POLICY ANALYSIS EXERCISE

# Partnering to Protect

**Reforming US Security Assistance** to Reduce Civilian Harm

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### **ACRONYMS REFERENCE GUIDE**

AECA – Arms Export Control Act AFRICOM – US Africa Command

AFP – Armed Forces Philippines

AM&E – Assessment, Monitoring, and **Evaluation** 

ASG – Abu Sayyaf Group (Philippines)

CCMT - Civilian Casualty Mitigation Team

CCTC – Civilian Casualty Tracking Cell

CENTCOM - US Central Command

CIA – US Central Intelligence Agency

CIVCAS – Civilian Casualties

DCS - Direct Commercial Sales

DIILS – Defense Institute for International **Legal Studies** 

DoD – US Department of Defense

DoS – US Department of State

EUM – End Use Monitoring

FAA – Foreign Assistance Act

FMF – Foreign Military Financing

FMS – Foreign Military Sales

GAO – US Government Accountability Office

GWOT - Global War on Terror

IC – Intelligence Community

IG – US Inspectors General

IHL – International Humanitarian Law

IMET – International Military Education and Training

INGO – International Non-Governmental Organization

ISAF – International Security Assistance Force (Afghanistan)

ISIS – Islamic State in Iraq and Syria

ISF – Iraqi Security Forces (Iraq)

JSOTF-P – US Joint Special Operations

Task Force-Philippines

LOAC – Law of Armed Conflict

MOU – Memorandum of Understanding

NADR - Nonproliferation Anti-terrorism,

Demining, and Related Programs

appropriations

NDAA – The US National Defense

Authorization Act

NGO – Non-Governmental Organization

OCHA – United Nations Office for the

Coordination of Humanitarian Affairs

OEF-P – Operation Enduring Freedom -

**Philippines** 

OHCHR –Office of the United Nations High

Commissioner for Human Rights

PGM – Precision Guided Munitions

PKO – Peacekeeping Operations

appropriations

PNP – Philippine National Police

(Philippines)

SFOPs – State, Foreign Operations, and

Related Programs appropriations

UAE – United Arab Emirates

UN – United Nations

USAID – United States Agency for

International Development

USML – United States Munitions List

### **EXECUTIVE SUMMARY**

Security assistance has long been an important component of American statecraft. The foreign policies of successive administrations have focused on empowering US partners to confront their own security challenges, rather than solving them through American force alone. Today, US foreign and defense policy indicates an intent to work "by, with, and through" partner forces to achieve shared goals. However, the outsourcing of American security objectives comes with a host of potential risks to civilians living in conflict zones or fragile states. Fighting with or relying on local partners – whose interests, priorities, and capabilities may not necessarily align with those of the United States – can complicate or even degrade America's ability to minimize civilian harm during military operations.

This Policy Exercise Analysis (PAE) examines the causes and consequences of civilian harm in security partnerships, and its implications for US foreign policy. The United States understands the strategic importance of protecting civilians during military operations and has learned valuable lessons from nearly two decades of counterinsurgency efforts in Iraq and Afghanistan. But, American officials have not paid the same careful consideration to the increased risk to

civilians when US forces operate "by, with, and through" local partners. When partner forces abuse or kill civilians with "Made in the USA" weapons, training, and support, it damages US interests. US engagement with those forces alienates local populations, reduces US credibility, and ultimately undermines America's interests in international peace and security.

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This report provides analysis and recommendations for a congressional office to lead on the important and timely policy problem of civilian harm in security partnerships. It was informed by extensive open source analysis and interviews with practitioners in the security assistance and civilian protection communities. The report proceeds in five parts. The first section provides background and defines the terms that will be used in the report. Section II explores in greater detail the relationship between civilian harm and US security assistance. Section III performs a gap analysis of congressional tools available to mitigate civilian harm in partnerships. Section IV explores three case studies – assistance to Nigeria to counter Boko Haram, support for the Saudi-led coalition in Yemen, and cooperation with the Philippine armed forces against domestic terrorist groups – to illustrate US tools, policies, and processes to reduce civilian harm in partnerships. The report closes with recommendations for Congress and the executive branch.

### KEY FINDINGS

Unpacking the complex relationship between security assistance and civilian harm is an essential contribution of this study. When the United States does not fully control, monitor, or understand the actions of actors with whom it is associated on the ground, civilians may pay the price. This report finds that the level of civilian harm perpetrated in partnerships depends on several factors:

- → The partner's independent capability, capacity, and will to prevent civilian harm
- → The nature of the partner's control of its security forces
- → The alignment of a partner's threat perceptions with those of the United States
- → The United States' relative dependence on the partner for wartime information
- → The United States' ability and willingness to change partner behavior

Responsibility for this complex policy area falls between the executive and legislative **branches.** The executive branch develops and implements security assistance policy. But current officials do not have a clear strategy to address the increased risk of civilian harm from partnerships. The executive branch's traditional focus on preserving bilateral relationships, selling equipment without understanding partners' capabilities and intentions, and an overreliance on human rights training as a panacea can all contribute to risks to civilians in conflict.

### RECOMMENDATIONS

This report provides recommendations for Congress and the executive branch to improve civilian protection in partnerships. These recommendations were developed and selected according to their performance on four key criteria: political feasibility, cost and budgetary considerations, implementation factors, and potential for impact.

### To the Congress:

- 1. Mandate the Department of Defense (DoD) and Department of State (DoS) to develop a strategy to address the increased risk of civilian harm when US forces work "by, with, and, through" partner forces. The absence of such a strategy sidelines and compartmentalizes considerations of civilian protection in partnerships. The strategy should include a framework to assess, monitor, and evaluate a partner's commitment to civilian protection and establish the triggers and indicators that would require a reevaluation of the partnership.
- 2. Conduct more consistent, effective, and transparent oversight of the executive branch's strategy for and implementation of US security assistance policy. Congress should improve notification and reporting requirements to better track which countries are getting what kinds of assistance in order to hold partners accountable for abusive behavior. Congress should also demand data and transparency from the executive branch on how security assistance initiatives advance US objectives and how assistance may contribute to civilian harm. Individual members can play a larger role in this process and bring in new voices and constituencies to inform oversight.
- 3. Amend the Leahy laws to close loopholes in interpretation and implementation. Leahy vetting is one of the most important tools to ensure US assistance is not used to perpetrate abuses. However, in their current form, the laws do not sufficiently mitigate partner-caused civilian harm. Congress should amend the Leahy provisions to extend their applicability to Foreign Military Sales and set clearer guidelines about which partner country entities are eligible for assistance.
- 4. Exercise greater influence and control over US arms sales strategy, policy, and **execution.** Congress should clarify the conditions under which it will approve future arms sales and reject or hold sales that are inappropriate for the partner's needs, capabilities, and intentions. Congress should also extend the notification deadline for congressional disapproval from 30 to 60 days, expand end-use monitoring programs to include an evaluation of how US weapons are used in conflict, and ensure that packages include tailored training and technical assistance on civilian protection.
- 5. Increase oversight of training programs on civilian casualties and the law of **armed conflict.** Training is often viewed as a silver bullet solution to a partner's civilian protection problems. Congress should require DoD to assess, monitor, and evaluate the impact of such training programs to understand their impact.

### TO THE EXECUTIVE BRANCH:

- 1. Assess partner capability, capacity, and will to protect civilians and establish civilian harm-related triggers. The establishment of such a framework would enable the United State to enter partnerships with a clear understanding of the partner's weaknesses and gaps on civilian protection and appropriately calibrate and sequence the level and form of assistance. It would also enable policymakers to adapt or modify existing partnerships when conflict conditions change on the ground.
- 2. Place conditions on training, equipment, and other support based on partner forces' commitment to and performance on civilian protection indicators. The exact impact of conditions on security assistance is uncertain and warrants further research. However, the Departments of State and Defense should limit the provision of unconditional military aid to partners while also identifying opportunities to implement more positive conditionality with partners to incentivize better behavior.
- **3. Improve monitoring of civilian harm in partnerships.** Documenting and analyzing civilian harm is critical to improving protection. The United States should develop metrics and information channels to independently assess and report on civilian harm caused by partner forces. The United States should also help partners enhance their own capacity to track these metrics.
- **4.** Improve training for partner forces to enable them to better plan and conduct military operations with civilians in mind. DoD's human rights training is too academic, overly legalistic, and doctrinal. Training should instead focus on working with partner militaries to devise practical civilian protection plans and policies that will prepare them to respond during a real conflict.
- **5.** Harmonize messaging on civilian protection across US government stakeholders to partners. The message the United States delivers to partners can be segregated and uncoordinated, with officials in the military, in Washington, and at embassies communicating different priorities. Policymakers should work to convey complementary messages to foreign counterparts on the importance of civilian protection.

### LOOKING AHEAD

This report demonstrates how security partnerships in armed conflict are uniquely risky to civilians. Improving policy in this area will require engaged, sustained, and effective congressional leadership. Given the increased role partnerships are playing in US foreign policy, Congress must act now to reform US security assistance policy to reduce and mitigate risks to civilians.

### METHODOLOGY

The report authors conducted research using open source materials, expert interviews, and three case studies. A comprehensive review of academic literature, think tank and advocacy reports, US government documents, congressional testimony, legislation, and contemporary reporting provided the direction for the central questions addressed in this report.

### **RESEARCH QUESTIONS:**

- **1.** What does an increased American reliance on working "by, with, and through" local partners mean for civilian harm outcomes in conflict?
- 2. To what extent does civilian harm inflicted by US-backed partners damage American strategic objectives?
- 3. What are the US responsibilities to monitor and prevent civilian harm in security assistance relationships?
- **4.** Which legal, policy, and process tools can, or should, the US government use to encourage greater partner accountability for civilian protection in conflict?

After an initial literature review, the authors conducted 50 interviews from September 2018 to March 2019 with stakeholders in the executive branch, congress, nongovernmental organizations/think tanks, and academia (see Annex A for a complete list of interviewees). The interviews were conducted in-person in Washington, DC and over the phone. The authors used the snowball sampling technique to identify experts to interview and used a semi-structured template to conduct the interviews. The interview questions were adapted where appropriate based on the expert's field of study and experience (see Annexes B and C for the interview templates). When possible and with permission, the authors recorded and transcribed the interviews to faithfully capture each expert's insights.

This report also selected three cases as a lens through which to examine the causes and consequences of civilian harm in security partnerships. The three cases were selected using seven specific criteria, detailed in Section IV of the report. Each case assesses the efficacy of US tools, policies, and processes for addressing civilian harm caused by USbacked partners during military operations. To compile the case studies, the authors consulted regional experts, historical resources, US government documents, and contemporary reporting.

#### LIMITATIONS

There are several limitations with this research methodology. The authors only had access to unclassified, open-source materials. The US government classifies and restricts public access to certain sensitive information on security assistance – for example, which foreign security forces may be prohibited from receiving US military aid – which inherently limits the scope of the research. Second, the authors primarily interviewed

and examined US actors. Due to financial limitations and political sensitivities, the authors could not conduct interviews with foreign government officials or partner security forces to gain their perspectives on US security assistance. Finally, the snowball interview method may lead to bias in that experts recommended other experts in their network who may have similar viewpoints.

The authors took several steps to mitigate the impact of these potential biases. For example, the authors interviewed regional specialists and sought local resources in constructing the three case studies. To address the limitations inherent in the interview methodology, the authors intentionally interviewed a diverse set of stakeholders to gain a more balanced perspective. The authors interviewed individuals who were inside and outside of the US government, military and civilian officials, political appointees and career civil servants, Democrats and Republicans, and think tanks on the right and left of the political spectrum.



# PART I: BACKGROUND, CONTEXT, AND DEFINITIONS

### THE EVOLUTION OF US SECURITY ASSISTANCE

Security assistance has long been an important component of American statecraft. Since World War II, administrations of both parties have underscored the importance of empowering partners to confront their own security challenges rather than attempting to solve them through American force alone. Through security assistance relationships, the United States sought to help partners improve their military and security forces to confront threats to their own internal stability or alleviate regional security dilemmas.¹ A network of capable partners around the globe can limit the deployment of US forces and reduce the need for costly, large-scale interventions. Partnerships can enhance the ability of the United States and foreign forces to operate together in international coalitions. Security partnerships also facilitate American access to bases and transit routes abroad, bringing US forces a continent closer to trouble spots in the Middle East, Africa, and beyond. Finally, the provision of military aid can serve to strengthen relationships with foreign militaries and generate goodwill with partner governments.

The attacks of September 11, 2001 marked a significant shift in US security assistance policy. Congress authorized a host of new authorities to empower the executive branch to build the capacity of fragile states to counter terrorist threats. This proliferation of counterterrorism authorities exponentially increased the size, scope, and geographical distribution of US security assistance

This report uses security assistance as a generic term to encompass all efforts by the US government to build the capacity of foreign partners to address security-related threats.

activities worldwide.<sup>2</sup> The relative influence of the Department of State (DoS) and the Department of Defense (DoD) on the interagency security policymaking process also shifted. Congress granted DoD new authorities to engage in "security cooperation," heralding an expanded global role for DoD in its engagements with foreign security forces.<sup>3</sup> Despite maintaining normative control over security assistance policy, the Department of State's relative influence declined.<sup>4</sup> The rapid increase in authorities, resources, partners, and government stakeholders gave way to a complex and unwieldy security assistance enterprise.

<sup>&</sup>lt;sup>1</sup> Derek S. Reveron, "Security Cooperation: A Key Pillar of Defense Policy," Foreign Policy Research Institute, November 23, 2015, https://www.fpri.org/article/2015/11/security-cooperation-a-key-pillar-of-defense-policy/.

<sup>&</sup>lt;sup>2</sup> Susan B. Epstein and Liana W. Rosen, *U.S. Security Assistance and Security Cooperation Programs: Overview of Funding Trends*, Washington, D.C.: Congressional Research Service, R45091, February 1, 2018, https://fas.org/sgp/crs/natsec/R45091.pdf.
<sup>3</sup> Ibid, 2.

<sup>&</sup>lt;sup>4</sup> Rose Jackson, "Untangling the Web: A Blueprint for Reforming American Security Sector Assistance," (Open Society Foundations, January 2017), 11, https://www.opensocietyfoundations.org/sites/default/files/untangling-the-web-20170109.pdf.

Today, US foreign and defense policy indicates an intent to work "by, with, and through" partners to achieve US security objectives. 5 Relying on local partners to fight terrorism is still a significant component of US strategy. Since 2014, America's strategic approach to countering the Islamic State has been to "identify and enable capable and motivated local forces to deliver a lasting defeat to ISIS." As the United States re-postures to focus more on great power conflict, bolstering partners will remain critical for achieving global defense objectives. DoD's Maritime Security Initiative, for example, aims to build maritime domain awareness and capabilities in Southeast Asia partners to ensure that maritime Asia remains free, open, and secure.<sup>7</sup>

The complex patchwork of authorities, agencies, and polices can undermine the effective prioritization, planning, assessment, and oversight of security assistance.8 It also has important implications for protecting civilians in conflict. As detailed in Section III of this report, the proliferation of security assistance authorities has not been accompanied by a similar growth in civilian protection policies. While the United States has enhanced its ability to train and equip partner forces, there has not been enough of a corresponding effort within the US government to understand and account for how working "by, with, and through" partners poses unique challenges for civilian protection in conflict.

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<sup>&</sup>lt;sup>5</sup> Jim Mattis, Department of Defense, Summary of the 2018 National Defense Strategy of the United States of America: Sharpening the American Military's Competitive Edge (Washington, D.C., 2018), https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf. <sup>6</sup> Ash Carter, "Opening Remarks at Counter-ISIL Defense Minister Meeting," (Joint Base Andrews, Maryland, July 20, 2016), https://dod.defense.gov/News/Speeches/Speech-View/Article/850519/opening-remarks-at-counter-isil-defense-minister-meeting/. <sup>7</sup> Office of the Press Secretary, "Fact Sheet: U.S. Building Maritime Capacity in Southeast Asia," (The White House, November 17, 2015), https://obamawhitehouse.archives.gov/the-pressoffice/2015/11/17/fact-sheet-us-building-maritime-capacity-southeast-asia.

<sup>8</sup> David Thaler, Michael J. McNerney, Beth Grill, Jefferson P. Marquis, and Amanda Kadlec, "From Patchwork to Framework: A Review of Title 10 Authorities for Security Cooperation," (RAND Corporation, 2016), https://doi.org/10.7249/RR1438.

### REPORT DEFINITIONS

### **Security Assistance**

The US government does not use a single definition for its efforts to work "by, with, and through" partner forces. The lack of standard terminology makes rigorous, informed oversight of US security assistance programs difficult. The three terms most frequently used to describe American assistance to foreign security services and militaries are "security assistance," "security cooperation," and "security sector assistance." Figure 1 provides a more detailed description of these terms.

While noting the important variations and nuance between these terms, for clarity and ease of reading, this report will use the term "security assistance" as a generic term to encompass all efforts by the US government to build the capacity of foreign partners to address security-related threats. This definition covers a broad range of activities and programs by the Departments of State and Defense, from individual military to military interactions, to large train and equip programs; from logistics and intelligence cooperation, to arms sales, grants, and transfers.

### **Civilian Harm**

This report defines civilian casualties as deaths from military operations. Civilian harm is defined as physical injury from military operations, or damage to personal or community well-being from military operations. This may include damage and destruction to personal property and civilian infrastructure like water, roads, and electricity; long-term health consequences; loss of livelihood and other economic impacts; and offenses to dignity and human rights. This expansive definition of civilian harm is necessary to appreciate the full impact of military operations on civilian life and the choices people make during and after conflict.

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<sup>&</sup>lt;sup>9</sup> Language used by US government officials includes military assistance, security assistance, security cooperation, security force assistance, foreign internal defense, train and equip, advise and assist, and building partner capacity.

<sup>&</sup>lt;sup>10</sup> For example, a recent US Government Accountability Office (GAO) report noted that, according to DOD officials, it is "not feasible" for "DOD to provide the individual program amount and total amount of funding for all DOD security cooperation programs intended to build partner security capabilities due to "(1) the lack of agreed-upon definition and listing of these programs and (2) the difficulty in identifying funding for programs that do not have a direct line of funding." Charles Michael Johnson, Jr., U.S. Government Accountability Office, *Building Partner Capacity: Inventory of Department of Defense Security Cooperation and Department of State Security Assistance Efforts*, GAO-17-255R (Washington, D.C., March 24, 2017), 1, https://www.gao.gov/assets/690/683682.pdf.

<sup>&</sup>lt;sup>11</sup> Christopher D. Kolenda, Rachel Reid, Chris Rogers, and Marte Retzius, "The Strategic Costs of Civilian Harm: Applying Lessons from Afghanistan to Current and Future Conflicts," (Open Society Foundations, June 2016), 10, https://doi.org/10.1163/2210-7975\_HRD-9709-2016010.

<sup>&</sup>lt;sup>12</sup> This conception of civilian harm is consistent with the Army Techniques Publication on the Protection of Civilians, which describes civilian protection as "efforts that reduce civilian risks from physical violence, secure their rights to access essential services and resources and contribute to a secure, stable, and just environment for civilians over the long-term." United States Army Combined Arms Center, *Protection of Civilians*, Army Techniques Publication (United States Army Peacekeeping and Stability Operations Institute, United States Army War College, October 2015), v, http://pksoi.armywarcollege.edu/default/assets/File/atp3\_07x6.pdf.

Figure 1. Varying Definitions of US Security Assistance. There is no single definition for US efforts to improve the capabilities of foreign security forces. The three terms used most often are defined below. This report uses "security assistance" to capture these terms.

### **Security Assistance**

The State Department uses the term *security assistance* to refer to the six budget accounts for which the State Department requests international security assistance appropriations. The underlying authorities for these requests reside in the Foreign Assistance Act of 1961 and the Arms Export Control Act of 1976. State Department assistance is codified in Title 22 of US Code. The State Department's security assistance programs are implemented through the Department of Defense.

### **Security Cooperation**

The Defense Department uses the term *security* cooperation to refer to its engagement and interaction with foreign defense and security forces. Security cooperation is authorized by Section 333 of Title 10 of the US Code. Commonly described as the Department's "Global Train and Equip" authority, it is the largest and broadest of DoD's security cooperation authorities. DoD also has other more specific authorities, such as the Counterterrorism Partnership Fund (CTFP) and the Afghan Security Forces Fund (ASFF) which fill specific functional or geographic security cooperation requirements.

### Security Sector Assistance

The term *security sector assistance* refers to all State Department assistance programs, DoD's security cooperation programs and engagements, as well as the activities of other relevant agencies like USAID and the Department of Justice. The Obama Administration issued Presidential Policy Directive 23 (PPD-23) in April 2013, which called for an overhaul of security sector assistance policy and the creation of a new framework to plan and implement security sector assistance.



# PART II: THE RELATIONSHIP BETWEEN SECURITY ASSISTANCE AND CIVILIAN HARM

When armed forces inflict indiscriminate harm on civilian populations, it carries steep costs beyond the obvious human toll on affected populations. This proposition is well-documented in academic literature. During an insurgency, violence against civilians can spark grievances among the local population, bolstering insurgent ranks and fueling revenge-seeking violence. Scholars found that civilian harm inflicted by the International Security Assistance Force (ISAF) in Afghanistan was met with reduced public support for ISAF and increased support for the Taliban. Civilian abuse may also prompt civilian populations to share critical wartime information with insurgent groups, undermining the military effectiveness of government forces. This line of reasoning posits that information about insurgent activities is a "central resource in civil wars: counter-insurgents seek it, insurgents safeguard it, and civilians often trade it." One study found that Iraqi civilians shared fewer tips with the government after Iraqi and coalition forces mistakenly killed civilians during combat operations. US military

doctrine also recognizes that a successful counterinsurgency campaign must focus on protecting civilians and turning them into allies of the military and government.<sup>18</sup> General Stanley McChrystal cited the potential for civilian casualties to harm cooperation from civilians as one reason for imposing more restrictive rules of engagement in Afghanistan in 2009.<sup>19</sup>

When armed forces inflict indiscriminate harm on civilian populations, it carries steep costs beyond the obvious human toll on affected populations.

<sup>&</sup>lt;sup>13</sup> Jason Lyall, Graeme Blair, and Kosuke Imai, "Explaining Support for Combatants in Wartime: A Survey Experiment in Afghanistan," *American Political Science Review* 107, no. 4 (2013): 833-848.; Luke Condra and Jacob Shapiro, "Who Takes The Blame? The Strategic Effects of Collateral Damage," *American Journal of Political Science* 56 no. 1 (2012): 167-187.; Stathis Kalyvas, *The Logic of Violence in Civil War* (Cambridge: Cambridge University Press, 2006).

<sup>&</sup>lt;sup>14</sup> Laia Baicells, *Rivalry and Revenge: The Politics of Violence During Civil War* (Cambridge: Cambridge University Press, 2017).; D. Scott Bennett, "Governments, Civilians, and the Evolution of Insurgency: Modeling the Early Dynamics of Insurgencies," *Journal of Artificial Societies and Social Simulation* 11 no. 4 (2008).; Matthew Kocher, Thomas Pepinsky, and Stathis Kalyvas, "Aerial Bombing and Counterinsurgency in the Vietnam War," *American Journal of Political Science* 55 (2011): 201-218. <sup>15</sup> Lyall et. al found that ISAF victimization is associated with a significant negative effect on ISAF support. ISAF victimization is also associated with a substantively large positive effect on Taliban support. See Jason Lyall, Graeme Blair, and Kosuke Imai, "Explaining Support for Combatants in Wartime: A Survey Experiment in Afghanistan," *American Political Science Review* 107, no. 4 (2013): 833-848. <sup>16</sup> Ibid. 833.

<sup>&</sup>lt;sup>17</sup> Andrew Shaver and Jacob N. Shapiro, "The Effect of Civilian Casualties on Wartime Informing: Evidence from the Iraq War," Households in Conflict Network Working Paper 210, October 2016.
<sup>18</sup> United States Department of the Army, *Army Field Manual 3-24: Counterinsurgency*, FM 3-24/MCWP 3-33.5, December 2006.

<sup>&</sup>lt;sup>19</sup> General Stanley McChrystal issued a revised Tactical Directive on July 2, 2009, which provided new guidance and intent for the employment of force in support of ISAF operations in Afghanistan, emphasizing the importance of preventing civilian casualties. Specifically, the directive calls on commanders "to scrutinize and limit the use of force like close air support against residential compounds and other locations likely to produce civilian casualties." The directive also states that "no ISAF forces will

Civilian harm caused by American-backed partners can cause similar damage to US objectives during armed conflict. When foreign security forces abuse civilians, US engagement with those forces fuels popular grievances and alienates local populations. When partner forces harm civilians with "made in the USA" weapons, equipment, or other support, the United States may be viewed by the civilian population as responsible for the violence. For example, public polling in Yemen reveals that most civilians blame the United States and United Kingdom for casualties caused by Saudi-led coalition airstrikes because of the role these countries play in providing arms and logistical support for the war.<sup>20</sup> Civilian harm in security partnerships also risks tainting America's image on the global stage and affects US credibility among other states. For example, the US-run "School of the Americas" trained foreign security forces who went

on to perpetrate egregious human rights abuses in El Salvador, Colombia, and Peru. <sup>21</sup> US ownership and financing of the school connected the United States to brutal massacres, which damaged American credibility in Latin America for decades. <sup>22</sup>

The "outsourcing" of American security objectives to partner forces comes with a host of potential risks to civilians living in conflict zones or fragile states.

Understanding the complex relationship between security assistance and civilian harm

is an essential component of this study. The "outsourcing" of American security objectives to partner forces comes with a host of potential risks to civilians living in conflict zones or fragile states. Although fighting together or relying on local partners may benefit the United States and its partners, it can simultaneously complicate or degrade America's ability to account for and minimize civilian harm.<sup>23</sup>

Security partnerships can potentially improve civilian protection during conflict. In partnering with local forces, the United States may benefit from in-country oversight and accountability institutions. These institutions can regulate security force conduct and help US forces capitalize on partners' access to local populations and knowledge of

enter or fire upon, or fire into a mosque or any religious or historical site except in self-defense. All searches and entries for any other reason will be conducted by the Afghan National Security Forces." See Memo to ISAF Headquarters in Kabul, Afghanistan: International Security Assistance Force. "Memo on Tactical Directive." NATO/ISAF, July 6, 2009.

https://www.nato.int/isaf/docu/official\_texts/Tactical\_Directive\_090706.pdf.

<sup>&</sup>lt;sup>20</sup> Melissa Dalton, Jenny McAvoy, Daniel Mahanty, Hijab Shah, Kelsey Hampton, and Julie Snyder, "The Protection of Civilians in U.S. Partnered Operations," (CSIS International Security Program, October 2018), 3, https://csis-prod.s3.amazonaws.com/s3fs-

public/publication/181029\_PartneredOperations.pdf?TnGZV1lgV.p9T15DqytYmtBG097SzXGB.

<sup>21</sup> Richard F Grimmett and Mark P Sullivan, *U.S. Army School of the Americas: Background and Congressional Concerns*, Washington, D.C.: Congressional Research Service, RL30532, April 16, 2001, 3.

<sup>22</sup> Clifford Krauss, "How U.S. Actions Helped Hide Salvador Human Rights Abuses," *New York Times*, March 21, 1993, https://www.nytimes.com/1993/03/21/world/how-us-actions-helped-hide-salvador-human-rights-abuses.html.

<sup>&</sup>lt;sup>23</sup> Melissa Dalton, Daniel Mahanty, Jenny McAvoy, Hijab Shah, Julie Snyder, and Kelsey Hampton, "Civilians and 'By, With, and Through': Key Issues and Questions Related to Civilian Harm and Security," CSIS Briefs (Center for Strategic and International Studies, April 2018), 2, https://csis-prod.s3.amazonaws.com/s3fs-

 $public/publication/180717\_Shah\_Civilians By With Through.pdf? 89q EI77st RoWJqt UdPlbMWozRxTyWTuT.$ 

cultural context. US participation in military operations – either through direct involvement in hostilities or indirect advising – may incentivize partner forces to exercise more caution, causing less damage to civilian populations and infrastructure. For example, some US officials found that when US forces operated alongside Iraqi forces during military operations to re-take Mosul from ISIS, the Iraqi units cooperating closely with Americans committed fewer abuses.<sup>24</sup> Finally, civilians may face fewer risks in conflict if training by the US military effectively sensitizes partners to the strategic risks of perpetrating civilian harm and trains them on how to avoid it.<sup>25</sup>

However, security partnerships in armed conflict can also increase the risk of civilian harm. In these circumstances, the United States does not fully control the actions of key actors with whom it is associated. US actors may not be directly involved in hostilities. Therefore, encouraging partners – whose interests, priorities, and capabilities regarding civilian harm may not perfectly align with those of the United States – to ensure the protection of civilians can be difficult. For example, the United Stated relied on the Kurdish Peshmerga Forces in the fight against ISIS; however, during the same campaign, Kurdish fighters engaged in collective punishment of villages of suspected ISIS suspects, including the "deliberate displacement of thousands of civilians and the razing of entire villages." <sup>26</sup>

### FACTORS FOR CIVILIAN HARM IN PARTNERSHIPS

The level of civilian harm perpetrated by US-backed partners during a conflict depends on several factors:

1. The partner's independent capability, capacity, and will to prevent civilian harm. Many of America's security partners suffer from weak defense institutions in which civilian protection norms are not institutionalized or enforced. Partner military doctrine may not include formal guidance, instructions, or codes of conduct for preventing and responding to civilian harm. The command culture of partner militaries may not emphasize minimizing civilian harm or may actively deprioritize it. Partners may use cheaper weapons that are more likely to cause harm, particularly in densely populated areas, or be unable to afford "smart munitions" that enable precision targeting. Partners may not be sufficiently trained on how to avoid civilian harm in conflict, such as by

<sup>&</sup>lt;sup>24</sup> A senior US military commander in Iraq during the fight to retake Mosul in 2017, Brig. Gen. Rick Uribe, said of the Iraqi security forces, "They have been extremely good at taking care of those civilians. I don't know whether you would have seen this a few years ago ... This was part of the training (by the coalition). You got to treat people with dignity and respect. You cannot go into a city and make it worse than before." Hamza Hendawi, "US General Hands Iraqis Fighting in Mosul Vote of Confidence," *AP via Military.com*, January 1, 2017, https://www.military.com/daily-news/2017/01/01/us-general-hands-iraqis-fighting-mosul-vote-confidence.html.

<sup>&</sup>lt;sup>25</sup> The United States also incorporates human rights training and instruction on the law of armed conflict into its engagement with partner forces. For example, all section 333 programs "must include elements that promote "Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military." 10 U.S. Code § 333.

<sup>&</sup>lt;sup>26</sup> Amnesty International, "Syria: U.S. Ally's Razing of Villages Amounts to War Crimes," Press Release, October 2015, https://www.amnesty.org/en/press-releases/2015/10/syria-us-allys-razing-of-villages-amounts-to-war-crimes/.

establishing proper targeting procedures or setting up a civilian harm mitigation cell. Finally, partners may not have the political will to prioritize civilian protection. For example, the United States provided Saudi Arabia with intelligence and targeting assistance designed to avoid civilian casualties, but the Saudi air force continued to strike civilians in Yemen.<sup>27</sup> Some US officials concluded that the Saudis were simply "just not willing to listen" to American priorities on civilian protection.<sup>28</sup>

- 2. The nature of the partner's control of its security forces. The US military tends to view foreign militaries as mirror images of itself that is, a military relatively separate from the political system. In reality, many partner militaries are closely integrated with and participate in the political and social system.<sup>29</sup> According to Samuel Huntington, this so-called "subjective" control of the military leads to reduced professionalism, as military leadership is not selected for merit but rather to advance the agenda of political leaders.<sup>30</sup> Civilian harm can thus be perpetrated in support of a particular political objective. A prime example of this dynamic was the Iraqi Security Forces (ISF) and Shia militias' brutality against Sunni civilians. Prime Minister Nouri al-Maliki built a Shiadominated sectarian state, punished Sunni political opponents, and failed to respond to Sunni demands for reform. The ISF and Shia militias, taking cues from their political leadership, committed serious, systemic abuses of Sunni civilians during Maliki's tenure.<sup>31</sup>
- **3.** The alignment of a partner's threat perceptions with those of the United States. US objectives or threat perceptions may not exactly match those of its partners. Priorities may diverge completely, even if military operations are jointly planned.<sup>32</sup> US support for Pakistan's security forces demonstrates how divergent threat perceptions can lead to civilian harm. Because the United States regards its partnership with Pakistan as critical for counterterrorism in South and Central

<sup>&</sup>lt;sup>27</sup> Declan Walsh and Eric Schmitt, "Arms Sales to Saudis Leave American Fingerprints on Yemen's Carnage," *New York Times*, December 26, 2018,

https://www.nytimes.com/2018/12/25/world/middleeast/yemen-us-saudi-civilian-war.html. <sup>28</sup> Ibid. Quote by Tom Malinowski, former Assistant Secretary of State for Democracy, Human Rights, and Labor.

<sup>&</sup>lt;sup>29</sup> Interview with Chris D. Kolenda, King's College London, February 28, 2019.

<sup>&</sup>lt;sup>30</sup> Huntington's "subjective control" of the military. See Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil–Military Relations* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1957).

<sup>&</sup>lt;sup>31</sup> For example, in December 2012, thousands of Iraqis took part in demonstrations in mostly Sunni areas, demanding reform of the Anti-Terrorism Law and the release of illegally held detainees. Security forces used violence against protesters, culminating in an attack on a demonstration in Hawija in April, which killed 51 protesters. Authorities failed to hold anyone accountable. The government responded to increasing unrest with mass arrest campaigns in Sunni regions, targeting ordinary civilians and prominent activists and politicians under the 2005 Anti-Terrorism Law. Residents of mixed Sunni-Shia neighborhoods in Baghdad and other areas in the country reported that Shia armed groups Asa'ib Ahl al-Haqq and Kita'ib Hezbollah threatened Sunni residents with death if they did not leave the areas. See Human Rights Watch, "World Report 2014: Rights Trends in World Report 2014: Iraq," January 21, 2014, https://www.hrw.org/world-report/2014/country-chapters/iraq.

<sup>&</sup>lt;sup>32</sup> Steven Tankel, *With Us and Against Us: How America's Partners Help and Hinder the War on Terror*, (New York: Columbia University Press, 2018).

Asia, US officials often ignore Pakistan's choice to support militant groups that kill civilians.<sup>33</sup>

- **4. The United States' relative dependence on the partner for wartime information.** In situations where the United States has a limited ground presence, officials may be forced to rely on observations and reporting from local partners to assess potential and actual civilian harm. Dependency on information from partners can leave US forces vulnerable to misinformation, faulty intelligence, and manipulation by local actors. For example, intelligence shortfalls caused by deliberate misinformation from local Afghan partners exacerbated civilian casualties in Afghanistan. Local and national elites exploited US and coalition forces by "fingering their personal and political rivals as Al Qaeda or Taliban" in the hopes that international forces would target them during military action."<sup>34</sup>
- **5. The United States' willingness to change partner behavior.** US foreign policy choices often prioritize relationships or perceived security interests at the expense of ensuring that partners protect civilians or meet their obligations under international law. The United States might be unwilling to pressure or impose conditions on certain partners to reduce civilian harm for fear of losing that partner's cooperation on shared security goals. American policymakers also cite concerns that introducing more accountability for security assistance would prompt partners to turn to Russia or China for easier terms, despite significant evidence that US equipment and a relationship with America is more desirable to partners.<sup>35</sup>

Understanding the causes and consequences of civilian harm in security partnerships is essential. Sarah Holewinski, a senior fellow at the New America Foundation and former executive director of the Center for Civilians in Conflict, argues that improving US policy in this area "must come from showing US policymakers, and in particular the Congress, that partnered operations are risky for specific reasons that are distinct from why armed conflict is risky."<sup>36</sup> The next section of this report performs a gap analysis of existing tools that Congress has to oversee US policy in this realm.

<sup>&</sup>lt;sup>33</sup> Vanda Felbab-Brown, "Why Pakistan Supports Terrorist Groups, and Why the US Finds It so Hard to Induce Change," (Brookings, January 5, 2018), https://www.brookings.edu/blog/order-from-chaos/2018/01/05/why-pakistan-supports-terrorist-groups-and-why-the-us-finds-it-so-hard-to-induce-change/. For an explanation of Pakistan's support for militants and resistance to US pressure, see Sahar Khan, "Double Game: Why Pakistan Supports Militants and Resists U.S. Pressure to Stop," (Cato Institute, Policy Analysis NO. 849, September 20, 2018), https://www.cato.org/publications/policy-analysis/double-game-why-pakistan-supports-militants-resists-us-pressure-stop.

<sup>34</sup> Christopher D. Kolenda et al., "The Strategic Costs of Civilian Harm: Applying Lessons from Afghanistan to Current and Future Conflicts," Open Society Foundations, June 2016, 21.
35 Interview with Eric Rosenbach, Co-Director of the Belfer Center and former Pentagon Chief of Staff, March 15, 2019.

<sup>&</sup>lt;sup>36</sup> Interview with Sarah Holewinski, Senior Fellow at New America, March 5, 2019.



## PART III: OVERSIGHT AND REFORM OF SECURITY **ASSISTANCE**

The complex relationship between civilian harm and security assistance poses challenges for engaged and effective oversight. Although the executive branch develops security assistance policy, Congress can mandate if and how security assistance dollars are spent.

Congressional oversight has been critical to checking or changing misguided executive branch policies on security assistance. Sarah Margon, the Washington director of Human Rights Watch, argued that "Although imperfect, for decades Congress has played an essential role rebalancing US foreign policy to ensure human rights are more regularly incorporated into major policy decisions."37 Congress established the Bureau of Democracy, Labor, and Human Rights in 1976 and mandated the bureau to produce annual human rights reports documenting abuses in other countries.<sup>38</sup> These reports are used to guide US relations with foreign governments. In the late 1990s, Congress created the Leahy laws as a flexible tool to restrict support for abusive Colombian security forces without ending the entire US-Colombia security relationship.<sup>39</sup> More recently, Congress mandated reforms in the 2017 National Defense Authorization Act (NDAA) to DoD's security cooperation enterprise to drive increased transparency,

"Although imperfect, for decades Congress has played an essential role rebalancing US foreign policy to ensure human rights are more regularly incorporated into major policy decisions. Sometimes this has taken the shape of legislation that requires an annual human rights report from the State **Department or conditioning** foreign aid allocation. It has also meant restricting security assistance or trying to block arms sales due to ongoing human rights violations."

> Sarah Margon, Washington Director. **Human Rights Watch**

accountability, and learning.<sup>40</sup> As the role of security assistance in US foreign policy increases, Congress must ensure that American partnerships are built to protect civilians and achieve long-term security objectives.

<sup>37</sup> Interview with Sarah Margon, Washington Director, Human Rights Watch, March 29, 2019.

<sup>&</sup>lt;sup>38</sup> Donald Hays, Arne Baker, Colleen Ayers, and Jonathon Walz, *Inspection of the Bureau of Democracy*, Human Rights, and Labor, Washington, D.C.: Office of the Inspector General, ISP-I-19-11, October 2018,

<sup>&</sup>lt;sup>39</sup> Nina M. Serafino, June S. Beittel, Lauren Ploch Blanchard, and Liana Rosen, *Leahy Law' Human* Rights Provisions and Security Assistance: Issue Overview, Washington, D.C.: Congressional Research Service, R43361, January 29, 2014, 15.

<sup>40 114</sup>th Congress, S.2943 - 114th Congress (2015-2016): National Defense Authorization Act for Fiscal Year 2017, December 23, 2016, https://www.congress.gov/bill/114th-congress/senate-bill/2943/text.

### **OVERSIGHT TOOLS AND AUTHORITIES**

Congress has four primary types of tools to exercise oversight over US security assistance: legislation, appropriations, independent oversight offices, and public scrutiny. A Strengths, Weaknesses, Threats, and Opportunities (SWOT) matrix of these tools is presented in Table 1.

**Table 1. Strengths, Weaknesses, Opportunities, and Threats (SWOT) of Congressional Tools.** While Congress possesses many of the tools and authorities to ensure that civilians are prioritized in US security assistance, gaps in existing legislation and problems with oversight structures and processes threaten the effectiveness of oversight.

	Tool	Strength	Weakness	Opportunity	Threat
Legislation	Leahy Laws	Allows restriction of US assistance to bad actors without ending the entire security partnership	Selective application does not restrict assistance to all relevant entities; DoD and DoS implementers may be disincentivized to use due to relationship concerns	Vetting can result in remediation of units and improved overall partner force behavior	Reform in current political climate could result in gutting instead of enhancing enforcement
Leg	Arms Export Control Act	Grants the authority to monitor and restrict which countries receive American weapons and equipment	High threshold to formally use blocking authority; end-use monitoring programs are under- implemented and under-resourced	Broad authority and means to regulate use of US equipment; congressional review can yield better arms sales packages and send strong message	Congressional capacity and will to use authority
Appropriations	Reporting Requirements	Restrict misguided executive branch policy; provide transparency around security assistance	National security waivers are often included that enable circumvention of restrictions	Reporting requirements attached to restrictions and waivers publicize partner harm and can encourage change	Limited congressional staff capacity impedes effective tracking and monitoring all reports

	Tool	Strength	Weakness	Opportunity	Threat
Independent Oversight Offices	Government Accountability Office	Public reports on executive branch policy; executive branch usually forced to provide written response	Executive branch is not required to implement recommendations without congressional mandate	Congress can task GAO to investigate and report on security assistance policy and implementation	Impact on fast- moving issues limited by resource and time constraints
	Inspectors General	IGs can investigate and highlight executive branch policy, often over long time periods with deep expertise	IGs require resources and a mandate from Congress	Congress can use IG reports to enhance oversight of executive branch behavior	Resource intensive; not practical or feasible for every partnership
ttention	Hearings	Draw public attention to issues; forces executive branch to explain and justify policy	Hearings not guaranteed to produce results; expend limited congressional bandwidth	Hearings can force reckoning within executive branch about policy and strategy	Ineffective if no follow up through legislation or appropriations; potential for executive branch stonewalling
Public Scrutiny and Attention	Individual Member Advocacy	Powerful platform to raise civilian harm issues publicly or privately	Lack of constituency-based incentives	Privileged position of authority requires response from executive branch	Lack of capacity and sustained engagement limits efficacy
Public S	Media and NGOs	Provide outside expertise and oversight to inform the policymaking process	Questions of impartiality and limited visibility of outside voices	NGOs and media can possess different information than government	Introduction of more voices to the process can challenge an already crowded space

**LEGISLATION:** Domestic laws grant the United States the authority to provide and restrict security assistance. These laws obligate the United States to ensure that security assistance accounts for human rights and civilian protection:

• **Foreign Assistance Act:** The FAA lays out the structure and provides the authority for US foreign aid and security assistance. The law calls on the president to conduct US security assistance "in a manner which will promote and advance human rights."<sup>41</sup> Section 502B of the law mandates "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."<sup>42</sup>

The FAA is well intended, but no administration has ever actually used it to justify cutting off assistance because of its broad mandate. Administrations are reluctant end all US engagement – even in the face of obvious patterns of abuse – because of countervailing priorities.<sup>43</sup> Moreover, the United States is hesitant to cut off all assistance when only a few individuals or units are engaged in atrocities. For example, the military dictatorship of Ríos Montt in the 1980s in Guatemala clearly fit the description of engaging in consistent patterns of gross human rights violations, but the Reagan administration refused to cut off US assistance because of Cold War competition.<sup>44</sup>

- **The Leahy Laws:** The Leahy laws (or amendments) prohibit the United States from providing security assistance to foreign security force units credibly implicated in human rights abuses.
  - → **State Department Leahy Law:** The DoS Leahy provision states that no US funds may be provided to "any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights." It is codified in Section 620M of the FAA. The provision includes a remediation provision that allows aid to resume if the partner takes effective accountability measures. 46

<sup>&</sup>lt;sup>41</sup> Foreign Assistance Act of 1961, Sec. 116, U.S. Code 22.

<sup>&</sup>lt;sup>42</sup> Foreign Assistance Act of 1961, Sec. 502B, U.S. Code 22.

<sup>43</sup> Interview with Tim Rieser, Foreign Policy Aide to Senator Patrick Leahy (D-Vt), March 22, 2019.

<sup>&</sup>lt;sup>44</sup> Geoff Thale, Central America Program Director at the Washington Office for Latin America (WOLA), argued that while "direct U.S. military aid was suspended during the Carter Administration, [it was then] then restored by the Reagan Administration, whose Cold War worldview clearly prioritized the fight against insurgents and their civilian supporters over respect for human rights." See Santiago Wills, "Did Reagan Finance Genocide in Guatemala?" *ABC News*, May 14, 2013,

https://abcnews.go.com/ABC\_Univision/News/ronald-reagan-finance-genocide-guatemala/story?id=19179627.

<sup>45</sup> Foreign Assistance Act of 1961, Sec. 620M, U.S. Code 22.

<sup>&</sup>lt;sup>46</sup> The full provision reads, "None of the funds made available by the Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice." Foreign Assistance Act of 1961, Sec. 620M, U.S. Code 22.

The DoS Leahy law applies to *assistance* and does not apply to weapons or training *purchased* by partners.

→ **Defense Department Leahy Law:** The DoD Leahy provision restricts defense funds for "any training, equipment, or other assistance" for a foreign security force unit credibly implicated in a gross human rights violation.<sup>47</sup> The DoD Leahy law directs the Secretary of Defense to consult with the Secretary of State to vet proposed assistance prior to its provision. DoD Leahy also excludes assistance provided through sales.

The Leahy laws are a "hugely important tool in our foreign policy arsenal," according to former US ambassador to the United Nations Samantha Power.<sup>48</sup> In contrast to the FAA, the Leahy laws were built as a practical way to address human rights violations while preserving the broader US relationship with a partner.<sup>49</sup> Leahy is intended to have a positive effect on partner forces, whereby governments work to create "clean units" in order to qualify for US assistance.<sup>50</sup> Administrations of both parties have respected vetting requirements.<sup>51</sup> Figure 2 examines a successful application of the Leahy laws in Colombia.

However, the Leahy laws suffer from gaps in implementation. One former DoD official described the process of declaring a unit as a gross violator of human rights as "opening up Pandora's Box" and something that severely damaged the bilateral relationship without actually affecting the partner's broader behavior.<sup>52</sup>

This may lead to incentives within the US government to circumvent the law.<sup>53</sup> Some experts noted that Leahy vetting is an inherently problematic tool for the challenge it seeks to resolve, because units that commit gross violations of human rights often do so in a political context which sanctions or even abets that behavior.<sup>54</sup> While the language of the Leahy laws

The Leahy laws are a "hugely important tool in our foreign policy arsenal."

Ambassador Samantha Power, Former US ambassador to the United Nations

<sup>&</sup>lt;sup>47</sup> The full provision reads, "None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken." Section 363 U.S. Code 10.

<sup>&</sup>lt;sup>48</sup> Interview from Samantha Power, former US Ambassador to the United Nations, March 2019.

<sup>&</sup>lt;sup>49</sup> Interview with Tim Rieser, Foreign Policy Aide to Senator Patrick Leahy (D-Vt), March 22, 2019.

<sup>&</sup>lt;sup>50</sup> For example, Amb. Samantha Power recalls officials in the Indonesian and Nigerian governments working to create "clean" units in order to qualify for US security assistance. Interview with Amb. Samantha Power, former US Ambassador to the United Nations, March 2019.

<sup>&</sup>lt;sup>51</sup> Nina M. Serafino et al., *Leahy Law' Human Rights Provisions and Security Assistance*, Congressional Research Service, January 29, 2014.

<sup>&</sup>lt;sup>52</sup> Interview with former Department of Defense official, February 28, 2019.

<sup>&</sup>lt;sup>53</sup> Interview with Christopher D. Kolenda, King's College London, February 28, 2019; Interview with former Department of Defense official, February 28, 2019.

<sup>&</sup>lt;sup>54</sup> Interview with Christopher D. Kolenda, King's College London, February 28, 2019.

contains provisions for remediation, some view the Leahy approach as primarily punitive, rather than compelling, except for in select cases.<sup>55</sup> Units barred from receiving US assistance are often disbanded and bad actors may be distributed, while broader partner behavior remains unchanged.<sup>56</sup> A 2015 joint DoS-DoD policy document sought to outline standards for remediation and resumption of assistance, but some have argued that the remediation process is too confusing and that relevant information is difficult to obtain.<sup>57</sup>

Finally, in practice, the executive branch only applies Leahy vetting to equipment and assistance provided under Foreign Military Financing (grants) and excludes sales. This application is not aligned with the intent of the law: "Senator Leahy does not believe there is a compelling foreign policy reason for having two contradictory policies simply because the Saudis have money and can purchase US equipment, while other countries cannot." 58

**Figure 2. Snapshot of the Leahy laws in Colombia in the 2000s.** Effective enforcement of the laws yielded positive changes in accountability measures for abusive security force units in Colombia.

US efforts in Colombia in the mid-2000s are considered a successful example of the Leahy law compelling change in partner behavior and improving overall compliance with human rights in a country's security forces. An Open Society Foundation report explains, "The Leahy Law played a part in helping to halt thousands of extrajudicial executions by the Colombian army. Largely between 2004 and 2008, Colombian soldiers killed more than 4,000 poor young men and dressed them in guerilla uniforms to claim monetary bonuses and other perks for 'combat kills.' Human rights activists provided key information about this practice, which led the United States to bar specific Colombian Army individuals and units from receiving US training and assistance. In addition, human rights groups provided information to the US Congress about how these killings violated country-specific human rights conditions on all U.S. security assistance to Colombia. That information led Sen. Leahy to freeze some US military aid from going to Colombia's military. The US government – along with the United Nations, Colombian human rights activists, media, and the valiant leadership of the victims' mothers – brought diplomatic pressure to bear on Colombia to encourage prosecutions in civilian courts."

> Lisa Haugaard, "The Law That Helps the U.S. Stop Heinous Crimes by Foreign Militaries," Open Society Foundations May 22, 2015

<sup>55</sup> Interview with former senior Department of Defense official, February 28, 2019.

<sup>&</sup>lt;sup>56</sup> Interview with former senior Department of Defense official, February 28, 2019.

<sup>57</sup> Michael McNerney, Jonah Blank, Becca Wasser, Jeremy Boback, and Alexander Stephenson,

<sup>&</sup>quot;Improving Implementation of the Department of Defense Leahy Law," (RAND Corporation, 2017), 5, https://www.rand.org/pubs/research\_reports/RR1737.html.

<sup>58</sup> Interview with Tim Rieser, Foreign Policy Aide to Senator Patrick Leahy (D-Vt), March 22, 2019.

• **Arms Control Export Act:** The AECA grants the president the authority to regulate the import and export of defense articles and services. The law establishes restrictions on how US-provided military assistance may be used.<sup>59</sup> Different agencies maintain different processes for approving and conducting sales or transfers.<sup>60</sup> The sale or provision of US weapons and equipment is conducted through either Foreign Military Sales, Foreign Military Financing, or Direct Commercial Sales (see Figure 3). Each process is subject to different oversight mechanisms. Congress appropriates Foreign Military Financing (FMF) as grants, rather than sales, to countries, and thus more restrictions are attached to this type of funding.

**Figure 3. Arms sales processes.** There are three processes that regulate the provision and sale of US arms, equipment, and services.

FOREIGN MILITARY SALES (FMS) The Foreign Military Sales process requires foreign buyers to purchase a "total package" of services and equipment, which could include training, technical assistance, ammunition, and follow-on support. FMS are overseen by the State Department and administered through DoD's Defense Security Cooperation Agency. Under the FMS program, DoD procures equipment or materials directly from US contractors on behalf of the foreign government. Sales are accompanied by end-use monitoring programs intended to prevent unauthorized transfer of US equipment.

FOREIGN MILITARY FINANCING (FMF) **Foreign Military Financing provides partners with US weapons through grants or loans.** The Arms Export Control Act authorizes the President to finance the procurement of US weapons and services for eligible partners. The Department of State determines which countries are eligible to receive financing. The Congress appropriates funds for financing. Equipment acquired through FMF undergoes the same procurement process for partners as FMS, but often carries more restrictions than purchased equipment.

DIRECT COMMERCIAL SALES (DCS) Sales between US manufacturers and non-US buyers are regulated by the DCS process and Department of Commerce. DCS applies to non-major equipment and certain items, which are regulated by the US Munitions List (USML). The State Department must approve sales of defense equipment and services on the USML. The US government is only involved in the initial approval and after-delivery monitoring process.

<sup>&</sup>lt;sup>59</sup> These reasons include "for internal security," "for legitimate self-defense," "for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons," "to permit the recipient country to participate in regional or collective arrangements" like UN peacekeeping, and "for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries." The president is required by the AECA to terminate US assistance if its use violates these principles. Arms Export Control Act, 22 U.S. Code Chapter 39.

<sup>&</sup>lt;sup>60</sup> The relevant agencies include the Departments of State, Defense, and Commerce.

• **End Use Monitoring (EUM):** The AECA requires US weapons sold or provided to partners to be monitored through End-Use Monitoring (EUM). EUM is a complex set of programs run by the Departments of Defense, State, and Commerce.<sup>61</sup> The stated purpose of EUM is to ensure weapons are "used for the purposes for which they are provided."<sup>62</sup>

In practice, EUM is focused on diversion (e.g., whether munitions sit in the warehouse the partner says they do), not use (how a bomb is used by the partner in conflict). EUM programs tend to be under-resourced, with few personnel at embassies qualified to conduct thorough monitoring. <sup>63</sup> For example, the GAO found serious weaknesses in the Egypt's EUM program. Egypt prevented US officials from accessing storage sites to verify the presence of US equipment. <sup>64</sup>

• **Congressional Review:** Section 36(b) of the AECA requires the executive branch to notify Congress before an arms sale to a foreign government is concluded. Congress may block a sale, but the barriers are high: it requires a joint resolution of disapproval or normal legislative procedure that could overcome a presidential veto. Congress has never formally blocked a sale using this approach. Instead, members of Congress have used their statutory powers to place "holds" on sales, signaling displeasure with executive branch proposals. Figure 4 examines a recent hold.

<sup>&</sup>lt;sup>61</sup> These processes are regulated by programs implemented by each agency. DoD implements through the Golden Sentry program. DoS implements through Blue Lantern program.

<sup>&</sup>lt;sup>62</sup> Section 40A of the Arms Export Control Act requires the Department of Defense and Department of State to perform end-use monitoring of US defense articles and defense services. The provisions are included in 22 U.S. Code § 2785 End-use monitoring of defense articles and defense services. Certain types of defense equipment require Enhanced End-Use Monitoring (EEUM); see Defense Security Cooperation Agency, Security Assistance Manual, "C8.4. – Enhanced EUM". Defense Security Cooperation Agency. "Chapter 8 - End-Use Monitoring." Accessed March 30, 2019. https://www.samm.dsca.mil/chapter/chapter-8#C8.4.

<sup>63</sup> Interview with former State Department official, March 12, 2019.

<sup>&</sup>lt;sup>64</sup> Charles Michael Johnson, Jr., Ū.S. Government Accountability Office, *U.S. Government Should Strengthen End-Use Monitoring and Human Rights Vetting for Egypt*, GAO-16-435 (Washington, D.C., April 2016). Human rights groups have documented serious abuses by Egyptian security forces against protestors. For a summary of some abuses, see Human Rights Watch, "Egypt: No Justice for Rab'a Victims 5 Years On," August 13, 2018, https://www.hrw.org/news/2018/08/13/egypt-no-justice-rabavictims-5-years.

<sup>&</sup>lt;sup>65</sup> Section 36(b) of the Arms Export Control Act requires that Congress is "formally notified 30 calendar days before the Administration can take the final steps to conclude government-to-government foreign military sales of major defense equipment valued at \$14 million or more, defense articles or services valued at \$50 million or more, or design and construction services values at \$200 million or more." Different thresholds and notification timelines are allowed for NATO members, Japan, Australia, South Korea, Israel, and New Zealand. Paul K. Kerr, *Arms Sales: Congressional Review Process*, Washington, D.C.: Congressional Research Service, RL31675, February 25, 2019.

<sup>&</sup>lt;sup>67</sup> Ibid. However, there are several examples of resolutions of disapproval that passed either the House or Senate during the Reagan administration.

### Figure 4. Congressional hold on arms sales to Saudi Arabia and the UAE.

Current oversight of arms sales in Congress is focused on preventing certain sales to Saudi Arabia and the UAE given the coalition's conduct in Yemen.

HOLDS IN ACTION Recent congressional efforts have focused on holding up certain transfers of arms to Saudi Arabia. For example, Senator Bob Menendez (D-NJ) has refused to consent – informally known as a hold – to a formal congressional notification of a proposed sale of precision guided munitions (PGMs) for Saudi Arabia and the United Arab Emirates, citing the need for more answers from the Trump administration on US support for Saudi-led coalition in Yemen

**APPROPRIATIONS:** Congress's "power of the purse" restricts how, when, and to whom US agencies provide security assistance:

• Reporting requirements and certifications: Congress can attach restrictions, reporting requirements, or other strings to appropriations. In appropriations bills, Congress can mandate that executive branch agencies provide reports or assessments on different aspects of security assistance. Last year, Section 1209 of the 2018 NDAA required a joint plan from the Departments of State and Defense describing how to improve the ability of the foreign security forces to protect civilians. Congress can also attach certification provisions to appropriations, whereby some portion of funds are withheld until the executive branch provides certain information. For example, State Department appropriations often contain a certification requirement that withholds a portion of FMF for Egypt until the Secretary of State certifies that the government is taking steps to promote reform among the security services (see Figure 5).

Congressional restrictions may be accompanied by waivers that allow the executive branch to provide assistance despite evidence of bad behavior. But even if they are waived, the requirement to certify or report can be useful because it requires the executive branch to publicly disclose information about civilian harm in partnerships.

68 See Sec. 1209 in House of Representatives, National Defense Authorization Act for Fiscal Year 2018,

Conference Report, November 2017, https://docs.house.gov/billsthisweek/20171113/HRPT-115-HR2810.pdf#page=963.

Figure 5. Congressional certification of US security assistance to Egypt. Annual certification requirements in aid to Egypt attempt to limit US assistance, but are often waived by the executive branch.

# Congressional certifications on US assistance to Egypt are a classic example of trying to condition assistance for human rights records.

Certification language in FY2019 appropriations requires the Secretary of State to verify, among other provisions, that "the Government of Egypt is taking sustained and effective steps, which are in addition to steps taken during the previous calendar year for such purposes, to ... (iv) hold Egyptian security forces accountable, including officers credibly alleged to have violated human rights; (v) investigate and prosecute cases of extrajudicial killings and forced disappearances; (vi) provide regular access for United States officials to monitor such assistance in all areas where assistance is used."

But certifications often contain waivers that allow the executive branch to continue providing assistance despite abuses. The waiver for the Egypt provision states, "The Secretary of State may waive the certification requirement in subparagraph (A) if the Secretary determines and reports to the Committees on Appropriations that to do so is important to the national security interest of the United States, and submits a report to such Committees containing a detailed justification for the use of such waiver and the reasons why any of the requirements of subparagraph (A) cannot be met."

**Even when waivers are used, they can force the executive branch to report on partner conduct.** For example, after the executive branch used a waiver to provide assistance to Egypt in 2017, the State Department was required to outline Egypt's human rights record in a report for Congress. 2017 State Department report detailed abuses by the Egyptian government. The report was never released publicly by the State Department, but a leaked version obtained and reported on by journalists at *AP* caused embarrassment for Egyptian president el-Sissi.

**INDEPENDENT OVERSIGHT OFFICES:** Congress also exercises oversight by tasking or creating other offices in the US government to report on executive branch behavior:

• **Government Accountability Office (GAO):** Often referred to as "the congressional watchdog," the GAO is an independent, nonpartisan agency that monitors government spending.<sup>69</sup> Any member of Congress can request the GAO to investigate any aspect of an executive branch policy or spending.

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<sup>&</sup>lt;sup>69</sup> "About GAO – Overview," United States Government Accountability Office, accessed March 31, 2019, https://www.gao.gov/about/.

Over the past five years, there have been at least twenty GAO reports investigating different aspects of security assistance or specific partnerships.<sup>70</sup>

• **Inspectors General (IGs):** Congress can establish statutory IGs to investigate government spending and actions.<sup>71</sup> IGs can highlight executive branch policy over long periods of time with deep expertise. For example, in January 2013, Congress created the Lead Inspector General framework for oversight of US Overseas Contingency Operations in January 2013, which issues quarterly reports for Congress on security assistance missions. These reports may highlight civilian protection issues, such as reports of Iraqi militia abuses against civilian populations in the counter-ISIS campaign.<sup>72</sup>

**PUBLIC ATTENTION AND SCRUTINY:** Congressional committees and individual members can raise public attention and shape the political agenda on issues of civilian protection and security assistance:

- **Hearings:** Committees in Congress with jurisdiction over security assistance issues can convene hearings that call on executive branch officials or outside experts to testify.<sup>73</sup> Hearings serve as opportunities for legislators to examine executive branch policy in public or closed settings. However, hearings that focus specifically on security assistance as a tool in US foreign policy are rare. Figure 6 examines recent hearings on security assistance.
- **Individual Member Advocacy:** Congressional members can be powerful advocates on issues they care about. For example, Senator Chris Murphy has been behind efforts to rein in US support for the Saudi-led coalition in Yemen, mobilizing large votes against arms sales to Saudi Arabia.<sup>74</sup>

<sup>&</sup>lt;sup>70</sup> According to a search of the GAO reporting database. "U.S. Government Accountability Office," United States Government Accountability Office, accessed March 31, 2019, https://www.gao.gov.

<sup>&</sup>lt;sup>71</sup> Kathryn A. Francis, *Statutory Inspectors General in the Federal Government: A Primer*, Washington, D.C.: Congressional Research Service, R45450, January 3, 2019.

The Lead Inspector General - Overseas Contingency Operations (LIG-OCO), "Operation Freedom's Sentinel: Lead Inspector General Report to the United States Congress," (October 1-December 31, 2018), 41, https://www.stateoig.gov/system/files/fy2019\_lig\_ocoreport\_2.pdf. The report states "OUSD(P)/ISA reported to the DoD OIG that the existence of the PMF [Popular Mobilization Forces, a group of Iraqi state-sponsored militias] was not seen as positively or negatively affecting ongoing security assistance efforts during the quarter. However, CJTF-OIR [Combined Joint Task Force — Operation Inherent Resolve] stated that there has been an increase in reports of violence, abuse, and tension in areas patrolled by the PMF, and that these trends will likely continue as long as the PMF competes with local police or other ISF formations for control of territory and influence. Furthermore, the described anecdotal reports of abuse against Sunni tribesmen and civilians by the PMF in areas cleared from ISIS. In media reports, residents of al Qaim, in Anbar province, stated that fear of militia abuses has been a major factor in their delay returning home."

<sup>&</sup>lt;sup>73</sup> Committees with jurisdiction over security assistance include the Senate and House Armed Services Committees, Senate Foreign Relations Committee, House Foreign Affairs Committee, and the House and Senate Appropriations and Authorizations Committee.

<sup>&</sup>lt;sup>74</sup> Seth Harp, "Sen. Chris Murphy's Lonely Quest to End the War in Yemen," *Rolling Stone*, November 19, 2018, https://www.rollingstone.com/politics/politics-features/yemen-war-us-involvement-758414/.

• The Role of Media and NGOs: Congressional hearings, briefings, and events can be important platforms for elevating non-governmental voices for oversight purposes. Congressional officials can leverage outside expertise by bringing NGO and expert witnesses to testify and weigh in on relevant issues, and by promoting a free exchange of ideas through the media.

**Figure 6. Congressional Hearings on US Security Assistance.** Hearings can be an important oversight tool, but there has not been a hearing held on security assistance strategy since 2017.

HEARINGS IN ACTION The last hearing on security assistance strategy occurred on September 26, 2017. Hearings that examine specific partnerships are even more rare. The US-Saudi security relationship has received significant congressional attention since the conflict began in 2015. Even so, there have been only three hearings in the Senate Foreign Relations Committee that specifically focused on the situation in Yemen since the conflict began: a closed/top secret briefing on the conflict in Yemen in February 2019 and full committee hearings on US policy in Yemen in April 2018 and March 2017.

In sum, while Congress possesses many of the tools and authorities to ensure civilians are prioritized in US security assistance, gaps in existing legislation and problems with oversight structures and processes threaten the effectiveness of congressional oversight.

Children watch a mini tornado whip up sand as it travels across the desert landscape near the town of Huth situated about 80 km north of Sanaa. Huth, Amran Governorate, Yemen, March 25, 2017 © Giles Clarke/UN OCHA



## PART IV: CASE STUDIES

This report explores three cases as a lens through which to examine the causes and consequences of civilian harm in security partnerships. Each case assesses the effectiveness of various tools, policies, and processes to mitigate civilian harm caused in partnerships. Lessons from the cases help to inform the policy recommendations in Part V of this report.

#### CASE SELECTION CRITERIA

The United States provides some form of security assistance to 144 countries, leaving many possibilities for case selection.<sup>75</sup> The authors narrowed the scope of potential cases using seven specific factors informed by the literature review and expert interviews (Table 2). The first factor is evidence, based on US government documentation and reporting by credible human rights groups, that the partner has perpetrated significant civilian harm.<sup>76</sup> Second, the authors chose cases in which the recipient was engaged in active conflict during the selected time period, either within their own borders or externally, in order to examine civilian harm during military operations. The third criterion is the level of security assistance provided or sold to the partner by the United States. The authors included recipients who received, by regional standards, a substantial amount of security assistance.77 Recipients of minimal security assistance – like countries who simply sent soldiers to train at US military academies – were excluded. Fourth, the authors excluded high-end partners with professionalized militaries like Japan, South Korea, or Eurozone members in order to examine how the United States engages partners with weak or fragile defense institutions on civilian protection. Fifth, the authors restricted the time period for each case to the post-9/11 era. As detailed in Section I, US security assistance changed profoundly after 2001. Sixth, Iraq and Afghanistan – which meet the aforementioned criteria – were intentionally excluded because those partnerships involved US "boots on the ground" engaged in extensive military operations in a wartime context. Finally, the authors chose geographically diverse cases to bolster the external validity of the findings and recommendations. Annex E provides an easily digestible takeaway of key insights from the case studies. Annex F contains a list of partner states that met the above criteria but ultimately not selected for case studies.

Each case study proceeds, broadly, in the following manner: First, a brief synopsis of the history of the bilateral security relationship between the US and the partner. Next, the case explores civilian harm perpetrated by the partner in the context of the conflict. The bulk of each case is spent exploring the mitigating steps taken by the US government to change partner behavior and employ accountability mechanisms.

<sup>&</sup>lt;sup>75</sup> The United States sells arms to 155 countries and provides some form of assistance to 144 countries. See "Security Assistance Dashboard," Security Assistance Monitor, accessed February 13, 2019, http://securityassistance.org/content/security-aid-dashboard.

 $<sup>^{76}</sup>$  See Section I for the definition of civilian harm used in this report. The authors used

<sup>77</sup> Ibid. Data for security assistance was gathered using Security Assistance Monitor data.

Table 2. Case Study Criteria Matrix. This table summarizes how each case study meets the selected criteria.

Criteria	Nigeria	Saudi Arabia	Philippines
Evidence of civilian harm	Extrajudicial killings; torture and killing of detainees; bombing of civilians and civilian infrastructure.	Civilian casualties from unlawful airstrikes; damaged and destroyed civilian infrastructure; impeded humanitarian aid	Extrajudicial killings; little differentiation between civilians and terrorists; bombing of civilians and civilian infrastructure; disappearances.
Active conflict	Counter-insurgency campaign against Boko Haram	The war in Yemen against Houthi rebels	Counter-insurgency campaign against the Abu Sayyaf Group
Level of security assistance (during time period) <sup>78</sup>	\$103 million in security assistance; \$252 million authorized in arms sales (\$136 million delivered)	\$305.87 thousand in training aid, including IMET discounts and seats service academies  \$27.35 billion authorized in arms sales, (\$13.4 billion delivered)  \$331 million in aerial refueling	\$829 million in security assistance; \$2 billion authorized in arms sales (\$595 million delivered)
Excludes "high-end" partnerships	Low levels of professionalism, history of civilian harm, persistent corruption in military and police forces	Medium-to-low levels of professionalism, no culture of respect for the LOAC, incapable force without US support	Low levels of professionalism, history of civilian harm, persistent corruption in military and police forces
Post-9/11	2009 – 2017	2015 – March 2019	2001 – 2014
Exclude Iraq/ Afghanistan	✓	✓	✓
Geographic diversity	West Africa	Middle East/Gulf	Southeast Asia

<sup>&</sup>lt;sup>78</sup> The data for security assistance levels was gathered from the Security Assistance Monitor. The data on refueling aid in the case of Saudi Arabia comes from Senator Jack Reed (D-RI), "Saudis & UAE to Repay U.S. \$331M for Aerial Refueling Costs," December 13, 2018, https://reed.senate.gov/news/releases/reed-saudis-and-uae-to-repay-us-331m-for-aerial-refueling-costs.



# US SUPPORT FOR NIGERIA IN THE COUNTER-BOKO HARAM CAMPAIGN, 2009-2017

Nigerian security force abuses in the context of operations to counter Boko Haram have complicated US efforts to pursue greater cooperation, despite shared concerns about the group. The United States attempted to employ various accountability measures for its security assistance to Nigeria. These efforts successfully blocked the provision of assistance to Nigerian military units implicated in the worst human rights abuses, and either denied or stalled weapons transfers that could have contributed to greater harm. Nevertheless, the United States faced serious setbacks in what were ultimately unsuccessful efforts improve Nigeria's ability to protect civilians.

#### HISTORY OF THE US-NIGERIA SECURITY RELATIONSHIP

US security interests in Nigeria have been shaped by three major milestones: the restoration of civilian government in 1999, the post-9/11 Global War on Terrorism (GWOT), and the rise of the terrorist group Boko Haram in 2009. The end of military rule in Nigeria paved the way for improved relations between the United States and Nigeria. US strategic interests at the time included "the expansion of the Nigerian oil industry, followed by increased stability and decreased corruption."<sup>79</sup> In the wake of 9/11, the Bush administration ramped up security assistance with Nigeria and other African partners, with US programming increasing in both form and significance.<sup>80</sup>

With the rise of Boko Haram in 2009, the United States renewed its efforts in Nigeria with a significant emphasis on counterterrorism cooperation.<sup>81</sup> Beyond the counterterrorism mission, American strategic interests in Nigeria lay in the country's substantial oil production, demographic concerns, and contribution to regional peacekeeping missions.

#### CIVILIAN HARM IN NIGERIA'S COUNTER-BOKO HARAM CAMPAIGN

Between 2009 and 2015, Boko Haram took control of extensive swaths of territory in northeast Nigeria. The violence by the group – also active in Niger, Cameroon, and Chad – has killed around 20,000 to 30,000 individuals and displaced over 2.3 million people. Boko Haram has abducted thousands of people, forcibly married off women

<sup>&</sup>lt;sup>79</sup> Kenneth L. Prendergast, Jr., "Security Assistance in Nigeria: Shaping the International Environment to Meet U.S. National Security Objectives in the Global Era," (USAWC Strategy Research Project, April 7, 2003), https://doi.org/10.21236/ADA414506.

<sup>&</sup>lt;sup>80</sup> The African Contingency Operations Training and Assistance Program (ACOTA) was established in 2004 and the Trans-Sahara Counterterrorism Partnership (TSCTP) was established in 2005; Nigeria was a participant in both. FMS to Nigeria increased from 271 agreements in 1999 to 8,498 in 2002, and the number of Nigerian officers participating in IMET increased from seven in 1999 to 204 in 2002.

<sup>81</sup> Boko Haram is an Islamist militant group based in Nigeria's northeast.

<sup>&</sup>lt;sup>82</sup> Vanda Felbab-Brown, "The Limits of Punishment: Transitional Justice and Violent Extremism: Nigeria Case Study," (United Nations University Center for Policy Research, May 2018), 95, https://i.unu.edu/media/cpr.unu.edu/post/2761/LoPWeb070119.pdf.

and girls to its fighters, and conducted mass-casualty attacks on mosques, markets, and camps for internally displaced persons.<sup>83</sup> The Nigerian government has reclaimed some territory from Boko Haram, but the group, while significantly degraded, retains the capacity to stage devastating attacks in northeast Nigeria.<sup>84</sup>

Nigerian security forces have perpetrated egregious abuses against their own citizens under the guise of counter-Boko Haram operations.<sup>85</sup> Military operations have been characterized by mass civilian casualties – at times killing as many innocents as actual Boko Haram operatives.<sup>86</sup> During "clearing" campaigns, security forces killed civilians they suspected of being Boko Haram members, while women in children were put in

detention centers.<sup>87</sup> Rights groups have documented egregious abuses by the Nigerian army, mostly notably a 2013 campaign in Baga that killed as many as 200 civilians and destroyed up to 2,000 homes, and the massacre of more than 640 people at the Giwa detention facility in 2015.<sup>88</sup> While the Nigerian air force has a better record than the army, it has bombed

Nigerian military operations have been characterized by mass civilian casualties – at times killing as many innocents as actual Boko Haram operatives.

<sup>&</sup>lt;sup>83</sup> For a detailed account of the abuses perpetrated by Boko Haram during the time period of this case, see United Nations Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on Violations and abuses committed by Boko Haram and the impact on human rights in the affected countries," September 29, 2015, https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-30-67\_en.pdf.

<sup>&</sup>lt;sup>84</sup> There has been a steady decline in reported fatalities associated with Boko Haram. According to the Armed Conflict Location & Event Data Project, there were more than 11,500 reported fatalities by Boko Haram in 2015, the deadliest year. By 2018 that number had fallen to approximately 2,700 reported fatalities. The group's lethality has also been on the decline since 2015, when the average number of reported fatalities per attack reached nearly 19; in 2018, the average lethality of each violent event involving Boko Haram was just under 5 reported fatalities. See Hilary Matfess, "The New Normal: Continuity and Boko Haram's Violence in North East Nigeria," Acled Data, February 11, 2019, https://www.acleddata.com/2019/02/11/the-new-normal-continuity-and-boko-harams-violence-in-north-east-nigeria/. However, the group retains the capacity to launch devastating attacks. As recently as January 2019, at least 60 people were killed by a Boko Haram attack in Rann, a border town in Borno state, northeast Nigeria. See Amnesty International, "Nigeria: Deadliest Boko Haram attack on Rann leaves at least 60 people murdered," February 1, 2019,

https://www.amnesty.org/en/latest/news/2019/02/nigeria-deadliest-boko-haram-attack-on-rann-leaves-at-least-60-people-murdered/.

<sup>&</sup>lt;sup>85</sup> These abuses are so extensive that they are the subject of an ongoing investigation by the International Criminal Court. See "Preliminary Examination: Nigeria," International Criminal Court, accessed February 3, 2018, https://www.icc-cpi.int/nigeria.

<sup>&</sup>lt;sup>86</sup> John Campbell, "U.S. Policy to Counter Nigeria's Boko Haram," Council Special Report No. 70 (Council on Foriegn Relations, November 2014), 13,

https://www.cfr.org/sites/default/files/pdf/2014/11/Nigeria\_CSR70.pdf.

<sup>&</sup>lt;sup>87</sup> These abuses have been documented in "scorched earth" or "clearing" campaigns conducted by the Nigerian military in the northeast. Vanda Felbab-Brown, "The Limits of Punishment: Transitional Justice and Violent Extremism: Nigeria Case Study,"95.

<sup>&</sup>lt;sup>88</sup> Adam Nossiter, "Massacre in Nigeria Spurs Outcry Over Military Tactics," *New York Times*, April 29, 2013, https://www.nytimes.com/2013/04/30/world/africa/outcry-over-military-tactics-after-massacre-in-nigeria.html?module=inline.; Amnesty International, "Stars on their shoulders. Blood on their hands. War crimes committed by the Nigerian military," June 2015,

https://www.amnesty.org/download/Documents/AFR4416572015ENGLISH.PDF.

civilians on multiple occasions, including a refugee camp in early 2017.<sup>89</sup> The Nigerian government has largely failed to undertake any kind of credible investigation to hold perpetrators accountable.<sup>90</sup>

Multiple systemic factors contribute to these high levels of civilian harm. Civilian oversight of the military is weak; the Minister of Defense is a political patronage position which is occupied by weak civilian politicians or former generals. The military, which ruled Nigeria until 1999, has long enjoyed an ability to behave with impunity and operate above and outside the law. Security forces – who generally prioritize regime protection over the military mission or constitutional responsibilities – report directly to the president. Nigeria's police forces atrophied after successive generations of military rule, leaving the military largely responsible for internal domestic security. Nigeria does not have a command and control infrastructure that allows commanders in the field to directly control their forces.<sup>91</sup> This decentralization can lead to situations in which soldiers are given free rein to commit abuses during military operations.

#### OVERSIGHT OF SECURITY ASSISTANCE IN NIGERIA

US security assistance to Nigeria is sizeable by regional standards.<sup>92</sup> Nigeria received approximately \$103 million in security assistance from 2009 to 2017.<sup>93</sup> After Boko Haram kidnapped 270 girls from their school in Chibok, Borno State in 2014, the United

<sup>&</sup>lt;sup>89</sup> Major incidents include: On February 28, 2014, a Nigeria military aircraft dropped munitions on Daglun, a Borno village, killing 20 civilians, mostly older residents. On March 16, 2014, a similar military attack on Kayamla village, less than 10 kilometers outside Maiduguri, reportedly killed 10 civilians. On February 17, 2015, a Nigerian air strike accidentally killed more than 35 people at a funeral gathering in a Niger border town. See Kyle Dietrich, "How Nigeria's Air Campaign Against Boko Haram Could Backfire," Center for Civilians in Conflict, June 21, 2016, https://civiliansinconflict.org/blog/hownigerias-air-campaign-against-boko-haram-could-backfire/ and Human Rights Watch, "Nigeria: Satellite Imagery Shows Strikes on Settlement," January 19, 2017,

https://www.hrw.org/news/2017/01/19/nigeria-satellite-imagery-shows-strikes-settlement.; On January 17, 2017, a Nigerian fighter jet searching for Boko Haram members accidentally bombed a camp in Rann for displaced people who had fled the militants, killing at least 90 people, Dionne Searcey, "Nigerian Jet Mistakenly Bombs Refugee Camp, Killing Scores," *New York Times*, January 20, 2018, https://www.nytimes.com/2017/01/17/world/africa/nigerian-jet-mistakenly-bombs-refugee-camp-killing-dozens.html.

<sup>90</sup> Hearing Before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, "Human Rights Vetting: Nigeria and Beyond," 113th Congress, July 10, 2014, https://www.govinfo.gov/content/pkg/CHRG-113hhrg88627/html/CHRG-113hhrg88627.htm. 91 For example, Commanders often rely on cell phones and in some cases runners to pass messages. See "Human Rights Vetting: Nigeria and Beyond, Hearing Before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, 113th Congress," July 10, 2014, https://www.govinfo.gov/content/pkg/CHRG-113hhrg88627/html/CHRG-113hhrg88627.htm. 92 For example, compared to security assistance provided to the other partners in West and North Africa over the same time period: Algeria (\$24 million), Burkina Faso (\$35 million), Cameroon (\$221 million), Chad (\$189 million), Libya (\$123 million), Mali (\$174 million), Mauritania (\$110 million), Morocco (\$301 million), Niger (\$225 million), Senegal (\$53 million), and Tunisia (\$578 million). See Security Assistance Monitor, Security Assistance Dashboard, http://securityassistance.org/content/security-aid-dashboard. 93 According to Security Assistance Monitor, from 2009-2016, Nigeria received \$36,767,000 in security assistance from the State Department, \$36,284,486 from the Defense Department, and \$19,005,060 as part of the Excess Defense Articles Program. See "Data for Nigeria from 2009 to 2016," Security Assistance Monitor, accessed March 31, 2019,

States sought to increase assistance to Nigeria. The United States sent Special Forces to train a new Nigerian battalion designed specifically to counter Boko Haram. US defense and law enforcement experts were sent to advise Nigerian officials in the recovery of the kidnapped schoolgirls. He United States also provided assistance to Nigeria through regional counterterrorism arrangements. Finally, Nigeria was a participant in the Security Governance Initiative, a multi-year effort to improve security sector governance for six countries in Africa. Throughout the time period of this case, Nigeria continued to seek additional resources from the United States, including attack helicopters, small arms, sniper rifles, and training for additional units.

The United States employed a number of oversight and accountability mechanisms for its security assistance to Nigeria:

**Leahy Vetting:** The Leahy laws were a powerful tool for holding the Nigerian military accountable for its behavior. In May 2014, the senior-most US official for human rights Sarah Sewell told Congress that "some fifty percent of the Nigerian military, at this point in time, are not eligible for training and materiel support because of the Leahy amendment." In addition to ensuring that US assistance did not go to Nigerian units credibly involved in gross human rights violations, the State Department suggested that

the Leahy laws provided a strategic tool to encourage reforms in Nigeria. 98 Because of the Leahy laws, the military scrambled to create clean units to try to qualify for assistance. Nigeria's political leadership ordered more human rights training for officers and sought to develop its own monitoring and training on civilian protection and human rights. 99

Because of the Leahy laws, the Nigerian military scrambled to create clean units to try to qualify for US assistance.

The Leahy process in Nigeria was not without flaws. One former US official noted that on several occasions embassy officials tried to frustrate the Leahy process by submitting vetting requests late, or right before officers were supposed to travel for training. 100 The

<sup>94</sup> Eric Schmitt, "U.S. Sends Troops to Chad to Aid Hunt for Nigerian Schoolgirls," *New York Times*, December 20, 2017, https://www.nytimes.com/2014/05/22/world/africa/us-sends-troops-to-aid-hunt-for-nigerian-schoolgirls.html.; Courtesy Story, "California Guard Special Forces Helping Train Nigerian Army to Counter," California National Guard, June 25, 2014,

http://www.nationalguard.mil/News/Article/576010/california-guard-special-forces-helping-train-nigerian-army-to-counter-boko-har/.

<sup>95</sup> Nigeria, for example, became a participant in the State Department's Trans-Sahara Counterterrorism Partnership (TSCTP), a U.S. interagency effort to increase regional counterterrorism capabilities and coordination. It is also a member of the through the region's Multinational Joint Task Force (MNJTF). See Lauren Ploch Blanchard and Tomas F. Husted, *Nigeria: Current Issues and U.S. Policy*, Washington, D.C.: Congressional Research Service, RL33964, February 1, 2019.

<sup>96 &</sup>quot;2016 Security Governance Initiative Review," Security Governance Initiative, 2016, https://ne.usembassy.gov/wp-content/uploads/sites/56/2017/05/SGI-2016-Review.pdf. 97 Testimony before the House Foreign Affairs Committee, by Under Secretary of State for Civilian Security, Democracy, and Human Rights Sarah Sewell, May 14, 2014, https://www.c-span.org/video/?319459-1/threat-boko-haram.

<sup>98 &</sup>quot;Human Rights Vetting: Nigeria and Beyond," 113th Congress, July 10, 2014.

<sup>&</sup>lt;sup>100</sup> Interview with Matthew Page, former State Department official and current associate fellow at Chatham House in London, March 7, 2019.

same official noted that DoD and embassy personnel sometimes viewed Leahy as "not valid" and an "obstacle," rather than a helpful tool to improve behavior.¹¹o¹

**High-Level Messaging:** High-level American policymakers repeatedly voiced their concerns about the Nigerian military's human rights and civilian protection record. At the highest levels of policymaking, US government officials recognized the need to balance security assistance with human rights and tried to synchronize communication with the Nigerian military to that end. One former State Department official recalled two meetings between Under Secretary of State Sarah Sewell and AFRICOM Commander General David Rodriguez, and the Nigerian Chief of Defense Forces and Chief of the Army Staff. The objective of the meetings was to try to chart a path forward towards greater bilateral military cooperation against Boko Haram while seeking assurances on civilian protection outcomes. Rodriguez and Sewell raised civilian protection concerns "directly and repeatedly," using examples from their own

experiences on US-caused civilian casualties in Afghanistan. <sup>103</sup> But both Nigerian officials showed no interest in working with the United States to improve and ended the meeting early. The same former official described the meetings as "shockingly bad" and argued that "you could not leave those meetings with any confidence whatsoever that these were people [the Nigerian defense officials] serious about instilling accountability." <sup>104</sup>

Senior US officials raised civilian protection concerns "directly and repeatedly," using examples from their own experiences on US-caused civilian casualties in Afghanistan.

However, the United States occasionally sent mixed messages on its human rights priorities that undermined overall efforts. For example, the State Department found Nigeria in violation of the Child Soldiers Prevention Act, but President Obama granted the country a waiver in order to continue counterterrorism cooperation.<sup>105</sup> Moreover, embassy officials often had greater confidence that the military would adopt reforms and clashed with those who advocated for stronger measures to reign in abuses.<sup>106</sup>

**Denying Arms Sales:** The US government twice denied weapons transfers to Nigeria based on concerns about civilian protection and human rights during the time period of the case. In 2014, DoD denied the transfer of US-origin Cobra attack helicopters to Nigeria, citing "human rights abuses committed or condoned by the Nigerian military,

<sup>&</sup>lt;sup>101</sup> Interview with Matthew Page, former State Department official and current associate fellow at Chatham House in London, March 7, 2019.

<sup>&</sup>lt;sup>102</sup> Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>103</sup> Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>104</sup> Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>105</sup> Nigeria was found in violation of the Child Solider Prevention Act, but President Obama granted the country a waiver in 2015 in order to continue security assistance professionalization and counterterrorism efforts. The law grants the executive branch the ability to issue a waiver in the interest of national security. Lauren Ploch Blanchard, *Nigeria's Boko Haram: Frequently Asked Questions*, Washington, D.C.: Congressional Research Service, R43558, March 29, 2016.

<sup>&</sup>lt;sup>106</sup> Interview with Matthew Page, former State Department official and current associate fellow at Chatham House in London, March 7, 2019.; Interview with former State Department Official, March 12, 2019.

apparent impunity for abuses, and numerous reports of significant civilian casualties from bombing."<sup>107</sup> The United States argued that equipment cannot replace the longterm work of counterinsurgency, which focuses on protecting civilians and turning them into allies and partners of the military and government.<sup>108</sup> The State Department explicitly tied future approval of sales of lethal military equipment to the prioritization of civilian protection and better respect for the rules of armed conflict.<sup>109</sup> As one of his last acts in office, President Obama stalled the sale of 12 A-29 aircraft after the Nigerian Air Force mistakenly bombed a refugee camp.<sup>110</sup>

**Training and Advising:** Improving the professionalism of the military and security services was a major objective of US security assistance in Nigeria. However, training and advising to the military was modest, inconsistent, and fraught with tension. It was ultimately not a successful tool for improving behavior. For example, Nigeria abruptly canceled a counterinsurgency training program run by US Special Forces in response to the decision to deny the sale of Cobra helicopters. <sup>111</sup> Limited training and a light military footprint meant that the United States lacked the presence, access, and leverage required to effectively oversee Nigerian partner forces or dictate the terms to overcome deficiencies in Nigerian capacity or conduct. One former State Department official noted, "we never had enough confidence in the Nigerian military or its leadership that we felt increased engagement would be a good investment of US resources." <sup>112</sup>

#### KEY CASE TAKEAWAY:

The success of US efforts to mitigate civilian harm by Nigerian security forces during the counter-Boko Haram campaign was mixed. The United States successfully blocked the provision of training and equipment to Nigerian military units implicated in the worst human rights abuses, and either denied or stalled inappropriate weapons transfers that could have contributed to greater civilian harm. However, US efforts to improve Nigeria's ability to protect civilians were setback by a lack of Nigerian political will and desire to improve civilian protection, a poor bilateral military relationship, a lack of American influence and leverage in Nigeria, and – at times – mixed messaging from within the US government.

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<sup>&</sup>lt;sup>107</sup> "Daily Press Briefing," U.S. Department of State, November 12, 2014, https://2009-2017.state.gov/r/pa/prs/dpb/2014/11/233963.htm.; James Entwistle, "Transcript: Press Interview with Ambassador James F. Entwistle in AUN Yola," US State Department, October 10, 2014, https://ng.usembassy.gov/transcript-press-interview-ambassador-james-f-entwistle-aun-yola-october-10-2014/.; Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>108</sup> Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>109</sup> Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>110</sup> Fergus Kelly, "Nigeria Says U.S. Agrees Sale of 12 A-29 Aircraft in Deal Delayed by Obama," *The Defense Post*, December 28, 2017, https://thedefensepost.com/2017/12/28/nigeria-us-sale-a-29-aircraft-obama-trump/.

<sup>&</sup>lt;sup>111</sup> In May 2014, DoD deployed twelve US Special Forces troops to train a new Nigerian battalion on counterinsurgency missions. The training was supposed to proceed in three phases, but Nigeria suspended it after two phases. See "California Guard Special Forces Helping Train Nigerian Army to Counter Boko Haram," National Guard, June 25. 2014,

https://www.nationalguard.mil/News/Article/576010/california-guard-special-forces-helping-train-nigerian-army-to-counter-boko-har/.; "Daily Press Briefing," US State Department, November 12, 2014, https://2009-2017.state.gov/r/pa/prs/dpb/2014/11/233963.htm.

<sup>&</sup>lt;sup>112</sup> Interview with former State Department Official, March 12, 2019.



# US SUPPORT FOR SAUDI ARABIA IN YEMEN, 2015-2019

The provision of significant amounts of security assistance has defined the strategic relationship between the United States and the Kingdom of Saudi Arabia. US arms, equipment, and training have enabled the Saudis to prosecute a war in Yemen against Iranian-backed Houthis, which has caused thousands of civilian casualties in the world's worst humanitarian disaster. Congressional attempts to rein in executive branch cooperation with the Saudis have curtailed some forms of US assistance but have left Saudi behavior on civilian protection largely unchanged.

#### HISTORY OF THE US-SAUDI SECURITY RELATIONSHIP

The United States views its relationship with Saudi Arabia as key to maintaining its economic, security, and geopolitical interests in the Middle East.<sup>113</sup> Through its partnership with the kingdom, the United States seeks to preserve access to military bases and trade routes, maintain stability in global oil markets, secure cooperation on regional efforts to combat terrorism, and counter Iranian influence in the Middle East. Saudi Arabia is also the number one buyer of American weapons, and successive US administrations have regarded arms sales as "integral" to the relationship.<sup>114</sup>

American officials have often overlooked or downplayed Saudi Arabia's dismal human rights record in order to advance other interests. <sup>115</sup> US-Saudi relations have been particularly strained since the murder of journalist Jamal Khashoggi in a Turkish consulate in October 2018. US intelligence reports suggest Crown Prince Mohammed

<sup>&</sup>lt;sup>113</sup> These interests are outlined by Secretary of State Mike Pompeo in a State Department blog in November 2018, after the murder of Saudi journalist Jamal Khashoggi. Michael R. Pompeo, "The U.S.-Saudi Partnership is Vital," *DipNote*, November 28, 2018,

https://blogs.state.gov/stories/2018/11/28/en/us-saudi-partnership-vital.

<sup>&</sup>lt;sup>114</sup> Michael Knights, "U.S.-Saudi Security Cooperation (Part 1): Conditioning Arms Sales to Build Leverage," *Washington Institute for Near East Policy*, November 5, 2018, https://www.washingtoninstitute.org/policy-analysis/view/u.s.-saudi-security-cooperation-part-1-

conditioning-arms-sales-to-build-lev.

The kingdom has long restricted basic civil, political, and religious freedoms, especially for women and minorities. Administrations from both parties have focused on preserving economic ties with the kingdom over raising human rights concerns. A Congressional Research Service report on US-Saudi relations notes that while US officials have "called publicly for the kingdom to seek a negotiated settlement in Yemen, allow peaceful expression of dissent at home, and help fight extremism abroad," real criticism is muted. "Any more strident official U.S. criticisms of the kingdom's policies traditionally remain subjects of private diplomatic engagement rather than official public discussion." Christopher M. Blanchard, *Saudi Arabia: Background and U.S. Relations*, Washington, D.C.: Congressional Research Service, RL33533, September 21, 2018, 4. Nevertheless, Saudi Arabia's rights record is criticized annually in US State Department human rights reports. See *Country Reports on Human Rights Practices for 2018*, "Saudi Arabia," for more information: Bureau of Democracy, Human Rights and Labor. "Country Reports on Human Rights Practices for 2018: Saudi Arabia." U.S. Department of State, 2018. https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2018&dlid=289228.

bin Salman directly ordered the killing.<sup>116</sup> The Trump administration sanctioned 17 Saudi officials, but has refused to cooperate with congressional demands to punish the crown prince or force real accountability.<sup>117</sup>

#### CIVILIAN HARM IN THE SAUDI-LED COALITION IN YEMEN

Under the crown prince, Riyadh's foreign policy has grown increasingly aggressive and unpredictable. Saudi Arabia began a military campaign in Yemen in March 2015 to dislodge Iranian-backed Houthi rebels from participation in Yemen's civil war. Saudi Arabia leads a multinational military coalition that supports the Hadi government in Yemen and maintains an operational control center in Riyadh. For the Saudis, the campaign in Yemen is critical to its broader regional strategy of countering Iranian hegemony.

The conflict in Yemen is the world's worst humanitarian crisis.<sup>119</sup> OHCHR has documented at least 17,640 civilian casualties in Yemen as of November 2018. <sup>120</sup> The rate of civilian casualties has skyrocketed in the past year as the coalition launched an

offensive to retake the port city of Hodeidah. <sup>121</sup> A coalition-imposed blockade around Hodeidah has also impeded the flow of humanitarian relief to Yemen, which the UN identified as a major driver of famine in the country. <sup>122</sup> More than 60 percent of civilian casualties and 76 percent of infrastructure damage are caused by coalition

More than 60% of civilian casualties and 76% of infrastructure damage in Yemen are caused by Saudiled coalition airstrikes.

<sup>&</sup>lt;sup>116</sup> Warren P. Strobel, "CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi," *Wall Street Journal*, December 1, 2018, https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460.

<sup>&</sup>lt;sup>117</sup> After the administration announced sanctions against Saudi officials, congressional representatives from both sides expressed concern with the failure to sanction more senior officials. See Jesus Rodriguez, "Trump administration sanctions Saudi officials, but not crown prince, over Khashoggi," Politico, November 15, 2018, https://www.politico.com/story/2018/11/15/trump-administration-sanctions-saudi-khashoggi-992296.

<sup>&</sup>lt;sup>118</sup> The military coalition includes Saudi Arabia, the United Arab Emirates, Bahrain, Kuwait, Egypt, Jordan, and Morocco. Qatar was a member of the coalition until the Gulf Crisis in mid-2017. A 2017 UN report identified Saudi Arabia and the United Arab Emirates as in control of operations in Yemen. See UN Security Council Committee Established Pursuant to Resolution 2140, "Final report on the Panel of Experts on Yemen," S/2018/193, January 31, 2017, https://undocs.org/S/2018/193.

<sup>&</sup>lt;sup>119</sup> According to the UN, nearly three-quarters of the population of Yemen requires some form of basic humanitarian assistance to survive. UN News, "Yemen: Tackling the world's largest humanitarian crisis," September 24, 2018, https://news.un.org/en/story/2018/09/1020232.

<sup>&</sup>lt;sup>120</sup> UN Office of the High Commissioner for Human Rights, "Bachelet urges States with the power and influence to end starvation, killing of civilians in Yemen," November 10, 2018,

https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23855&LangID=E. 

121 Peter Beaumont, "Huge spike in Yemen violence as civilian deaths rise by 164% in four months," *The Guardian*, September 26, 2018, https://www.theguardian.com/global-development/2018/sep/26/huge-spike-in-yemen-violence-as-civilian-deaths-rise-by-164-in-four-months-hodeidah.

<sup>&</sup>lt;sup>122</sup> UN Office of the High Commissioner on Human Rights, "Lift blockade of Yemen to stop 'catastrophe' of millions facing starvation, says UN expert," April 12, 2017, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21496&LangID=E.

airstrikes.<sup>123</sup> Human rights groups have documented more than 90 unlawful airstrikes on homes, funerals, hospitals, schools, and mosques.<sup>124</sup> US-made bombs have been used in some of the most egregious attacks in Yemen, including on school buses filled with children.<sup>125</sup>

#### OVERSIGHT OF SECURITY ASSISTANCE IN SAUDI ARABIA

The United States has backed and enabled Saudi Arabia's campaign in Yemen since the start of the conflict by providing high-level political support, weapons and equipment, intelligence, training, and other material assistance.

Saudi Arabia is the top purchaser of US-made weapons and equipment, with more than \$129 billion in active sales cases. <sup>126</sup> Saudi Arabia is also one of the largest consumers of US military training. <sup>127</sup> More than 140 US military advisors stationed in the kingdom support the entire Saudi security sector. <sup>128</sup> Riyadh sent 18,280 officers through US training programs between 2009 and 2017. <sup>129</sup> Because of a special provision in annual appropriations bills, the kingdom purchases training – aimed at increasing Saudi military capabilities and improving civilian protection – at a discounted rate. <sup>130</sup>

<sup>&</sup>lt;sup>123</sup> UN Office of the High Commissioner for Human Rights, "Bachelet urges States with the power and influence to end starvation, killing of civilians in Yemen," November 10, 2018. Statistic on damage to infrastructure from Civilian Impact Monitoring Project, a service of the Protection Cluster Yemen, "Civilian Impact Monitoring Report, January – December 2018,"

https://www.humanitarianresponse.info/en/operations/yemen/document/civilian-impact-monitoring-report-annual-2018.

<sup>&</sup>lt;sup>124</sup> Human Rights Watch, "Yemen: Hiding Behind Coalition's Unlawful Attacks," September 8, 2017, https://www.hrw.org/news/2017/09/08/yemen-hiding-behind-coalitions-unlawful-attacks. <sup>125</sup> A 500-pound bomb built by Lockheed Martin hit a school bus and killed 40 young children (Nima Elbagir, Salma Abdelaziz, Ryan Browne, Barbara Arvanitidis, and Laura Smith-Spark, "Bomb that killed 40 children in Yemen was supplied by the US," CNN, August 17, 2018,

https://www.cnn.com/2018/08/17/middleeast/us-saudi-yemen-bus-strike-intl/index.html). A US-manufactured laser-guided bomb used in a strike on a funeral hall killed more than 100 people and wounded hundreds more (Human Rights Watch, "Yemen: Saudi-Led Funeral Attack Apparent War Crime," October 13, 2016, https://www.hrw.org/news/2016/10/13/yemen-saudi-led-funeral-attack-apparent-war-crime). Multiple US-supplied weapons were used in strikes on a crowded market that killed at least 97 people in 2016 (Human Rights Watch, "Yemen: US Bombs Used in Deadliest Market Strike," April 7, 2016, https://www.hrw.org/news/2016/04/07/yemen-us-bombs-used-deadliest-market-strike).<sup>125</sup>

<sup>&</sup>lt;sup>126</sup> "U.S. Security Cooperation with Saudi Arabia," US Department of State Fact Sheet, March 18, 2019, https://www.state.gov/t/pm/rls/fs/2019/288671.htm.

<sup>&</sup>lt;sup>127</sup> For an overview of Saudi training programs, see Christopher Blanchard, *Saudi Arabia: Background and U.S. Relations*, September 21, 2018.

<sup>&</sup>lt;sup>128</sup> The mission operates until Title 22 "train, advise, and assist" authorities and falls under US Central Command's jurisdiction. "United States Military Training Mission," U.S. Central Command, http://www.centcom.mil/OPERATIONS-AND-EXERCISES/USMTM/.

<sup>&</sup>lt;sup>129</sup> "Saudi Arabia Training Data," Security Assistance Monitor, http://securityassistance.org/content/trainees-dashboard.

<sup>&</sup>lt;sup>130</sup> For an explanation of the IMET discount, see Christopher Blanchard, *Saudi Arabia: Background and U.S. Relations*, September 21, 2018.

The United States also provides intelligence sharing and operational support including aerial refueling for coalition jets. Refueling, in which US aircraft provide necessary fuel for Saudi jets to complete their missions in Yemen, was among the most controversial aspects of US support. Critics allege it enabled the Saudis to carry out illegal strikes that caused significant civilian harm. Some estimate that while US refueling only accounted for 10 percent of all coalition flights, it enabled Saudi Arabia to fly aircraft over the capital city of Sana, where numerous civilian casualty incidents occurred. The United States also shares intelligence on the conflict in Yemen, which informs Saudi

targeting policy. <sup>133</sup> At various points throughout the conflict, US officials were stationed in Saudi targeting centers to advise the Saudis on a list of proposed targets. <sup>134</sup> Some US officials maintained an informal database on coalition airstrikes. <sup>135</sup> But there is little evidence to suggest that US intelligence reduced civilian casualty rates. Tom Malinowski (D-NJ), former Assistant Secretary of State for Democracy, Human Rights, and Labor, said the Saudis were unwilling to heed US advice: "They were given specific coordinates of targets that should not be struck and continued to strike them. That struck me as a willful disregard of advice they were getting." <sup>136</sup>

"They were given specific coordinates of targets that should not be struck and continued to strike them. That struck me as a willful disregard of advice they were getting."

Rep. Tom Malinowski (D-NJ), former Assistant Secretary of State for Democracy, Human Rights, and Labor

The United States has employed pressure and incentives to reduce civilian harm perpetrated by the Saudis in Yemen. US efforts have not significantly improved civilian protection on the ground because the executive branch continues to prioritize perceived economic and security ties with the country.

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<sup>&</sup>lt;sup>131</sup> "Yemen 2017/2018," Amnesty International, https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/report-yemen/.

<sup>&</sup>lt;sup>132</sup> Wesley Morgan, "Pentagon: No more refueling of Saudi aircraft bombing in Yemen," *Politico*, November 9, 2018, https://www.politico.com/story/2018/11/09/saudi-arabia-yemen-bombing-pentagon-refueling-982924.

<sup>&</sup>lt;sup>133</sup> Melissa Dalton, Hijab Shah, and Timothy Robbins, "U.S. Support for Saudi Military Operations in Yemen," Center for Strategic and International Studies, March 23, 2018,

https://www.csis.org/analysis/us-support-saudi-military-operations-yemen.

<sup>&</sup>lt;sup>134</sup> At its peak, the Joint Combined Planning Cell was staffed by 45 officials who were dedicated as full-time staff for the coalition based in Riyadh and elsewhere. The cell was established to coordinate US support for the Saudi-led coalition, including refueling and intelligence support. In response to civilian casualty rates, the US removed personnel and significantly cut down staff. Phil Stewart, "Exclusive: U.S. withdraws staff from Saudi Arabia dedicated to Yemen planning," *Reuters*, August 19, 2016, https://www.reuters.com/article/us-yemen-security-usa-saudiarabia/exclusive-u-s-withdraws-staff-from-saudi-arabia-dedicated-to-yemen-planning-idUSKCN10U1TL.

<sup>&</sup>lt;sup>135</sup> The coalition maintained a database of the warplane, target, munitions used, and a brief description of the attack that American officers maintained access to. Some argue that the list could be used to pinpoint US involvement in the conflict. Declan Walsh and Eric Schmitt, "Arms Sales to Saudis Leave American Fingerprints on Yemen's Carnage," December 25, 2018.

<sup>136</sup> Ibid. Quoted by Declan Walsh and Eric Schmit.

**Suspending or Blocking Arms Sales:** Despite Saudi Arabia's dismal record on civilian protection, US officials have approved nearly \$50 billion in new weapons sales for Riyadh since the start of hostilities in Yemen. <sup>137</sup> Saudi Arabia's armed forces are "so heavily reliant" on American training and maintenance that if the US were to cut off assistance, Riyadh would struggle to operate its forces. <sup>138</sup> At the end of the Obama administration, officials suspend some arms sales, citing civilian casualty concerns. <sup>139</sup> In May 2016, US officials blocked the transfer of cluster bombs to Saudi Arabia after human rights groups documented their use in civilian areas in Yemen. <sup>140</sup> In December 2016, the Obama administration blocked the sale of Precision Guided Munitions, citing "systemic, endemic" targeting problems by Saudi forces. <sup>141</sup> Numerous policymakers

cited this decision as an example of a successful – if temporary – use of American leverage. 142 However, rights groups ultimately concluded that "whatever conditionality the Obama administration thought it had created ... ultimately did not have meaningful impact in reining in the continued Saudi-led coalition attacks on civilians." 143

"We gave these guys PGMs [precision-guided munitions], and since then they've been hitting *more* civilian targets."

**Senator Chris Murphy (D-CT)** 

Congress has the authority to block or hold up weapons sales, which could reduce US culpability for civilian harm in Yemen and send a strong message to Saudi Arabia. Beginning in 2016, the Senate held a series of votes on resolutions of disapproval of proposed sales. 44 Senator Chris Murphy (D-CT) argued,

<sup>&</sup>lt;sup>137</sup> Christopher Blanchard, *Saudi Arabia: Background and U.S. Relations*, September 21, 2018. <sup>138</sup> Interview with Eric Rosenbach, Co-Director of the Belfer Center and former Pentagon Chief of Staff, March 15, 2019.

<sup>&</sup>lt;sup>139</sup> Phil Stewart and Warren Strobel, "U.S. to halt some arms sales to Saudi, citing civilian deaths in Yemen campaign," *Reuters*, December 13, 2016, https://www.reuters.com/article/us-usa-saudiarabia-yemen-exclusive/u-s-to-halt-some-arms-sales-to-saudi-citing-civilian-deaths-in-yemen-campaign-idUSKBN1421UK.

<sup>&</sup>lt;sup>140</sup> John Hudson, "Exclusive: White House Blocks Transfer of Cluster Bombs to Saudi Arabia," *Foreign Policy*, May 27, 2016, https://foreignpolicy.com/2016/05/27/exclusive-white-house-blocks-transfer-of-cluster-bombs-to-saudi-arabia/.

<sup>&</sup>lt;sup>141</sup> Phil Stewart and Warren Strobel, "U.S. to halt some arms sales to Saudi, citing civilian deaths in Yemen campaign," December 13, 2016.

<sup>&</sup>lt;sup>142</sup> Interview with former State Department official, March 12, 2019. The Trump administration reversed Obama's ban on precision guided munitions sales and resumed approving PGMs for Saudi Arabia in early 2017. Some have argued that the continuation of arms sales to Saudi Arabia violates the Arms Control Export Act and the Foreign Assistance Act "until the Kingdom of Saudi Arabia takes effective measures to ensure compliance with international law" on reasonable steps to avoid civilian harm. Mike A. Newton, "An Assessment of the Legality of Arms Sales to the Kingdom of Saudi Arabia in the Context of the Conflict in Yemen," (Vanderbilt Law, May 19, 2017), No. 17-26, http://dx.doi.org/10.2139/ssrn.2971208. <sup>143</sup> Sarah Leah Whitson, "Obama Officials' Incomplete Reckoning with Failure on Yemen," *Just Security*, November 19, 2018, https://www.justsecurity.org/61522/obama-officials-incomplete-reckoning-failure-vemen/.

<sup>&</sup>lt;sup>144</sup> S.J.Res.39, *A joint resolution relating to the disapproval of the proposed foreign military sale to the Government of the Kingdom of Saudi Arabia of M1A1/A2 Abrams Tank structures and other major defense equipment*, <sup>114th</sup> Congress (2015-2016) was proposed by Senator Rand Paul (R-KY). S.J.Res.42, *A joint resolution related to the disapproval of the proposed export to the Government of the Kingdom of Saudi Arabia of certain defense articles*, <sup>115th</sup> Congress (2017-2018) was proposed by Senator Rand Paul (R-KY) and Chris Murphy (D-CT). It narrowly failed by 47 to 53 votes on June 13, 2017.

"We gave these guys PGMs, and since then they've been hitting *more* civilian targets." Senator Bob Menendez (D-NJ) placed a separate hold on a proposed sale of PGM kits which prevented the deal from moving forward. A resolution calling for an end to US support for the Saudi-led coalition passed in the Senate in December 2018. Despite congressional pressure, the executive branch has continued to propose sales to Saudi Arabia. In March 2018, the State Department approved a \$670 million package of missiles and spare parts for US-made tanks and helicopters. 148

**Providing Enhanced Training:** According to a senior US military official, the Saudis had "no culture of respect for the Law of Armed Conflict" at the outset of the conflict in Yemen. <sup>149</sup> DoD officials claim that ongoing training of Saudi officers has enabled the military to enhance its ability to protect civilians in Yemen. <sup>150</sup> A \$750 million training package in June 2017 for the Saudi Royal Air Force was intended to improve Saudi targeting capabilities in Yemen. <sup>151</sup> The State Department maintains that the kingdom is taking measures to improve targeting and prevent civilian harm, but civilian casualty rates actually increased after the Saudis purchased the training package. <sup>152</sup> No public information is available on the outcome of this training and whether it resulted in measurable changes in Saudi conduct or capability.

**Cutting Discounts for Training:** There is little public information about how much money the Saudis save on the purchase price of US training. Congress sought to address

https://www.state.gov/t/pm/rls/fs/2019/288671.htm; Civilian casualty rates have increased during that time period according to tracking by the Yemen Data Project.

 <sup>145</sup> Seth Harp, "Sen. Chris Murphy's Lonely Quest to End the War in Yemen," November 19, 2018.
 146 Joe Gould, "Key US Democrat holds back support for Gulf munitions sales over Yemen," *Defense News*, July 3, 2018, https://www.defensenews.com/congress/2018/07/03/key-us-democrat-holds-back-support-for-gulf-munitions-sales-over-yemen/.

<sup>&</sup>lt;sup>147</sup> The vote passed 56-41 in the Senate on December 13, 2018. The resolution was largely symbolic because it was blocked by leadership in the Republican-majority House. Patricia Zengerle, "U.S. Senate hands Trump historic rebuke on Saudi Arabia," *Reuters*, December 13, 2018, https://www.reuters.com/article/us-usa-saudi-yemen/u-s-senate-hands-trump-historic-rebuke-on-saudi-arabia-idUSKBN1OC2S3.

<sup>&</sup>lt;sup>148</sup> The packages have been defended as "support U.S. foreign policy and national security objectives by helping to improve the security of a friendly country," while noting that "Saudi Arabia will have no difficulty absorbing this equipment and support into its armed forces." Helene Cooper, "State Dept. Approves \$670 Million Arms Deal with Saudi Arabia," *New York Times*, March 22, 2018, https://www.nytimes.com/2018/03/22/us/politics/us-arms-sales-saudi-arabia-.html.

<sup>&</sup>lt;sup>149</sup> Interview with senior US military official, 2019.

 $<sup>^{150}</sup>$  "Press Gaggle with Secretary Mattis," US Department of Defense, December 29, 2017, https://dod.defense.gov/News/Transcripts/Transcript-View/Article/1406278/press-gaggle-with-secretary-mattis/.

<sup>&</sup>lt;sup>151</sup> "U.S. Security Cooperation with Saudi Arabia," US Department of State Fact Sheet, March 18, 2019. DoD announced the training would cover "civilian casualty avoidance, the law of armed conflict, human rights command and control, and targeting training." See "News Release," US Department of Defense Security Cooperation Agency, June 5, 2017, https://www.dsca.mil/major-arms-sales/saudi-arabia-blanket-order-training.

<sup>&</sup>lt;sup>152</sup> A 2019 State Department fact sheet reports that the "Saudi government is taking measures to improve its targeting processes" and that the government has "agreed to receive training from US forces on Law of Armed Conflict (LOAC) and best practices for preventing civilian casualties." See "U.S. Security Cooperation with Saudi Arabia," US Department of State, January 30, 2019,

this in 2010 by mandating a report on Saudi net savings.<sup>153</sup> In 2016, an appropriations amendment offered by Sen. Murphy (D-NJ) would have conditioned the discount on training on Saudi behavior in Yemen. <sup>154</sup> While the measure narrowly failed in committee, it highlighted congressional willingness to condition assistance and sent a strong message to Riyadh.

**Congressional Certification:** A provision in the 2019 NDAA required the Secretary of State to certify that Saudi Arabia (and the UAE) were undertaking "demonstrable actions to reduce the risk of harm to civilians and civilian infrastructure resulting from military operations" of the coalition. Is In September 2018, Secretary Pompeo certified that Saudi Arabia was taking the required steps and pledged to "continue to work closely with the Saudi-led coalition to ensure Saudi Arabia [would] undertake actions that mitigate the impact of the conflict on civilians. Is Humanitarian groups condemned the certification as papering over the Saudi record, noting a steep rise in civilian casualties before the certification. A bipartisan group of senators disputed Pompeo's certification, arguing that "facts on the ground in Yemen... cast serious doubt on this certification. The certification language mandates the Secretary to submit updated certifications 180 and 360 days after the initial deadline.

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<sup>&</sup>lt;sup>153</sup> The conference report for H.R. 3288 required the Obama administration to report to Congress on the net savings of IMET discount eligibility to Saudi Arabia and other recipients. As cited in Christopher Blanchard, *Saudi Arabia: Background and U.S. Relations*, September 21, 2018.

<sup>&</sup>lt;sup>154</sup> Consideration of Amendment offered by Senator Chris Murphy to S.3117, Senate Appropriations Committee, June 29, 2016. Committee voted 14 in favor, 16 opposed. See Patricia Zengerle, "Senate rebukes Trump on Saudi, backs war powers resolution," *Reuters*, March 13, 2019.

https://www.reuters.com/article/us-usa-saudi-yemen/u-s-senate-hands-trump-historic-rebuke-on-saudi-arabia-idUSKBN1OC2S3

 <sup>155</sup> Section 1290, Certifications Regarding Actions by Saudi Arabia and the United Arab Emirates in Yemen, H.R.5515 John S. McCain National Defense Authorization Act for Fiscal Year 2019.
 156 Michael R. Pompeo, "Certification to Congress on Actions of Saudi Arabia and UAE in Yemen Under the NDAA," US Department of State, September 12, 2018,

https://www.state.gov/secretary/remarks/2018/09/285861.htm

<sup>&</sup>lt;sup>157</sup> Scott Paul, Oxfam's humanitarian policy lead, said "With Secretary Pompeo's certification, the State Department demonstrated that it is blindly supporting military operations in Yemen without any allegiance to facts, moral code or humanitarian law." Oxfam America, "In response to Secretary Pompeo's full certification of the US' refueling of Saudi-led coalition plans in the Yemen conflict," September 12, 2018, https://www.oxfamamerica.org/press/in-response-to-secretary-pompeos-full-certification-of-the-us-refueling-of-saudi-led-coalition-planes-in-the-yemen-conflict-oxfams-humanitarian-policy-lead-scott-paul-said/.

<sup>&</sup>lt;sup>158</sup> Letter to Secretary of State Michael Pompeo, by Senators Todd Young (R-IN), Jeanne Shaheen (D-NH), Susan Collins (R-ME), Christopher Coons (D-DE), Jerry Moran (R-KS), Christopher Murphy (D-CT), Jeffrey Merkley (D-OR), sent October 10, 2018. Available at Senators Todd Young, Jeanne Shaheen, Susan M. Collins, Christopher A. Coons, Jerry Moran, Christopher S. Murphy, Jeffrey A. Merkley, "Letter to Secretary Pompeo," October 10, 2018.

https://www.young.senate.gov/imo/media/doc/2018.10.10%20Letter%20to%20Secretary%20Pompeo%20(Yemen%20Certification).pdf.

**War Powers Resolution:** Congress maintains the power to declare war through Article 1 of the US constitution. This means that Congress must approve the use of US armed forces in a war. Members of Congress have attempted to use the War Powers Act to curtail support for the Saudi-led coalition by arguing that the US is a belligerent in the conflict. Congress introduced a joint war powers resolution in February 2018; the Democrat-controlled House re-introduced it in 2019. The House passed the resolution (248 to 177) in February 2019, which Congressman Ro Khanna (D-CA) described as the

"culmination" of legislative efforts to end US involvement and evidence that Congress wants "to play a much larger role" in US foreign policy. <sup>159</sup> The Trump administration and DoD maintain that the United States is not an official party to the conflict and therefore the War Powers Act does not apply. <sup>160</sup> Nevertheless, the War Powers Resolution demonstrates growing efforts in Congress to reclaim responsibility and oversight of when and how the US engages provides assistance to partner forces.

Rep. Ro Khanna (D-CA) described the War Powers Resolution passage as the "culmination" of legislative efforts to end US involvement in the war in Yemen and evidence that Congress wants "to play a much larger role" in US foreign policy.

**Limiting Assistance:** Congress also led the charge to halt refueling support. Senators Todd Young (R-IN) and Jeanne Shaheen (D-NH) issued public calls for "immediate steps" to end refueling, citing concerns of "indiscriminate airstrikes against civilians and civilian infrastructure." Senator Jack Reed (D-RI) led efforts to charge Saudi Arabia for refueling after reports emerged that DoD failed to conclude a servicing agreement with the kingdom. After Senator Reed requested additional information, DoD admitted to "errors in accounting where DoD failed to charge the [Saudi-led coalition] for fuel and refueling services." The Trump administration ended refueling operations

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<sup>&</sup>lt;sup>159</sup> Rep. Ro Khanna, "Statement: Rep. Khanna on Historic Vote, Passage of the Yemen WPR in House," February 13, 2019, https://khanna.house.gov/media/press-releases/statement-rep-khanna-historic-vote-passage-yemen-wpr-house.

<sup>&</sup>lt;sup>160</sup> The Department of Defense contends that US support "does not involve any introduction of U.S. forces into hostilities for purposes of the War Powers Resolution." U.S. Department of Defense General Counsel Letter to Senate Majority Leader Mitch McConnell, February 27, 2018; letter available at https://minbane.wordpress.com/2018/02/28/https-wp-me-p1xtjg-6rr/.

<sup>&</sup>lt;sup>161</sup> Senator Todd Young, "Young and Shaheen Call for Immediate Steps in Yemen, Including Ending U.S. Air Refueling of Saudi Coalition Aircraft in Yemen," November 9, 2018,

https://www.young.senate.gov/newsroom/press-releases/young-and-shaheen-call-for-immediate-steps-in-yemen-including-ending-us-air-refueling-of-saudi-coalition-aircraft-in-yemen.

<sup>&</sup>lt;sup>162</sup> Senator Jack Reed, "Reed: Saudis and UAE to Repay U.S. \$331M for Aerial Refueling Costs," December 13, 2018, https://www.reed.senate.gov/news/releases/reed-saudis-and-uae-to-repay-us-331m-for-aerial-refueling-costs. Senator Reed sent his initial letter to Defense Secretary Mattis in March 2018.

<sup>&</sup>lt;sup>163</sup> Samuel Oakford and Ryan Goodman, "The U.S. Is Paying More Than It Bargained for in the Yemen War," *The Atlantic*, December 8, 2018, https://www.theatlantic.com/politics/archive/2018/12/pentagon-refueling-controversy-saudi-led-war-yemen/577666/.

in November 2018, citing a mutual agreement with Saudi Arabia. 164 Advocates argued that the administration "saw the writing on the wall and wanted to save face before Congress could vote to cut off US support for the coalition." 165

#### KEY CASE TAKEAWAY:

Congressional pressure was key to stopping some of the worst forms of US assistance to Saudi Arabia that enabled the indiscriminate killing of civilians, like refueling for coalition airplanes. But congressional attempts to block US weapons transfers, cut "The need to end the civil war and address the world's worst humanitarian crisis in Yemen remains dire...Our national security interests and our humanitarian principles demand nothing less."

Senator Todd Young (R-IN)

discounts for Saudi training, and limit US support for the Saudi-led coalition through certifications or war powers authorities have not yet succeeded. Continued American training and weapons for the Saudis, pushed by the executive branch, have not discernibly improved conditions for civilians in Yemen, who bear the brunt of this crisis.

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<sup>&</sup>lt;sup>164</sup> Saudi Arabia's embassy released a statement declaring it requested an end to US refueling because the kingdom could handle those operations. US Defense Secretary Jim Mattis said the United States was consulted and agreed with the decision. Phil Stewart, "U.S. halting refueling of Saudi-led coalition aircraft in Yemen's war," *Reuters*, November 9, 2018, https://www.reuters.com/article/us-usa-yemen-refueling/u-s-halting-refueling-of-saudi-led-coalition-aircraft-in-yemens-war-idUSKCN1NE2LJ.
<sup>165</sup> Kate Kizer, Win Without War, quoted by Wesley Morgan, "Pentagon: No more refueling of Saudi aircraft bombing Yemen," *Politico*, November 9, 2018, https://www.politico.com/story/2018/11/09/saudi-arabia-yemen-bombing-pentagon-refueling-982924.



# US Special Operations Forces in the Counter-Terrorism Fight in the Philippines, 2001-2014

The US-Philippine partnership to counter the Abu Sayyaf Group was relatively successful in mitigating civilian harm by Philippine forces through specialized arms sales, training, and reintegration efforts. US security assistance strategy took a holistic approach that incorporated military and nonmilitary aid. While US efforts to reduce civilian harm in Philippine operations succeeded in the short term, the actions of security forces in the Philippines today raise questions about the sustainability of US efforts.

#### HISTORY OF THE US-PHILIPPINE SECURITY RELATIONSHIP

The US-Philippine relationship is characterized by a long history of security assistance to counter internal threats to the government while increasing US military presence in Asia. The Philippines faces a complex internal security environment with threats from insurgent groups and a decades-long Muslim separatist movement. The Abu Sayyaf Group (ASG) emerged in 1990 with the aim of creating an Islamic state in the Philippines. The Abu Sayyaf Group (ASG) emerged in 1990 with the aim of creating an Islamic state in the Philippines.

ASG is associated with al Qaeda and the Taliban, tying the group directly to America's Global War on Terror. <sup>168</sup> In 2002, the US government signed on to help the Philippines to combat ASG through Operation Enduring Freedom-Philippines (OEF-P) and specifically through the US Joint Special Operations Task Force-Philippines (JSOTF-P). The primarily goal was to "build the capacity of the Philippine military to defeat terrorist organizations operating in the region." <sup>169</sup>

#### CIVILIAN HARM IN THE COUNTER-ABU SAYYAF GROUP CAMPAIGN

Civilian harm in the Philippines was perpetrated by both ASG and the Philippine security forces. ASG employed targeted bombings, kidnappings, and extortion against the Christian population throughout the 1990s.<sup>170</sup> In 2000, the group began conducting international attacks to gain greater notoriety. ASG sought to fund their Islamic state

<sup>&</sup>lt;sup>166</sup> Sheena Chestnut Greitens, "Terrorism in the Philippines and U.S.-Philippine Security Cooperation," *Brookings East Asia Commentary*, August 15, 2017, https://www.brookings.edu/opinions/terrorism-in-the-philippines-and-u-s-philippine-security-cooperation/.

<sup>&</sup>lt;sup>167</sup> Maria Ressa, "Abu Sayyaf and Its Links to Bin Laden," *CNN*, September 28, 2001, http://www.cnn.com/2001/WORLD/asiapcf/southeast/09/28/gen.phil.sayaff/index.html.

<sup>168</sup> Mikas Matsuzawa, "What You Need to Know about the Abu Sayyaf," *philstar.com*, June 13, 2016, https://www.philstar.com/headlines/2016/06/13/1577353/what-you-need-know-about-abu-sayyaf.

<sup>169</sup> Molly Dunigan, Dick Hoffmann, Peter Chalk, Brian Nichiporuk, and Paul Deluca, "Characterizing and Exploring the Implications of Maritime Irregular Warfare," Prepared for the United States Navy (RAND, 2012), 22, https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND\_MG1127.pdf.

<sup>170</sup> Larry Niksch, *Abu Sayyaf: Target of Philippine-U.S. Anti-Terrorism Cooperation*, Washigton, D.C.: CRS Report for Congress, RL31265, January 25, 2002, 3.

through kidnappings and ransom demands of foreigners.<sup>171</sup> The Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) also have a long history of civilian harm.<sup>172</sup> The AFP and PNP faced significant pressure to respond to high-profile

attacks by ASG and other insurgency groups. Their operations often failed to distinguish between civilians and insurgents. The Philippine forces' metric for success in operations focused exclusively on the total number of people killed, without regard for the distinction between terrorists and civilian lives. This led to huge civilian casualty rates in AFP and PNP missions.

The Philippine forces' metric for success in operations focused exclusively on the total number of people killed, without regard for the distinction between terrorists and civilian lives.

Structural barriers prevent accountability for abuses in the Philippines. The government suffers from weak judicial systems that are underfunded and understaffed. Political leadership often ignores reports of human rights abuses by the military and private militias. Government officials, as well as police forces, have been known to sanction extrajudicial killings and vigilantism as expedient means of fighting crime and terrorism. A survey conducted by the International Committee of the Red Cross found that while Philippine civilians and forces see the value in civilian protection measures, many appear resigned to the fact that civilians often become embroiled. The Civilians, particularly those living in active conflict zones, reported feeling caught in middle and noted a general lack of understanding in the country of the principle of limits in armed conflict.

<sup>&</sup>lt;sup>171</sup> Geoffrey Lambert, Larry Lewis, and Sarah Sewell, "Operation Enduring Freedom - Philippines: The Salience of Civilian Casualties and the Indirect Approach" (2010 Joint Civilian Casualty Study, February 1, 2012), 6.; Thomas Fuller and International Herald Tribune, "20 Kidnapped From Malaysian Resort Island," *New York Times*, April 25, 2000, https://www.nytimes.com/2000/04/25/news/20-kidnapped-from-malaysian-resort-island.html.

<sup>&</sup>lt;sup>172</sup> Geoffrey Lambert, Larry Lewis, and Sarah Sewell, "Operation Enduring Freedom - Philippines: The Salience of Civilian Casualties and the Indirect Approach," 11.; Major Lawrence M. Greenberg, "The Hukbalahap Insurrection: A Case Study of a Successful Anti-Insurgency Operation in the Philippines, 1946-1955," (Analysis Branch, U.S. Army Center of Military History, July 1986), 68, https://history.army.mil/html/books/093/93-8/CMH\_Pub\_93-8-1.pdf.

<sup>&</sup>lt;sup>173</sup> Geoffrey Lambert, Larry Lewis, and Sarah Sewell, "Operation Enduring Freedom - Philippines: The Salience of Civilian Casualties and the Indirect Approach," 11.

<sup>&</sup>lt;sup>174</sup> "Refworld | Philippines: Human Rights Abuses Committed by the Armed Forces of the Philippines (AFP) (2000 - April 2001)," Refworld, accessed March 29, 2019, https://www.refworld.org/docid/3df4be96c.html.

<sup>&</sup>lt;sup>175</sup> Thomas Lum and Ben Dolven, *The Republic of the Philippines and U.S. Interests – 2014*, Washington, D.C.: Congressional Research Service, R43498, May 15, 2014, 6.

<sup>&</sup>lt;sup>176</sup> "Philippines," U.S. Department of State, accessed March 25, 2019,

http://www.state.gov/j/drl/rls/hrrpt/2004/41657.htm.

<sup>&</sup>lt;sup>177</sup> Greenberg Research, Inc., "Country Report Philippines: ICRC Worldwide Consultation on the Rules of War," People on War (International Committee of the Red Cross, December 1999), 4, https://www.icrc.org/en/doc/assets/files/other/philippines.pdf.

<sup>&</sup>lt;sup>178</sup> Ibid. The survey was conducted by the International Committee of the Red Cross (ICRC) for the People on War project in 1999. Under the management of Greenberg Research, ICRC conducted focus groups, indepth interviews, and a national quantitative survey.

The State Department's annual human rights report on the Philippines in 2011 cited problems with armed forces' monitoring of extrajudicial killings.<sup>179</sup> Philippine forces were also associated with disappearances of civilians, warrantless detentions, and harassment.<sup>180</sup> Despite this evidence, the judicial system failed to convict a single state actor by 2010.<sup>181</sup>

#### OVERSIGHT OF SECURITY ASSISTANCE IN THE PHILIPPINES

To counter the threat of ASG, the United States provided significant counterterrorism assistance to Manila. The AFP became the largest benefactor in Southeast Asia of Foreign Military Financing under OEF-P. From 2001 to 2014, the United States allocated nearly \$102 million to equip and train security forces as part of a regional effort to increase counterterrorism capacity. The United States provided assistance in the form of military as well as development aid, which was part of the broader strategy to counter ASG. The JSOTF-P was the primary avenue through which the United States helped the Philippines counter ASG. Philippine-imposed restrictions on American rules of engagement led to a "small-footprint" approach whereby "tactical advisory units deployed continuously on shorter rotations to train, advise, and assist a variety of Philippine military units". 186

**Arms Sales:** The US provided weapons to the Philippines aimed at enhancing the professionalism of the AFP, while increasing interoperability with US forces. Assistance attempted to increase capabilities as well as capacity to mitigate civilian harm. <sup>187</sup> In the initial years of the JSOTF-P, the United States provided military equipment – including trucks, helicopters, and rifles – maintenance, and spare parts. <sup>188</sup> US efforts focused on tackling issues of civilian harm through limited intelligence sharing, closer air support, and precision guided munitions. The United States provided the AFP with the capability to "deliver swift precision strikes against identified terrorist leadership," which

<sup>&</sup>lt;sup>179</sup> Bureau of Democracy, Human Rights, and Labor, "Reports on Human Rights Practices for 2011," Country Report: Philippines, (U.S. Department of State, 2011),

https://www.state.gov/j/drl/rls/hrrpt/2011humanrightsreport/index.htm?dlid=186301#wrapper. 180 Ibid

<sup>&</sup>lt;sup>181</sup> Nathanael Tenorio Miller, "The Leahy Law: Congressional Failure, Executive Overreach, and the Consequences," *Cornell International Law Journal* 45 (2012): 680.

<sup>&</sup>lt;sup>182</sup> Peter Chalk, "U.S. Security Assistance to the Philippines: A Success Story Against Terrorism," *CTC Sentinel Vol* 1, no. 3 (2008): 2.

<sup>&</sup>lt;sup>183</sup> Joseph A. Christoff, United States Government Accountability Office, *Southeast Asia: Better Human Rights Reviews and Strategic Planning Needed for U.S. Assistance to Foreign Security Forces*, GAO-05-793 (Washington, D.C., July 29, 2005), 2, https://www.gao.gov/assets/250/247336.pdf.; "Data: Philippines," Security Assistance Monitor, accessed March 30, 2019,

https://securityassistance.org/data/program/military/Philippines/2001/2014/all/Global//.

<sup>&</sup>lt;sup>184</sup> Thomas Lum and Ben Dolven, *The Republic of the Philippines and U.S. Interests – 2014*, 14. <sup>185</sup> Molly Dunigan et al., "Characterizing and Exploring the Implications of Maritime Irregular Warfare," RAND, 2012, 22.

<sup>&</sup>lt;sup>186</sup> Linda Robinson, "The SOF Experience in the Philippines and the Implications for Future Defense Strategy," *PRISM* 6, no. 3 (December 7, 2016): 154.

 <sup>&</sup>lt;sup>187</sup> Joseph A. Christoff, Southeast Asia: Better Human Rights Reviews and Strategic Planning Needed for U.S. Assistance to Foreign Security Forces, 47.
 <sup>188</sup> Ibid, 14.

"significantly reduced the chance of collateral damage and civilian casualties." Experts consider these efforts to improve the AFP's targeting capabilities a success. 190

**Training:** The AFP was a principle recipient of International Military Education and Training during this time period. <sup>191</sup> US Special Operation Forces attempted to instill the notion that the Philippine forces were "not in the fight for itself but in the fight for the citizens of the Philippines." <sup>192</sup> After this training, the AFP adopted the 80/20 approach, which required forces to dedicate 80 percent of their efforts on civilian relationship building activities and 20 percent on combat operations. <sup>193</sup> Changes in Philippine law also reflected this shift in values, granting civilian political leaders with the authority to charge and prosecute AFP and PNP forces for human rights violations, including civilian

casualty incidents and detainee abuse.<sup>194</sup>
Accountability mechanisms for civilian harm like these are a critical step towards improving overall civilian protection. While the effects of this training cannot be directly linked, experts attribute some of the change to the training imparted by the US military: "The change in mindset, while driven by Philippine leadership from above, was likely enabled in part by US military efforts." <sup>195</sup>

After training [by US forces], the Philippine forces adopted the 80/20 approach, which required forces to dedicate 80% of their efforts to civilian relationship building activities and 20% on combat operations.

**Leahy Vetting:** Despite overall improvement, parts of the AFP continued to inflict civilian harm. <sup>196</sup> Between 2008 and 2013, Congress played an important role in conditioning US security assistance to the Philippine army in an attempt to encourage better human rights behavior. Individual officials raised alarms, including a 2008 amendment from Senator Patrick Leahy (D-VT) expressing concern over lack of respect for human rights and civilian protection in Philippine military operations. <sup>197</sup> Congress also restricted appropriations, withholding \$2 million of \$30 million in Foreign Military Financing for the Philippines in 2009. <sup>198</sup> However, the Obama administration in 2010 pushed to have the restrictions removed to fully fund counterterrorism cooperation.

<sup>&</sup>lt;sup>189</sup> Linda Robinson, Patrick Johnston, and Gillian Oak, "U.S. Special Operations Forces in the Philippines, 2001—2014," (RAND, 2016), 87, http://www.rand.org/pubs/research\_reports/RR1236.html.

<sup>&</sup>lt;sup>190</sup> Ibid, 88. While the primary target did escape, the AFP considered the operation and success and touted it as such in the media. Media framed these successes as Philippine Forces "Using US Smart Bombs".

<sup>&</sup>lt;sup>191</sup> Peter Chalk, "U.S. Security Assistance to the Philippines: A Success Story Against Terrorism," 1. <sup>192</sup> Geoffrey Lambert, Larry Lewis, and Sarah Sewell, "Operation Enduring Freedom - Philippines: The Salience of Civilian Casualties and the Indirect Approach," 7.

<sup>193</sup> Ibid, 123.

<sup>194</sup> Ibid, 15.

<sup>195</sup> Ibid, 15.

<sup>&</sup>lt;sup>196</sup> Manny Mogato, "Philippines Names New Military Chief amid Corruption Scandals," *Reuters*, March 6, 2011, https://www.reuters.com/article/us-philippines-military-idUSTRE7250KQ20110306.

<sup>&</sup>lt;sup>197</sup> Patrick J. Leahy, *S.Amdt.2762 to H.R.2764 - 110th Congress (2007-2008)*, September 6, 2007, https://www.congress.gov/amendment/110th-congress/senate-amendment/2762.

<sup>&</sup>lt;sup>198</sup> Miller, "The Leahy Law: Congressional Failure, Executive Overreach, and the Consequences," 683.;Patrick J. Leahy, "Text - S.3288 - 110th Congress (2007-2008): Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009," webpage, July 18, 2008, https://www.congress.gov/bill/110th-congress/senate-bill/3288/text.

Ultimately, Congress re-allocated the \$29 million. <sup>199</sup> This attempt to provide funding despite civilian protection concerns illustrates the difficulties in maintaining the political and following through on human rights concerns. <sup>200</sup>

Nonmilitary Assistance/Reintegration Efforts: Non-military contributions also supported counterterrorism capacity building efforts. The US Agency for International Development managed the Growth with Equity in Mindanao (GEM) program from 2002 to 2012. The program "enhanced the legitimacy of the AFP and the government among local communities and also created positive impressions of US troops."<sup>201</sup> The US military noted that in terrorist safe havens, civilians' "greatest concerns were roads, water, security, medical care, and education."<sup>202</sup> The US military's community outreach projects to improve local infrastructure enabled the local population to become supportive of a national military presence in the region and encouraged civilians to cut ties with the ASG. As part of these efforts, the AFP also developed trust in the US military's advise-and-assist mission.<sup>203</sup> These programs demonstrate the positive impacts of weaving civilian protection into US security assistance.

#### SUSTAINABILITY OF US EFFORTS:

US efforts were fairly successful in the 2001-2014 time period in persuading the Philippines to merge counterterrorism strategy with civilian harm mitigation efforts. The actions of current President Rodrigo Duterte, however, call into in question the sustainability of these efforts. President Duterte has employed the security forces in his war against drugs, which has resulted in thousands of civilian deaths.<sup>204</sup> The Duterte administration has shown no concern for civilian harm, going so far as to classify children killed during drug operations as "collateral damage."<sup>205</sup>

#### **KEY CASE TAKEAWAY:**

US training programs pushed the Philippine armed forces to keep civilians at the center of security operations, while instilling respect for human rights into military doctrine. US security assistance strategy in the Philippines established more comprehensive approach to counterterrorism by including nonmilitary assistance. The US military's investment in infrastructure and efforts to understand the priorities of local communities led to more effective programs to counter ASG. While some Philippine military leadership effectively built civilian protection values into some security force units, the long-term positive effects of these efforts are under scrutiny due to President Duterte's brutal war against drugs. The US-Philippines relationship also highlights the challenges of exerting congressional pressure to curtail US assistance in the face of competing priorities, even when the amount of funding is relatively small.

<sup>&</sup>lt;sup>199</sup> Miller, "The Leahy Law: Congressional Failure, Executive Overreach, and the Consequences," 683. <sup>200</sup> Please see Part V: Recommendations, section 1.

<sup>&</sup>lt;sup>201</sup> Lum and Dolven, *The Republic of the Philippines and U.S. Interests* – 2014, 14.

<sup>&</sup>lt;sup>202</sup> David P. Fridovich and Fred T. Krawchuk, "The Special Operations Forces: Indirect Approach," *Joint Force Quarterly* 1st quarter, no. 44 (2007): 26.

<sup>&</sup>lt;sup>203</sup> David P. Fridovich and Fred T. Krawchuk, "The Special Operations Forces: Indirect Approach," 26. <sup>204</sup> Hannah Ellis-Peterson, "Duterte's Philippines drug war death toll rises above 5,000," *The Guardian*, December 19, 2018.

<sup>&</sup>lt;sup>205</sup> Ted Regencia, "Senator: Rodrigo Duterte's Drug War Has Killed 20,000," *Al Jazeera*, February 21, 2018.



### PART V: RECOMMENDATIONS

This report provides recommendations for the Congress and the executive branch to improve civilian protection in security assistance relationships. The recommendations were informed by extensive discussions with practitioners in the security assistance and civilian protection community. The recommendations also draw on some of the key findings from the case studies, though do not mirror them exactly as the case studies only highlight only a small slice of the US security assistance universe.

The criteria of political feasibility, cost and budgetary considerations, implementation, and potential for impact guided the selection and evaluation of the recommendations (Figure 7). The authors consider and weigh the criteria in their analysis of each recommendation.

**Figure 7. Criteria for Selection and Evaluation of Recommendations.** The authors used the following questions while evaluating the recommendations in this report.

### **Political Feasibility**

- Is a congressional office willing and able to lead on the effort?
- Would the recommendation receive bipartisan support?
- Would the recommendation require a standalone bill? Or could it be included in existing authorization or appropriations efforts?
- Would the measure receive the necessary votes to pass? Is there value to forcing a vote regardless?
- Are there political costs (alienating constituencies or industries) to leading on this recommendation?
- Would the State Department, Defense Department, and US military support this recommendation?
- Would the recommendation receive positive or negative attention from the media or the public?
- Is there a risk of raising this recommendation in the current political climate?

### **Cost and Budgetary Considerations**

- How much money would be required to implement this effort?
- Are financial resources to fund the recommendation available?
- Who is paying? Through which Department's budget would the recommendation be funded?
- Would the recommendation require new appropriation mechanisms to implement?
- Would the recommendation require one-time appropriations or annual funding from Congress?
- Would the recommendation require additional funding for an existing office or the creation of a new office?

### **Implementation**

- Could the recommendation be implemented under existing authorities, or are new authorities required?
- Do the necessary human and technical resources to implement the recommendation exist within the government or will they need to be contracted?
- What is the timeframe for implementation?
- Has it or something close it it been done before?
- Would the recommendation require buy-in from the partner nation?
- What stakeholders across the interagency would be required to implement the recommendation? Who could be a potential spoiler?
- Is the recommendation legal?
- How will the recommendation be communicated to relevant stakeholders?
- How will the recommendation be monitored and evaluated throughout its implementation?

### **Impact**

- Would the implementation of this recommendation make a real impact on stated objectives?
- Given current capacity levels, can the recommendation be efficiently implemented?
- Would implementing the recommendation solve multiple challenges?
- Is it worth the effort to implement?

### To the Congress

The following recommendations are directed towards congressional offices, congressional committees, and their staff:

1. Mandate the development of a strategy to address the increased risk of civilian harm when US forces work by, with, and through partner forces.

The current policy process at DoS and DoD sidelines and compartmentalizes civilian protection issues, rather than integrating them at the start and throughout strategy development.

a. Require the Departments of State and Defense to develop and adopt a strategy for civilian protection in partnered operations.

Congress should require the Departments of State and Defense to develop a joint strategy on civilian protection in all forms of partnered operations. Civil society and nongovernmental organizations have already developed useful frameworks and concepts for these efforts.<sup>206</sup> A recently declassified study by the Chairman of the Joint Chiefs of Staff recognized the need to develop such a strategy, which indicates that there may be appetite and will within the Department of Defense to undertake this recommendation.<sup>207</sup> Congress could mandate this strategy in the National Defense Authorization Act (NDAA) or include in State, Foreign Operations, and Related Programs appropriations (SFOPs). This mandate would also fit well within a State Department authorization bill, but passing one remains unlikely (the last time Congress reauthorized the State Department was in 2002)."<sup>208</sup>

b. Require the Departments of State and Defense to assess, monitor, and evaluate a partner's ability to protect civilians during military operations.

Congress should require that the new AM&E framework developed by the Department of Defense includes civilian protection factors. Congress should require the State Department to develop a similar AM&E program to assess partnerships. (See executive branch recommendations in this report for more detail on the substance of the AM&E framework).

c. Require the Departments of State and Defense to develop a framework of triggers and indicators on civilian protection that would require a reevaluation or termination of a partnership.

<sup>&</sup>lt;sup>206</sup> Melissa Dalton et al., "The Protection of Civilians in US Partnered Operations," CSIS, October 2018. <sup>207</sup> Department of Defense, Civilian Casualty (CIVCAS) Review, April 17, 2018, https://www.jcs.mil/Portals/36/Documents/Civilian%20Casualty%20Review%20Report%20Redacted.pdf

<sup>&</sup>lt;sup>208</sup> Danny Vink, "The State Department hasn't been authorized in 13 years," *Politico*, September 4, 2015, https://www.politico.com/agenda/story/2015/09/the-state-department-hasnt-been-authorized-in-13-years-000219

Congress should require the executive branch to articulate specific partner performance expectations with respect to civilian harm, including a set of conditions that trigger a re-evaluation of ongoing security assistance (See executive branch recommendations for more detail on the substance of these triggers).

### 2. Conduct more consistent, effective, and transparent oversight over the executive branch's strategy for and implementation of US security assistance policy.

Improved oversight was the most frequently raised recommendation from policymakers and experts interviewed for this project. Given the challenges of incentivizing the executive branch to modify or monitor its own policies, Congressional committees and individual member offices must lead efforts to oversee and reform security assistance. As detailed in Section III of this report, Congress already possesses many of the tools and authorities needed to serve as an effective check on any executive branch impulses to deprioritize civilian harm.

### a. Improve notification and reporting requirements on security assistance, particularly for the Department of State.

The patchwork of US security assistance authorities is accompanied by a patchwork of reporting requirements embedded in standalone legislation, authorization acts, and appropriations bills. This results in information not being

shared effectively across committees. For example, some reports on counterterrorism assistance (like 127e reports<sup>209</sup>) are only delivered to the House and Senate Armed Services Committees. 210 It would be feasible for the chairs of the Senate Foreign Relations or House Foreign Affairs Committees to request these reports. This could would likely increase transparency and learning around a controversial counterterrorism authority. Experts noted that Section 333 represents

The Section 333 "approach to congressional notifications facilitates congressional oversight and transparency, by enabling tracking which countries are getting what kinds of assistance and follow-up on implementation of Leahy vetting when credible allegations arise of gross human rights violations by a given unit."

Alexis Arieff. **Congressional Research Service** 

the "gold standard" for reporting requirements: Prior to initiating new activities under this authority, DoD must submit a written notification to Congress to specify which country and specific unit will be the focus; evaluate the capacity of

<sup>&</sup>lt;sup>209</sup> Section 127e is an operational counterterrorism authority for enabling local partners but is not technically considered in statute to be a security assistance or security cooperation authority. Nevertheless, the second- or third-order effects of counterterrorism training authorities have important implications for security assistance and civilian harm.

<sup>&</sup>lt;sup>210</sup> Cited by participants in a CSIS simulation on security cooperation, January 29, 2019.

the recipient country and unit to absorb the planned assistance; clarify the implementation timeline for assistance; describe plans for future sustainment of new capabilities built under the program; and list all other security assistance provided to the country during the three preceding fiscal years.<sup>211</sup> Alexis Arieff of the Congressional Research Services notes, "This approach to congressional notifications facilitates congressional oversight and transparency, by enabling tracking which countries are getting what kinds of assistance and follow-up on implementation of Leahy vetting when credible allegations arise of gross human rights violations by a given unit."<sup>212</sup>

In contrast, certain State Department spending notifications may list dozens of potential recipients with no information on recipient units or accompanying analysis or background of the partner's capacity and history. This makes it extremely difficult to conduct effective policy coordination or congressional oversight.<sup>213</sup> Overhauling current reporting requirements for the State Department would require amending the original language, which may be difficult to do for each type of report. Congressional officials should prioritize modifying the more opaque reports, like peacekeeping (PKO) and nonproliferation (NADR) notifications.

b. Insist upon more information for train and equip packages, particularly those intended for partners with known patterns of abusive behavior or weak defense institutions.

Congress must be willing to say no to train and equip packages that inappropriately assist partners that lack the capacity, capability, or will to prioritize civilian protection. According to Tommy Ross, former deputy assistant secretary of defense for security cooperation, Congress has been unwilling to

insist on an explanation of how funding packages advance US strategic objectives, request more information on the ends, ways, and means of a package before approving the money, or say no to a proposal outright.<sup>214</sup> If proposed packages do not sufficiently address

Congress must be willing to say no to train and equip packages that inappropriately assist partners that lack the capacity, capability, or will to prioritize civilian protection.

civilian protection concerns or are proposed to countries with track records of failing to prevent civilian harm, Congress should reject the packages or send them back to DoD or DoS for improvement. If Congress approves risky packages,

<sup>&</sup>lt;sup>211</sup> Communication with Alexis Arieff, Specialist in African Affairs, Congressional Research Service, March 27, 2019. See also Congressional Budget Justification, Department of State Foreign Operations, and Related Programs, Fiscal Year 2018, https://www.state.gov/documents/organization/271013.pdf <sup>212</sup> Communication with Alexis Arieff, Specialist in African Affairs, Congressional Research Service, March 27, 2019.

<sup>&</sup>lt;sup>213</sup> For example, the State Department Peacekeeping Operations (PKO) and Nonproliferation, Antiterrorism, Demining, and Related Programs (NADR) notifications are often provided in this unhelpful format.

<sup>&</sup>lt;sup>214</sup> Interview with Tommy Ross, former Deputy Assistant Secretary for Security Cooperation, December 19, 2018

it must ensure they contain enhanced measures, like additional reporting requirements or certification provisions, to monitor and mitigate civilian harm. One potential hurdle in the implementation of this recommendation is that committee staff often lack deep expertise on every single partner nation's defense institutions and history of abuse, making it difficult to know when to raise alarm bells. Another hurdle is the sheer volume of train and equip packages that Congress must approve, which creates incentives to simply rubber stamp packages without a careful consideration of the needs, capabilities, and interests of the partner.

# c. Re-structure security assistance appropriations to enable long-term strategy development.

The annual appropriations process can be a barrier to effective long-term strategy development.<sup>215</sup> The tight feedback loop of annual appropriations means that the executive branch cannot conduct the long-term planning required to create sustainable change in partner forces. Congressional appropriators should work with the executive branch to restructure appropriations along a ten to fifteen-year timeline. Restructuring the appropriations schedule is likely to be extremely difficult, given the strong bureaucratic momentum towards an annual cycle. However even if current appropriations cycles remain, movement towards increased assessment, monitoring, and evaluation of security assistance (at least at DoD) means that long-term monitoring of assistance is starting to occur, which has the potential to mitigate the downsides of the annual appropriations cycle.

# d. Demand data and transparency from the executive branch on civilian harm in security relationships.

Congress should demand that the executive branch provide more transparent accounts of how US partners are assessed and monitored for civilian protection outcomes. Criteria and checks imposed by the executive branch on partners should be available for public scrutiny. Although it is often difficult to obtain greater transparency from the Department of Defense, this recommendation builds on recent efforts within the Pentagon to increase transparency around civilian casualties: the Department is required to report to Congress on civilian casualty incidents during its military operations (and during the Obama administration, the CIA was also required to report CIVCAS from covert operations). <sup>216</sup> Congress should ensure US partners are held to similar standards. While there may be resistance within DoD and in some parts of Congress to publicly track this data due to concerns potential legal liability for the US role in

Casualties From U.S. Airstrikes Outside War Zones," *New York Times*, March 7, 2019, https://www.nytimes.com/2019/03/06/us/politics/trump-civilian-casualties-rule-revoked.html.

<sup>&</sup>lt;sup>215</sup> Interview with former senior Department of Defense official, February 28, 2019.

<sup>&</sup>lt;sup>216</sup> Department of Defense, "Report on Civilian Casualty Policy Submitted Pursuant to Section 936 of the National Defense Authorization Act for Fiscal Year 2019," 2019, https://media.defense.gov/2019/Feb/08/2002088175/-1/-1/1/DOD-REPORT-ON-CIVILIAN-CASUALTY-POLICY.PDF.; Charlie Savage, "Trump Revokes Obama-Era Rule on Disclosing Civilian

partner abuses, greater transparency could highlight the worst practices and build momentum to reform.

# e. Request more frequent briefings from the Intelligence Community (IC) on abuses committed by partners that receive US security assistance.

The IC has deep, substantive expertise on US partners that, according to a former US Ambassador to Nigeria, is often "not accessed as frequently as would be desired." Congress should request more briefings from the IC on civilian abuses by US partner forces. This recommendation could be a relatively low cost (and low effort) endeavor with potentially high impact as it would enable congressional staff to easily access experts with advanced knowledge of partner nations' militaries. Congress could also consider include a requirement in the NDAA or SFOPs that mandates the IC to produce unclassified reports on civilian protection in partner nations, with classified annexes if necessary. Bureaucratic hurdles to sharing sensitive material with wider audiences will emerge, but Congress should demand access to the intelligence it funds.

# f. Individual members must be a louder voice in the US security assistance oversight process.

When individual members of congress write letters to officials at the Departments of State or Defense, the agencies must respond to clarify existing policy or explain department actions. For example, Senator Reed's letter to Defense Secretary James Mattis on US refueling services to Saudi Arabia led the Department of Defense to revisit its accounting record and bill the Saudis for nearly tens of millions of dollars' worth of services. This suggests that the efforts of individual members can make a real impact. Member offices should focus on working collaboratively, and in bipartisan manner when possible, to reduce the political and capacity burden on any one office.

## g. Bring in new voices and constituencies to inform oversight of US security assistance.

The issues discussed in this report do not have natural constituencies in the Congress, unlike other issues that drive policy change. As one expert put it, "the Hill is fundamentally about the electorate and the electorate doesn't care." To mitigate incentives for inaction, Congress could work more closely with nongovernmental advocacy groups and prioritize hearing from civil society from partner nations. Often, the only voices in the policymaking process come from the partner government or military. Local civil society and human rights advocates can round out the picture of the impact of US security assistance, particularly on civilians. Congressional offices maintain significant control over

<sup>219</sup> Interview with Ambassador John Campbell, Council on Foreign Relations, February 28, 2019.

<sup>&</sup>lt;sup>217</sup> Interview with Ambassador John Campbell, Council on Foreign Relations, February 28, 2019.
<sup>218</sup> Samuel Oakford and Ryan Goodman, "The US Is Paying More Than It Bargained for in the Yemen War," *The Atlantic*, December 8, 2018, https://www.theatlantic.com/politics/archive/2018/12/pentagon-refueling-controversy-saudi-led-war-yemen/577666/.

which voices have access to hearings and the public debate. Changing who is heard in these debates can feasibly be driven by individual offices.

#### Increase congressional capacity – in terms of staffing and compensation – in order to realistically and effectively conduct oversight of US security assistance.

Professional staff on the relevant six committees are overworked and underpaid.<sup>220</sup> Committee staff with whom we spoke received ten to fifteen reports per day and noted that tracking reporting requirements is "labor intensive" and executed manually using spreadsheets.<sup>221</sup> Hiring additional professional staff would significantly increase prospects for effective oversight, but will be difficult given tight budgets and political constraints around the size of the federal government. If hiring new staff is infeasible, committees should task at least one professional staff member with monitoring security assistance reform and reporting requirements.

### 3. Amend the Leahy laws to close loopholes in interpretation and implementation.

Leahy vetting is one of the most important tools to ensure that US partners do not commit human rights abuses. However, gaps in its interpretation and application raise questions about its effectiveness.

### a. Amend the DoS and DoD Leahy laws to explicitly expand the application of Leahy to cover Foreign Military Sales.

Assistance provided through Foreign Military Sales is not covered under the definition of "assistance" in the current application of the DoD and DoS Leahy Law.<sup>222</sup> The State and Defense Departments thus do not restrict commercial arms sales on the basis of human rights violations. According to Tim Rieser, a foreign

policy aide to Senator Patrick Leahy (D-VT), there is no compelling foreign reason for why the US government would have two contradictory policies.<sup>223</sup> Congress should require that the Departments of State and Defense

"Senator Leahy does not believe there is a compelling foreign policy reason for having two contradictory policies simply because the Saudis have money and can purchase US equipment, while another country can't."

Tim Rieser, Foreign policy aide to Senator Patrick Leahy (D-VT)

<sup>223</sup>Interview with Tim Rieser, Foreign Policy Aide to Senator Patrick Leahy (D-Vt), March 22, 2019.

<sup>&</sup>lt;sup>220</sup> Relevant committees include Senate Foreign Relations, House Foreign Affairs, Senate Armed Services, House Armed Services, and relevant Senate and House Appropriations sub-committees.

<sup>&</sup>lt;sup>221</sup> Interview with House Foreign Affairs Committee staff, March 1, 2019.

<sup>&</sup>lt;sup>222</sup> The executive branch insists that they apply the same human rights standards to both sales and grants, but this is a somewhat murky area because the text of the law only actually applies to assistance.

apply the Leahy laws to Foreign Military Sales.<sup>224</sup>

## b. Clarify the terms "unit," "assistance," and "credible," in the DoS and DoD Leahy laws.

The lack of clear, agreed upon definition for these terms inhibits the efficacy of the Leahy law. Greater clarity from Congress may enable better enforcement.<sup>225</sup> However, not all stakeholders agree that all of the terms require greater elucidation. Tim Rieser, foreign policy aide to Senator Patrick Leahy, argues that the word "credible" is better left vague, as it depends on the quality and reliability of available information and is ultimately a judgment of the Secretary of State.

### c. Amend the Leahy laws to set clear guidelines about which partner country entities are eligible for security assistance.

Current implementation of the Leahy laws does not include vetting for assistance that goes directly to a Ministry of Defense entity, rather than an individual unit. This may allow ministries in abusive governments to receive US assistance despite bad rights records. Congress should require vetting of ministries and non-security force unit entities. <sup>226</sup> Congress should require the Department of State to keep records of these violations.

Amending the Leahy laws is not without precedent. Since the laws' inception in 1998, Congress has worked to align the language of the DoS and DoD Leahy laws and instituted changes that significantly expanded the requirements for vetting.<sup>227</sup> However, the Trump administration has not signaled a

Amending the Leahy laws is not without precedent, but lawmakers should exercise caution in attempting to reform Leahy without bipartisan support in the current political climate.

willingness to prioritize civilian protection and might resist efforts to constrain US security assistance. Lawmakers should exercise caution in attempting to reform Leahy without bipartisan support and be wary of partisan backlash which could reverse, rather than advance, progress.

<sup>&</sup>lt;sup>224</sup> See also Daniel Mahanty and Annie Shiel, "With Great Power: Modifying US Arms Sales to Reduce Civilian Harm," (Center for Civilians in Conflict, January 10, 2018), https://civiliansinconflict.org/wp-content/uploads/2018/01/With-Great-Power.pdf.

<sup>&</sup>lt;sup>225</sup> Some groups have advocated for more clearly defining these terms. In an interview with Tim Rieser, Foreign Policy Aide to Senator Patrick Leahy (D-Vt), March 22, 2019, and the architect of the Leahy law, provided his views on the current definitions. "Unit" depends on the circumstances of the incident, and so it is difficult to define for all purposes. A unit should be considered the smallest unit operating in the field when and where the crime was committed. "Assistance" has been defined as "training, equipment, and other assistance" in order to be inclusive.

<sup>&</sup>lt;sup>226</sup> Interview with Sarah Holewinski, Senior Fellow, New America, March 5, 2019.

<sup>&</sup>lt;sup>227</sup> Michael McNerney et al., "Improving Implementation of the Department of Defense Leahy Law," RAND, 2017, 14.

### 4. Exercise greater influence and control over US arms sales strategy, policy, and execution.

Arms sales are playing a larger role in US foreign policy.<sup>228</sup> Congress, which possesses many of the necessary tools and authorities to regulate arms sales, must ensure that they are conducted in a manner which advances human rights and civilian protection.

a. Clarify the conditions under which Congress will approve future arms sales and reject or hold proposed sales that do not fit the needs and capabilities of the partner nation.

Congress should make clear that future arms sales will be based on an assessment of partner need, capacity and capabilities, as well as intent and political will.<sup>229</sup> Such an assessment would address whether the weapon is appropriate for the type of campaign or conflict a partner is fighting; whether the partner could actually absorb the training necessary to appropriately use the weapon without causing civilian harm; whether the partner's plans to use the weapons are aligned with the reasons the United States is providing them; and whether the partner is willing and able to prioritize civilian protection.

For sales to partners engaged in conflicts or activities that pose higher risks to civilians, Congress should require the executive branch to provide clear timelines and decision-making processes, including for Direct Commercial

Congress should make clear that future arms sales will be based on an assessment of partner need, capacity, and capabilities, as well as intent and political will.

Sale (DCS) items, to give a fuller picture of all US assistance. Such a process could be modeled on the notification process for Foreign Military Sale (FMS). The reporting requirement for this list of risky partners could be included in SFOPs or NDAA language. While additional requirements may slow down transfers, heightened scrutiny is necessary to ensure proper oversight of US weapons in conflict.

For sales it views as unacceptable, Congress should also exercise its formal authority to block an arms deal. Blocking a sale outright is unlikely due to the two-thirds Senate majority it requires. Moreover, given strong defense industry interests in members' districts and the influence of the arms lobby, Congress is subject to extremely strong pressures to eventually approve sales. However, placing holds on arms sales notifications is far more feasible as the chairs and/or ranking members of the Senate Foreign Relations Committee and House Foreign

<sup>&</sup>lt;sup>228</sup> Arms sales are playing an increased role in US foreign policy. The terrorist attacks of 9/11 marked the most recent inflection point for U.S. arms sales policy. In response to the attacks, both the George W. Bush and Obama administrations oversaw a boom in arms sales. During its first years, the Trump administration continued this trend, with an added emphasis on economic opportunities and even less regard for the human rights records of American clients. See A Trevor Thrall and Caroline Dorminey, "Risky Business: The Role of Arms Sales in American Foreign Policy," (CATO Institute, March 13, 2018), https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-836.pdf.

<sup>229</sup> Interview with Sarah Holewinski, Senior Fellow, New America, March 5, 2019.

Affairs Committee have the power to temporarily derail foreign arms sales under the congressional notification process. As the Saudi case demonstrates, holds can also be valuable. When Congress holds up arms sales, it sends a strong signal to the partner nation that the United States is paying attention to their conduct.

### b. Extend the notification deadline for congressional disapproval of arms sales.

The Foreign Military Sales process should be amended to avoid committing the United States to providing weapons before adequate Congressional review can occur. The current notification policy requires the executive branch to give Congress 30 days' notice before concluding a government-to-government foreign military sale of major defense equipment valued over certain thresholds.<sup>230</sup> Congressional staff and outside advocacy groups noted that this is an insufficient amount of time to conduct sufficient scrutiny of the intended sale. The AECA should be amended to at least double the amount of time Congress has to review the proposed sale to 60 days' notice. Sixty days' notice would give congressional staff and outside advocacy groups more time to review the potential impact of the sale on civilian protection. If negative potential impact is found, 60 days' notice would also give stakeholders the time needed to draft, introduce, gather cosponsors for, and generate pressure toward a vote on a formal resolution of

disapproval to block the sale from proceeding.<sup>231</sup> Given arms industry pressure to approve sales faster, some members may resist amending the AECA to further slow the process. Nevertheless, this change could prove critical to allowing sufficient time for real oversight.

Sixty days' notice – as opposed to the current thirty days – for arms sales notifications would give congressional staff and outside advocacy groups more time to review the potential impact of the sale on civilian protection.

#### Expand end-use monitoring provisions for recipients of US weapons and equipment to include an evaluation of outcomes on the actual use of weapons.

End-use monitoring (EUM) focuses on the protection of US technology and the prevention of unauthorized transfer, rather than the manner of use in conflict.<sup>232</sup> Congress should ensure that monitoring the actual use of US weapons is prioritized in EUM programs. Congress should require that the criteria for EUM of items on the US Munitions List include outcomes on use (for example, cases of civilian harm).<sup>233</sup> Congress could clarify its intent during hearings on arms sales or consider mandating reforms to State and Defense Department end use monitoring programs in the NDAA or SFOPs. One potential challenge in

<sup>&</sup>lt;sup>230</sup> Notification is required for foreign military sales of major defense equipment valued above \$14 million, defense articles or services valued above \$50 million, or design and construction services valued above \$200 million. Section 36(B) of the Arms Export Control Act; see Congressional Research Service, *Arms Sales: Congressional Review Process*, February 25, 2019.

<sup>&</sup>lt;sup>231</sup> Interview with Cole Bockenfeld, Forum on the Arms Trade, March 1, 2019.

<sup>&</sup>lt;sup>232</sup> Mahanty and Shiel, "With Great Power," 23.

<sup>&</sup>lt;sup>233</sup> Mahanty and Shiel, "With Great Power" 31.

implementation of this recommendation is the additional manpower and technical expertise required to monitor these expanded criteria. Already, EUM programs tend to be under-resourced, with few personnel at embassies qualified to conduct thorough monitoring. Adding additional requirements for EUM may be difficult to man and resource.

### d. Block the Trump administration's decision to move certain arms from State Department jurisdiction to the Department of Commerce.

The Trump administration plans to move oversight of the majority of gun exports from the State Department to the Commerce Department.<sup>234</sup> This would allow US arms and ammunition manufacturers to sell guns abroad with significantly less oversight and vetting processes.<sup>235</sup> Given the destructive role light arms play in conflict, this change could lead to greater civilian harm around the world.<sup>236</sup> Senator Menendez has placed a hold on this measure, but Congress should act to reverse this move permanently by passing legislation that explicitly mandates guns and ammunition exports must go through the more rigorous State Department process.<sup>237</sup> There is currently legislation to this effect in both chambers, but it unlikely to pass given that the Republican-controlled Senate will not want to be seen as voting to restrict the sale of guns.

## e. Ensure that all arms sales packages include tailored technical assistance and training for partners to improve civilian protection outcomes.

Before approving sales, Congress should ensure that the package includes a set of technical assistance and training that explicitly and effectively address human rights and civilian protection. Congress can place a hold on the notification of the sale if it unsatisfied with the human-rights related training, forcing the executive branch to adjust the terms of the sale.

<sup>&</sup>lt;sup>234</sup> Nicholas Fandos, "Trump Administration Eases Regulations on Gun Exports, Raising Concerns," *New York Times*, January 31, 2019, https://www.nytimes.com/2019/01/31/us/politics/gun-exports-trump.html.

<sup>&</sup>lt;sup>235</sup> The vetting process for Direct Commercial Sales (DCS) is viewed as less restrictive and cumbersome. The State Department is required to submit notifications to congress on commercial sales over \$1 million. The Commerce Department is not required to do so. Moving the jurisdiction of these sales would mean congress receives no notification and cannot conduct oversight on such sales.

<sup>&</sup>lt;sup>236</sup> OHCHR, "Impact of arms transfers on the enjoyment of human rights," Report of the Office of the United Nations High Commissioner for Human Rights, May 3, 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/109/83/PDF/G1710983.pdf?OpenElement

<sup>&</sup>lt;sup>237</sup> The administration's move was temporarily blocked by Senator Bob Menendez (D-NJ), who placed a hold on the measure in late February 2019. Menendez argued in a letter to Secretary of State Mike Pompeo that small arms "should be subject to more, not less, rigorous export controls and oversight." Menendez's hold is not legally binding on the Trump administration, which could choose to ignore the hold and proceed with the change. Rachel Oswald, "Menendez blocks firearm export rule, citing oversight concerns," *Roll Call*, February 28, 2019, https://www.nytimes.com/2019/01/31/us/politics/gun-exportstrump.html.

### 5. Increase oversight and assessment of training programs on civilian casualties and the Law of Armed Conflict.

DoD often regards training on human rights or the law of armed conflict as a silver bullet solution to a partner's civilian protection problems. However, there is no systematic evaluation of the impact and effectiveness of training programs to support this conclusion.

### a. Require assessment, monitoring, and evaluation of the human rights and law of armed conflict training provided and sold to partner nations.

A significant part of this training is provided through the International Military Education and Training (IMET) program, which funds members of foreign militaries to take classes at US military facilities. IMET is designed to help foreign militaries bolster their relationships with the United States, learn about US military equipment, and instill democratic values in their members.<sup>238</sup> The program is often touted as an effective way to professionalize partner militaries, and was characterized by a senior US military official as "hands down the best investment we can make" in partnerships.<sup>239</sup>

However, neither the Department of State nor the Department of Defense measure the effectiveness of the program in achieving its stated goals or its impact on civilian protection outcomes in partner nations. Measurement of the training focuses on inputs, like number of officers trained, or the number of sessions conducted, rather than qualitative measurement of the outcomes. DoD does not even have a system for tracking which foreign military officers attended IMET.<sup>240</sup> In a 2011 study, the GAO citied similar concerns and recommended that the Departments of State and Defense take initial steps to begin developing a system to evaluate the effectiveness of the IMET program.<sup>241</sup> An AM&E program still does not exist for IMET.

The implementation of this recommendation could be relatively straightforward as the basic framework for it already exists. Congress has already mandated (as part of the 2017 NDAA) that the Department of Defense conduct "strategic evaluations" to measure the effectiveness and impact of "significant security cooperation initiatives" toward meeting expected outcomes.<sup>242</sup> As part of this existing framework, Congress could require that DoD prioritize an evaluation of

<sup>&</sup>lt;sup>238</sup> Joshua Kurlantzick, "Reforming the U.S. International Military Education and Training Program," (Council on Foriegn Relations, June 8, 2016), https://www.cfr.org/report/reforming-us-international-military-education-and-training-program.

<sup>&</sup>lt;sup>239</sup> Interview with senior US military official, 2019.

<sup>&</sup>lt;sup>240</sup> Kurlantzick, ""Reforming the U.S. International Military Education and Training Program", June 8, 2016.

<sup>&</sup>lt;sup>241</sup> Charles Michael Johnson, Jr., U.S. Government Accountability Office, *International Military Education and Training: Agencies Should Emphasize Human Rights Training and Improve Evaluations*, GAO-12-123 (Washington, D.C., October 2011), https://www.gao.gov/assets/590/585950.pdf.

<sup>&</sup>lt;sup>242</sup> DoD Instruction 5132.14, "Assessment, Monitoring, and Evaluation Policy for Security Cooperation Enterprise," Office of the Under Secretary of Defense for Policy, January 13, 2017, https://open.defense.gov/portals/23/documents/foreignasst/dodi\_513214\_on\_am&e.pdf.

the effectiveness of the Department's IMET, IHL and civilian harm mitigation training. This could be done in the NDAA. The results of AM&E should be unclassified and available for public scrutiny whenever possible to increase transparency on the efficacy of US training efforts.

### b. Consider imposing a modest "tax" on all US security assistance that would fund the oversight of human rights and civilian protection training.

AM&E for all IMET programming would be a complex and costly undertaking, requiring DoD to hire many technical experts for the duration of the program's lifetime. To help resource this important initiative, Congress could restrict a certain portion of all funds directed towards US security assistance and mandate that those funds are spent on specific oversight mechanisms. Given that some monitoring and evaluation requirements were included in recent appropriations bills, expanding them further may be relatively feasible for congressional actors. However, appropriators may face significant pushback from within Congress and DoD on the idea of a tax.

#### TO THE EXECUTIVE BRANCH

The following recommendations are directed towards policymakers in the Department of Defense, Department of State, the National Security Council, and other executive branch representatives. Congress should support these recommendations with the necessary oversight and resources.

# 1. At the outset of a partnership, assess whether the partner force has effectively incorporated and prioritized the protection of civilians in military operations.

By assessing and anticipating potential issues arising from partnerships early, the United States can emphasize and impart the importance of civilian protection at the nascent stages of a program or mission. Such an assessment would not necessarily mean non-engagement with militaries that arguably need the most help professionalizing. It would, however, enable the United States to enter the partnership with a clear understanding of the partner's weaknesses and gaps on civilian protection and appropriately calibrate and sequence the level and form of security assistance.

#### The Departments of State and Defense should explicitly assess a partner's capacity, capability, and political will to protect civilians in their military operations.

Lessons from past US experience demonstrate the difficulty of implementing civilian protection measures when missions are already underway.<sup>243</sup> At the start of the relationship, the United States must comprehensively assess a partner's commitment and capacity to protect civilians. This may include indicators such as the partner's behavior in conflict, national policy guidance on civilian

protection, demonstrated commitment from political and military leadership to credibly investigate and hold perpetrators accountable, indigenous professional military education and training on civilian protection, and mechanisms to monitor, report, and redress civilian harm.

An assessment of partner forces would enable the United States to enter the partnership with a clear understanding of the partner's weaknesses and gaps on civilian protection and appropriately calibrate and sequence the level and form of security assistance.

This recommendation would be easier to implement at DoD than DoS. DoD is already required to submit an "Initial Assessment" of a partner nation before engaging in a "significant security cooperation initiative" with that partner.<sup>244</sup>

<sup>243</sup> Christopher D. Kolenda et al., "The Strategic Costs of Civilian Harm: Applying Lessons from Afghanistan to Current and Future Conflicts," Open Society Foundations, June 2016, 31. <sup>244</sup> The Initial Assessment is intended to capture a partner's willingness and propensity to implement and sustain security assistance, the extent to which an allied or partnered nation shares relevant strategic

The Office of the Secretary of Defense for Security Cooperation could revise the Initial Assessment framework to include an analysis of specific human rights and humanitarian factors that would indicate whether or not the partner has the capability, willingness, or intention to protect civilian populations during conflict.<sup>245</sup> However, DoD has been slow to implement the Initial Assessment framework, as adopting AM&E reforms requires a real culture shift.<sup>246</sup> It might take some time before policymakers at DoD are willing to add what may be viewed as yet another requirement.

Unlike DoD, the State Department does not have an existing overarching framework for assessing security partnerships. DoS should establish such a mechanism for all of its Title 22 security assistance funding, including an assessment of a partner's capabilities and intentions surrounding civilian harm. If it is not possible to implement AM&E of Title 22 wholesale, the State Department could consider adopting a piecemeal approach, whereby individual programs (like the Peacekeeping Operations (PKO) programs) are selected for assessment.

Civil society groups in these areas should be brought into the development process to advise DoD and DoS assessment frameworks. Outside experts may have important insights about the actual impact of US assistance on civilians on the ground that could inform these processes.

### b. The Departments of State and Defense should establish civilian harm-related triggers that require a re-evaluation of the partnership.

There are very few controls or automatic procedures that exist to adapt or modify existing partnerships when conflict conditions change on the ground. Policymakers should establish civilian harm-related triggers that would prompt a reevaluation of the level and type of security assistance provided to partners. For example, as the risk of armed conflict increases, or at a certain threshold of conflict-related casualties, relevant agencies should automatically begin a process of evaluating civilian protection risks and potential liabilities for US involvement.<sup>247</sup> These triggers could potentially be built into existing AM&E frameworks (at least at DoD), but to achieve maximum impact they would need to be constantly revisited and reassessed. This implies a need for tighter

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objectives with the United States, and an analysis of potential risks. AM&E is required for all significant security cooperation initiatives. Such initiatives are generally led by the GCCs and are often articulated as specific lines of effort in the country specific security cooperation sections of a theater campaign plan. Significant security cooperation initiatives involve the application of multiple security cooperation tools and programs, which may be overseen and managed by various DoD Components and the Department of State, over multiple years to realize a country- or region-specific objective or functional objective (e.g., maritime security or counterterrorism). However, the Department has yet to conduct a single Initial Assessment to date. See DoD Instruction 5132.14, "Assessment, Monitoring, and Evaluation Policy for Security Cooperation Enterprise," January 17, 2017.

<sup>&</sup>lt;sup>245</sup> For example, the nature of the partner's relationship with its civilian population or history of civilian harm.

<sup>&</sup>lt;sup>246</sup> This represents one author's assessment of DoD's ability to absorb AM&E requirements from working at the Office of the Undersecretary of Defense for Policy/Security Cooperation.

<sup>&</sup>lt;sup>247</sup> Interview with Christopher D. Kolenda, King's College London, February 28, 2019.

coordination between State, DoD, and the IC to share information on US partners from their own unique vantage points.

# 2. The Departments of State and Defense should place conditions on training, equipment, and other support based on partner forces' commitment to and performance on key civilian protection indicators.

The United States sets basic parameters for the conduct of its partners by requiring compliance with certain standards before the provision of assistance. Conditionality aims to leverage partners' reliance on US security assistance to compel or incentivize them to take certain steps to reform their behavior or better align their policies with US objectives. Practically, the Departments of State and Defense can impose conditions either by articulating and enforcing red lines for recipients of US security assistance, limiting specific military capabilities, or linking additional or more sophisticated levels of security assistance towards positive steps by the partner nation.<sup>248</sup>

#### a. Limit the provision of unconditional military aid to security partners.

Some empirical research has shown that states that receive unconditional military aid are less likely to align their policies with US preferences. <sup>249</sup> If the partner views security assistance as an "entitlement," the threat to condition assistance is rarely credible. For example, some experts believe that Egypt views its \$1.3 million in annual FMF appropriations – provided since 1987 – as an entitlement for upholding the peace treaty with Israel. <sup>250</sup> US attempts to explicitly link military assistance and arms sales to Egypt's human rights record have not borne fruit. Following Egypt's authoritarian crackdown and ouster of President Morsi in 2013, the Obama administration temporarily froze the delivery of four large-scale weapons systems until Egypt made "credible progress" towards democratic reform. <sup>251</sup> The United States lifted the hold two years later, despite lack of democratic reforms and increased repression. <sup>252</sup> As the case of

<sup>&</sup>lt;sup>248</sup> Melissa Dalton, "Smart Conditions: A Strategic Framework for Leveraging Security Assistance," (Center for Strategic and International Studies, July 2016), https://csis-prod.s3.amazonaws.com/s3fs-public/publication/160706\_Dalton\_SmartConditions\_Web.pdf.

<sup>&</sup>lt;sup>249</sup> Patricia Sullivan, Brock Tessman, and Xiaojun Li, "US Military Aid and Recipient State Cooperation," *Foreign Policy Analysis* 7 (2011): 275-294,

https://www.academia.edu/915133/US\_Military\_Aid\_and\_Recipient\_State\_Cooperation.

<sup>&</sup>lt;sup>250</sup> Dalton, "Smart Conditions: A Strategic Framework for Leveraging Security Assistance".; Stephen Tankel, and Melissa Dalton, "How to Improve Return on Investment for Security Assistance," Foreign Policy Essay, *Lawfare*, August 27, 2017, https://www.lawfareblog.com/how-improve-return-investment-security-assistance.; Andrew Miller and Richard Sokolsky, "What Has \$49 Billion in Foreign Military Aid Bought Us? Not Much," Carnegie Endowment for International Peace, February 27, 2018, https://carnegieendowment.org/2018/02/27/what-has-49-billion-in-foreign-military-aid-bought-us-not-much-pub-75657.

<sup>&</sup>lt;sup>251</sup> The Obama administration halted the delivery of F-16 aircrafts, M1-A1 tanks, Harpoon cruise missiles, and Apache attack helicopters, Missy Ryan, "Obama Administration Ends Long Hold on Military Aid to Egypt," *Washington Post*, March 31, 2015, https://www.washingtonpost.com/world/national-security/obama-administration-ends-long-hold-on-military-aid-to-egypt/2015/03/31/6f528c2c-d7d6-11e4-8103-fa84725dbf9d\_story.html?noredirect=on&utm\_term=.c9fa0do69ffe.

<sup>&</sup>lt;sup>252</sup> Agencies, "US to Deliver F-16 Aircraft to Egypt," Al Jazeera, July 30, 2015,

https://www.aljazeera.com/news/2015/07/deliver-16-aircraft-egypt-150730130345721.html.

Egypt demonstrates, it is often practically difficult for policymakers to retroactively impose credible conditions on aid packages that have in the past flowed with no strings attached. US officials must be willing to condition – and enforce – US assistance to problematic partners. If officials are unwilling to enforce limits, other forms of conditionality may work better.

### b. Identify opportunities to implement "positive conditionality" with partners to incentivize better civilian protection behavior.

Even for partners who do not receive entitlements, conditionality has a mixed record of success. Policymakers interviewed for this report identified several reasons that negative conditions or punitive measures are often not successful. Partners may call the Americans' bluff. They may calculate that the United States will not actually suspend assistance due to a strong preference for continued cooperation and will thus not feel the need to modify their behavior. There is also a widespread view particularly at DoD that the United States is more likely to impact behavior by remaining engaged and making incremental progress where possible. Negative conditionality may also fail because the United States does not have enough leverage. According to Tommy Ross, former deputy assistant secretary of defense for security cooperation, "the assistance we are providing in many countries is a drop in the bucket... If we are to have leverage, we need to provide a larger share of their arms trade or security assistance." 255

Others argue that the "total package" approach of US security assistance does provide the United States with real influence over partners, and thus a real opportunity to enforce conditions. Partners are dependent on American expertise

to operate, maintain, and modernize weapons systems throughout their entire life-cycles. This dependency should give US officials leverage, but one expert noted that the US government is often "constitutionally incapable or unwilling to use that leverage" for fear of disrupting the bilateral relationship.<sup>256</sup>

Policymakers might try to identify opportunities to implement positive conditionality: a conditions-based framework where partners are incentivized to demonstrate good behavior over time in exchange for security assistance.

Given this mixed record, policymakers might try to identify opportunities to implement positive conditionality: a conditions-based framework where partners are incentivized to demonstrate good behavior over time in exchange for security

<sup>&</sup>lt;sup>253</sup> Interview with Mike McNerney, RAND, March 1, 2019.

<sup>&</sup>lt;sup>254</sup> DoD officials frequently cited the Pressler amendment in the US-Pakistan relationship in the 1980s. The United States cut Pakistan off from U.S. security assistance because of human rights abuses. Pakistani officers were not permitted to participate in IMET, exercises, and general mil-mil engagement. On September 11, 2001, the Pakistanis suddenly became important partners, yet the U.S. military hadn't worked closely with them in over a decade.

<sup>&</sup>lt;sup>255</sup> Interview with Tommy Ross, former Deputy Assistant Secretary for Security Cooperation, December 19, 2018.

<sup>&</sup>lt;sup>256</sup> Interview with Seth Binder, Advocacy Officer, Project on Middle East Democracy, December 27, 2018.

assistance. Rather than authorizing aid and then withholding it when confronted with undesirable behavior, the United States could identify specific positive actions the partner is open to taking, and the specific incentives the United States would provide if benchmarks were met. To implement this, the State Department could negotiate a memorandum of understanding (MOU) between the United States and the partner. It should reflect the elements, including civilian protection measures, that would govern security assistance between the two countries over a certain period of time. Milestones should be built over the course of the MOU such that when the partner meets a goal, they are rewarded. If the partner fails to meet the milestone, they do not receive the agreed-upon security assistance. The implementation of this framework would have a real impact by lending predictability to the relationship and limit the potential for mismanaged expectations on both sides.<sup>257</sup> One major hurdles would be overcoming entrenched bureaucratic tendencies to "shovel security assistance out the door," as one expert put it.<sup>258</sup> However, if tackled in a piecemeal fashion – for example, starting with a few "easy" partnerships and building on momentum and success – this approach could feasibly be implemented at either State or DoD.

### 3. Increase US capacity to monitor civilian harm by partners, while encouraging partners to enhance their own capacity to track these metrics.

Documenting and analyzing civilian harm is a critical component of mitigating the impact of armed conflict on civilians. A data driven approach to monitoring civilian harm allows the United States and its partners to identify the circumstances which contributed to civilian harm, identify relevant measures to minimize harm, and adapt operations accordingly. As the United States learned from its own experience in Afghanistan with the Civilian Casualty Tracking Cell (CCTC) in 2008 and later the Civilian Casualty Mitigation Team (CCMT), systematic analysis and feedback helps commanders better understand the primary causes and trends of civilian harm. <sup>259</sup> The creation of CCMT in Afghanistan, among other factors, contributed to a significant decrease in civilian casualties in Afghanistan. <sup>260</sup> DoD should develop metrics and information channels to independently assess civilian harm caused by US partner forces. DoS should increase the capacity of embassies in conflict zones to monitor and report on the strategic, political, and social impact of partner-caused civilian harm. <sup>261</sup> However, in terms of the actual implementation of this recommendation, there may be

<sup>&</sup>lt;sup>257</sup> This approach could be modeled on the Millennium Challenge Corporation (MCC), largely regarded as the most promising and effective American aid program. See Melissa Dalton, Hijab Shah, Shannon N. Green, and Rebecca Hughes, "Oversight and Accountability in U.S. Security Sector Assistance: Seeking Return on Investment," (Center for Strategic and International Studies, February 2018), 17, https://csis-prod.s3.amazonaws.com/s3fs-

public/publication/180207\_Dalton\_OversightAccountability\_Web.pdf?9CJj6j5KVqQgWAlLSLJkOpdCga .Yz28l.

<sup>&</sup>lt;sup>258</sup> Interview with former State Department Official, March 12, 2019.

<sup>&</sup>lt;sup>259</sup> Christopher D. Kolenda et. al, "The Strategic Costs of Civilian Harm," June 2016.

<sup>&</sup>lt;sup>260</sup> Jennifer Keene, "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," CIVIC and Every Casualty, 2014, https://civiliansinconflict.org/wp-content/uploads/2017/09/CCCERP\_4\_page\_FINAL\_May\_19.pdf.

<sup>&</sup>lt;sup>261</sup> Christopher D. Kolenda et. al, "The Strategic Costs of Civilian Harm," June 2016.

significant challenges in relying on partner forces for accurate civilian casualty data when the United States is not present on the ground. This may leave US forces vulnerable to misinformation, faulty intelligence, and manipulation by local actors.

Moreover, practically, there may be little appetite within the Department of Defense to adopt formal mechanisms to monitor partner-caused civilian harm. In Saudi Arabia, for example, the US military has been reticent to formally track civilian harm from the Saudi-led coalition.<sup>262</sup> When asked by Senator Elizabeth Warren during a March 2018 hearing if US Central Command (CENTCOM) tracked "where a US-refueled aircraft is going, what target it strikes, and the result of the mission [in Yemen]," CENTCOM Commander General Votel said no.<sup>263</sup> US resistance to track partner-caused civilian harm may be due to concerns about potential legal liability for the American role in war, so any new mechanism would clearly need to take into account the legal implications.<sup>264</sup>

# 4. Improve the education and training provided to partners to better them to plan and conduct operations within the bounds of International Humanitarian Law (IHL) and the Law of Armed Conflict (LOAC).

Training is not a silver bullet and will not compensate for a lack of political will, weak institutions, or misaligned incentives. Indeed, as the Saudi case demonstrates, the provision of training may serve as a crutch to avoid making tough decisions about reevaluating security assistance. However, training – if done effectively – can be an important piece of a broader strategy to reduce partner-caused civilian harm.

### a. Overhaul DoD training on IHL/LOAC and human rights to be more practical for the operational considerations of partner nations.

The Defense Institute for International Legal Studies (DIILS) is the main resource for training of partner forces at the Department of Defense. Yet experts referred to it as ineffective and poorly structured noting while well-intentioned, the training currently provided is "unsophisticated," "overly legalistic," "doctrinal," and "very academic." DIILS training is overly focused on military

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<sup>&</sup>lt;sup>262</sup> A senior US official echoed Votel's assessment, saying "I would assume the Saudis have an inventory system that traces that information. But that's not information that is available to the US." At one point, the State Department State maintained an *improvised* a system to track the campaign's levels of civilian harm (essentially a database populated with information from open-source reporting as well as operational data received informally by parts of the US military, including the types of strikes, their circumstances, and the targets hit). It is unlikely that this informal tracking mechanism still exists as the State Department official leading it was pushed out in 2017. See Samuel Oakford, "One American's Failed Quest to Protect Civilians in Yemen," *The Atlantic*, August 17, 2018,

https://www.theatlantic.com/international/archive/2018/08/yemen-saudi-airstrike-schoolbus/567799/.

<sup>&</sup>lt;sup>263</sup> Elizabeth Warren questions Gen. Joseph Votel on Yemen Targeting, CSPAN, March 13, 2018, https://www.c-span.org/video/?c4718581/elizabeth-warren-questions-gen-joseph-votel-yemen-targeting; Declan Walsh and Eric Schmitt, "Arms Sales to Saudis Leave American Fingerprints on Yemen's Carnage," December 25, 2018.

<sup>&</sup>lt;sup>264</sup> Warren Strobel and Jonathan Landay, "Exclusive: As Saudis bombed Yemen, U.S. worried about legal blowback," *Reuters*, October 10, 2016, https://www.reuters.com/article/us-usa-saudi-yemen/exclusive-as-saudis-bombed-yemen-u-s-worried-about-legal-blowback-idUSKCN12A0BQ.

<sup>&</sup>lt;sup>265</sup> Interview with former senior Department of Defense official, December 19, 2018.

justice considerations for military lawyers and judges. Instead, DIILS should be working with partner militaries on how they plan their operations, the types of precautionary measures they take, policies for calling in air support, how they are mapping facilities on no-strike lists, how they define civilian versus military targets, and more. <sup>266</sup> Policymakers at DoD recognize the shortcomings of DIILS but have been thus far unable to fix it. <sup>267</sup> Faithfully implementing any congressionally mandated evaluation for training, as proposed in the recommendations to congress, could increase accountability and learning within the Pentagon and give policymakers the evidence they need to drive change.

### b. When conducting combined training exercises with partners, DoD should include scenarios that involve civilian harm incidents.

Civilians and civilian harm incidents are rarely included in combined training exercises between the US military and its partners, leaving partners unprepared to respond during a real conflict and potentially increasing the risk of harm to civilians. Joint exercises should replicate the characteristics of an expected military operation and include vignettes involving civilians. These small adjustments to exercises – which should be prioritized for partners fighting in urban environments or partners with poor records of civilian protection – should not be a heavy lift for the US military, which has extensive experience with and valuable lessons to share on protecting civilians in counterinsurgency operations.

### 5. Harmonize messaging on civilian protection across US government stakeholders to partners.

The US government has a difficult time connecting the different pieces of its engagement strategy into a coherent message to partners. Former government officials interviewed for this report noted that the message the United States delivers to its partners on civilian protection is segregated and uncoordinated. Military and diplomatic leaders can fail to convey complementary messages to foreign counterparts on the importance of civilian protection. Tommy Ross argued, "if the US really cared about human rights, the two-star general leading US personnel in Saudi, the four-star CENTCOM Commander, the Chief of Staff of the Air Force and the Army would talk about human rights. Instead, we send a bureaucrat at State to do that and the generals talk about FMS [Foreign Military Sales]."<sup>268</sup>

<sup>&</sup>lt;sup>266</sup> Interview with INGO expert, March 8, 2019.

<sup>&</sup>lt;sup>267</sup> Interview with Tommy Ross, former Deputy Assistant Secretary of Defense for Security Cooperation, December 19, 2018.

<sup>&</sup>lt;sup>268</sup> Interview with former Department of Defense official, December 19, 2018.

Messaging can also be unsynchronized between stakeholders on the ground and in Washington. The ambassador in the partner country can sometimes be the loudest voice calling for increased security assistance for the partner, ignoring red flags on human

rights. Embassy personnel may act as clients of the partner government and fail to deliver tough messages on the importance of civilian protection.<sup>269</sup> Officials at higher levels in Washington, with more distance from the partner, were often described as far more even-handed and clear-eved about the need to balance security assistance and human rights.<sup>270</sup> These officials must drive clear guidance and instructions from the top to the working level on US civilian protection policies. However, as the case of Nigeria demonstrated, even tight synchronization on message within the US government may be unable to overcome a partner's lack of interest in instituting stronger civilian protection mechanisms.

"If the US really cared about human rights, the two-star general leading US personnel in Saudi. the four-star CENTCOM Commander, the Chief of Staff of the Air Force and the Army would talk about human rights. Instead, we send a bureaucrat at State to do that and the generals talk about FMS [Foreign Military Sales 1."

**Tommy Ross Former Deputy Assistant** Secretary of Defense for Security Cooperation

<sup>&</sup>lt;sup>269</sup> Interview with Matthew Page, former State Department official and current associate fellow at Chatham House in London, March 7, 2018.

<sup>&</sup>lt;sup>270</sup> Interview with Matthew Page, former State Department official and current associate fellow at Chatham House in London, March 7, 2018.

### **CONCLUSION**

This report demonstrated how security partnerships in armed conflict can increase risks to civilians in conflict. In their analysis of this unique and timely policy problem, the authors identified five factors that impact the level of civilian harm perpetrated by US-backed partners. Each factor stems from the fact that the United States does not always control, monitor, or even fully understand the actions of key actors on the ground with whom it is associated. While Congress possesses many of the tools and authorities necessary to ensure civilians are prioritized in US security assistance, gaps in existing legislation and issues with oversight structures and processes threaten the effectiveness of current congressional oversight.

The report provided recommendations for a congressional client to lead on efforts to reform US security assistance to reduce civilian harm. The recommendations outlined concrete steps for Congress to conduct more consistent, effective, and transparent oversight of US security assistance and arms sales. This report also provided recommendations for the executive branch, which Congress should support with the necessary oversight and resources. The recommendations for the executive branch focused on developing a clear strategy for addressing increased risks to civilians in partnerships, including the development of frameworks, conditions, and monitoring mechanisms. This approach would enable policymakers to modify security assistance when conflict conditions or partner behavior changes.

Ultimately, the report's authors believe that the implementation of these recommendations will drive progress towards a civilian-centered US security assistance policy. Given the increased role that partnerships are playing in US foreign policy, the time is ripe for Congress to act to reform US security assistance policy to reduce and mitigate civilian harm.

### **APPENDIX**

#### **ANNEX A: INTERVIEW LIST**

Full Name	Affiliation	Date	Location	
Alexis Arieff	Congressional Research Service	3/1/2019	Washington, DC	
Emma Ashford	CATO Institute	12/17/2018	Washington, DC	
Brittany Benowitz	American Bar Association, Center for Human Rights	12/18/2018	Washington, DC	
Seth Binder	Project on Middle East Democracy	12/17/2018	Washington, DC	
Cole Bockenfeld	Arms Trade Forum	3/1/2019	Washington, DC	
Chris Brose	Former Staff Director of the Senate Armed Services Committee	12/6/2018	Cambridge, MA	
John Campbell	Council on Foreign Relations	2/28/2019	Washington, DC	
Dave Cate	Office of the Undersecretary of Defense for Policy	12/19/2018	Arlington, VA	
Melissa Dalton	Center for Strategic and International Studies	12/20/2018	Phone	
Mieke Eoyang	Third Way	12/6/2018	Cambridge, MA	
Colby Goodman	Security Assistance Monitor	3/1/2019	Washington, DC	
Kate Gould	Friends Committee on National Legislation	12/19/2018	Washington, DC	
Luke Hartig	New America Foundation	12/17/2018	Washington, DC	
Kathleen Hicks	Center for Strategic and International Studies	12/6/2018	Cambridge, MA	

Sarah Holewinski	New America	3/5/2019	Phone	
Adam Isacson	The Washington Office on Latin America 2/28/20		Washington, DC	
Christopher D. Kolenda	King's College London	2/28/2019	Washington, DC	
Jeremy Konyndyk	Center for Global Development	12/17/2018	Phone	
Larry Lewis	Center for Naval Analyses	9/25/2018	Phone	
Dan Mahanty	Center for Civilians in Conflict	12/18/2018	Washington, DC	
Sarah Margon	Human Rights Watch	2/14/2019	Cambridge, MA	
Kathleen McInnis	Congressional Research Service	12/18/2018	Washington, DC	
Mike McNerney	RAND Corporation	3/1/2019	Arlington, VA	
Andrew Miller	Project on Middle East Democracy	12/17/2018	Washington, DC	
Mike Noblett	Senate Armed Services Committee	10/3/2018	Phone	
Matthew Page	Chatham House London	3/7/2019	Phone	
Michael Pates	American Bar Association, Center for Human Rights	12/18/2018	Washington, DC	
Steve Pomper	International Crisis Group	12/19/2018	Washington, DC	
Tim Rieser	Foreign Policy Aide, Senator Patrick Leahy (D- VT)	3/22/2019	Phone	
Eric Rosenbach	Belfer Center for Science and International Affairs	3/15/2019	Cambridge, MA	
Tommy Ross	Former Deputy Assistant Secretary for Security Cooperation	12/19/2018	Arlington, VA	

Geo Saba	Office of Congressman Ro Khanna	10/2/2018; 11/20/2018; 2/7/2019; 2/29/2019	Phone, Washington, DC	
James Schear	RAND Corporation	3/1/2019	Arlington, VA	
Hijab Shah	Center for Strategic and International Studies	12/17/2018	Washington, DC	
Annie Shiel	Center for Civilians in Conflict	3/13/2019	Phone	
Steven Tankel	American University	12/19/2018	Washington, DC	
Rachel Tecott	Massachusetts Institute for Technology, Security Studies Program	11/7/2018	Cambridge, MA	
Jessica Trisko Darden	American University	12/17/2018	Washington, DC	
DoD official	Office of the Undersecretary of Defense for Policy	3/14/2019	Phone	
Former DoD official		2/28/2019	Washington, DC	
Former State Department official		3/12/2019	Phone	
Staff	House Foreign Affairs Committee	3/1/2019	Washington, DC	
Senior INGO official	Senior INGO official	3/8/2019	Phone	
Senior US military official		2019		
Staff	Democratic Congressional Office	3/8/2019	Phone	
State Department official	State Department (Bureau of Political- Military Affairs)	12/20/2018	Washington, DC	
State Department officials	State Department (Bureau of Near East Affairs)	12/18/2018	Washington, DC	

### ANNEX B: SEMI-STRUCTURED INTERVIEW TEMPLATE, ROUND 1 (DECEMBER 16-18, 2018)

#### **Key Informant Interview Guide**

We are conducting a series of interviews with foreign policy experts for our PAE, which is a capstone project for Master in Public Policy students at HKS. Our prospective client for the PAE is a member of the House of Representatives. The aim of this research is to examine how the US can improve civilian protection in security cooperation relationships. The driver of our study is the war in Yemen and US support for the Saudi coalition, but we aim to conduct a historical assessment of how the US has incentivized or pressured security partners to alter their behavior vis-a-vis civilian protection.

All the information collected today will only be used to inform our student project. First, do we have your consent to participate in the interview? Second, we hope to cite your insights in our report. Would you be comfortable with us using your name (i.e. footnote) or is there a different citation that you prefer? Finally, are you comfortable with us recording this meeting for transcription purposes? We plan to destroy the recordings after the project is complete.

#### US Responsibilities, Tools, Authorities Regarding Civilian Protection

- 1. What are US responsibilities to monitor and prevent civilian harm in partnered operations? How does the law/policy account for different models/levels of security cooperation (e.g. advise/assist/accompany versus operational support)?
- 2. What tools does the US have to encourage changes in partners' behavior? Are these sufficient to mitigate civilian harm?
  - a. Have existing human rights oversight mechanisms and tools (Leahy Law, end-use monitoring, sanctions, etc.) been used effectively?
  - b. Are there red lines for partner conduct on protecting civilians?
- 3. 1209 report. Can you give us some history here? What was the impetus for the inclusion in the NDAA? What is the status of the report? What is the likely impact?
- 4. With which countries has the US successfully leveraged economic, military, political tools to pressure its security partners to protect civilians? With which countries has the US failed and why? [E.g. What would be the most compelling cases for our study]

#### **Policy Options**

- 5. [NGO Question] What are groups currently advocating for in terms of civilian protection? What are the main recommendations?
- 6. Does the USG currently conduct an initial assessment of partner capability, motivation, track record, etc. that would speak to its capacity to protect civilians? [To what degree do the Department's new Initial Assessments incorporate civilian protection considerations? E.g., Does it take into account the PN's relation to the civilian population?]

- 7. Does conditionality on security assistance improve partner behavior? What are the limitations of this approach?
- 8. Are the gaps in training, education, or advising that the US provides? How can it be improved?
- 9. How can the US (Congress, State, DOD, or other agencies) improve oversight and monitoring of security cooperation?

#### The Case of the US-Saudi Security Partnership

- 1. What tools have been used in Congress or elsewhere that have been the most successful and/or gotten the most traction in the US-Saudi relationship?
  - a. Why was the certification not taken seriously by the Trump administration?
  - b. Is the War Powers Resolution the right tactic?
- 2. Why hasn't the US (White House, DOD, State, or Congress) pushed Saudi Arabia harder on its civilian protection track record? How do we get the Saudis to care? How do we impose costs if they don't care?
- 3. The debate over the US-Saudi relationship is framed as a (potentially false) choice between protecting civilians and US national security concerns. What is the evidence that national security concerns will suffer if we ask for more accountability on civilian protection? E.g. After the US allowed American citizens to sue Saudi for 9/11 deaths, we did not see a souring of the relationship or a drop-off in CT cooperation.

#### Other Cases:

1. Based on our questions, do you have recommendations for other cases we should consider examining for this study?

#### Other

- 1. Are there any questions we have not yet asked that you think we should be asking?
- 2. Based on our research questions, do you have any recommendations for who else we should reach out to?

### ANNEX C: SEMI-STRUCTURED INTERVIEW TEMPLATE, ROUND 2 (FEBRUARY 28-MARCH 1, 2019)

#### **Key Informant Interview Guide**

We are conducting a series of interviews with foreign policy experts for our PAE, which is a capstone project for Master in Public Policy students at HKS. Our client for the PAE is a member of the House of Representatives. The aim of this research is to examine how the US can improve civilian protection in security cooperation relationships. The driver of our study is the war in Yemen and US support for the Saudi coalition, but we aim to conduct a historical assessment of how the US has incentivized or pressured security partners to alter their behavior vis-a-vis civilian protection.

All the information collected today will only be used to inform our student project. First, do we have your consent to participate in the interview? Second, we hope to cite your insights in our report. Would you be comfortable with us using your name (i.e. footnote) or is there a different citation that you prefer? Finally, are you comfortable with us recording this meeting for transcription purposes? We plan to destroy the recordings after the project is complete.

#### US Responsibilities, Tools, Authorities Regarding Civilian Protection

- 1. What role will security cooperation play in American foreign policy in the next 10-15 years? Will the United States, as the 2018 NDS implies, work increasingly "by, with, and through" partners?
  - a. What does "by, with, and through" mean for future strategy?
- 2. How does civilian harm perpetrated by American partners do damage to American interests? Does it matter?
- 3. What are US responsibilities to monitor and prevent civilian harm in partnered operations? How does the law/policy account for different models/levels of security cooperation (e.g. advise/assist/accompany versus operational support)?
- 4. What tools does the US have to encourage changes in partners' behavior? Are these sufficient to mitigate civilian harm?
  - a. Have existing human rights oversight mechanisms and tools (Leahy Law, end-use monitoring, sanctions, etc.) been used effectively? Where are the gaps?
  - b. What are some vignettes of success/failure that might be useful to include in our report?

#### **Policy Options**

- 5. How can the USG (DOD/DOS or Congress) strengthen partner accountability for civilian harm?
  - a. Does the US have any formal mechanism for tracking civilian harm by partners?
- 6. Does DOD or DOS or another agency currently conduct an initial assessment of partner capability, motivation, track record, etc. that would speak to its capacity to protect civilians?

- a. If not, should they? What should this look like?
- 7. Does conditionality on security assistance [training, funding, transfer of arms] improve partner behavior/accountability?
  - a. If not, what specifically isn't working?
  - b. What specific conditions would you suggest?
  - c. What are some of the most important indicators (beyond, # of CIVCAS) that suggest that the partner is taking civilian protection?
  - d. Is positive or negative conditionality a better approach?
  - e. What are the limitations of this approach?
- 8. [For Civilian Security Experts]: You recommend that the USG should have a uniform policy on civilian protection. How would a policy towards partner forces fit into this? What is the feasibility of such a policy?
- 9. What are the gaps in training, education, or advising that the US provides? How can it be improved?
- 10. How can Congress improve oversight and monitoring of security cooperation?
  - a. Does existing legislation (Leahy, EUM provisions) need to be strengthened or do we need new legislation?
  - b. What is the appropriate role of committees? Does this fit within SFRC/HFAC or SASC/HASC better?
  - c. Are arms sales the problem? How should we reform the process?

#### ANNEX D: GUIDING QUESTIONS FOR CASE ANALYSIS

The following guiding questions structured the author's examination of the three case studies:

- 1. What are the interests in the security partnerships, threat perceptions of the US and the partner, and the desired outcomes of security assistance for the US and the partner nation? Are they aligned or misaligned?
- 2. What is the nature of civilian harm? Why is it happening?
- 3. What is the level of support being provided by the United States? How may US security assistance be enabling or contributing to civilian harm?
  - a. What is the historical context of US security assistance in the country?
  - b. In the case period, are there higher or lower levels of US involvement?
- 4. What are the relevant legal and policy obligations on the part of the United States and the partner and how faithfully were they applied?
- 5. Did the United States attempt to mitigate civilian harm? How? Why or why not?
- 6. If yes, which tools were employed and by which part of the US government (Congress? Executive Branch?)? Were these tools effective? Why or why not?
  - a. Did Congress drive action?
  - b. Did public outcry drive action?

#### ANNEX E: KEY CASE STUDY INSIGHTS

#### **Key Case Study Insights**

- A clear strategy on civilian protection in partnerships contributes to the clear and consistent application of pressure and incentives. In the Philippines, the United States employed an intentional, holistic strategy from the outset which integrated security assistance with civilian protection and nonmilitary engagement. This strategy improved the Philippine armed forces' relations with its civilian population, enabling it to execute a more effective counterinsurgency campaign.
- Existing oversight tools like the Leahy laws are vitally important to preventing assistance to partners forces implicated in the worst abuses but suffer from a narrow application. The Leahy laws were critical to denying US equipment to abusive units in Nigeria and spurred the government to create clean units. However, gaps in the Leahy provisions meant that US equipment and training to Saudi Arabia kept flowing even after it was used to perpetrate gross human rights violations.
- Congressional scrutiny can draw attention to civilian harm in partnerships, but it must be sufficiently sustained and high-level. Pressure from Congress forced the Trump administration to stop refueling for Saudi planes that bombed civilian infrastructure in Yemen. In contrast, half-heartened attempts by Congress to restrict appropriations for the Philippines in 2009 due to security force abuses later yielded to executive branch pressure to restore previous funding levels.
- Conditioning security assistance yields mixed results, as US officials can fail to follow through on threats or send mixed messages. In Nigeria, US officials insisted that the approval of future equipment transfers would be tied to performance on civilian protection, but simultaneously granted Nigeria a waiver for its violation of a major human rights law in order to continue counterterrorism cooperation. In Saudi Arabia, officials temporarily halted one weapons transfer based on civilian protection concerns but continued to provide other enabling support for the war.
- Training is not a silver bullet for improving a partner's ability or will to protect civilians in conflict. Human rights training may change a partner's behavior in some cases. Human rights training in the Philippines improved the armed forces' ability to protect civilians during military operations. However, in Saudi Arabia, the provision of training served as a crutch to avoid making tough decisions about reevaluating security assistance. A more rigorous assessment of the conditions under which training succeeds and when it does not is warranted.

#### ANNEX F: LIST OF ALTERNATIVE CASES

The authors considered a number of other countries that fit the seven criteria used to narrow case selection in the report. Alternative cases the authors considered for this report included: Pakistan, Egypt, El Salvador, Colombia, Guatemala, Indonesia, Niger, Burma, Thailand, Somalia, and Bahrain. These cases were ultimately not selected for the following reasons:

- → The breadth and depth of existing research. A robust body of literature on US security assistance already exists for Egypt, Pakistan, and Colombia. The authors did not want to simply restate existing scholarly insights in their report. The authors selected cases that lacked a significant amount of existing literature in order to provide a fresh contribution to the security assistance field.
- → Complexity and gravity of the relationship. Some cases that fit the criteria, most notably Pakistan and Egypt, are immensely complex and come with substantial historical baggage. For these cases, it is difficult to isolate the impact of particular tools and processes US officials used to try to reduce civilian harm. Moreover, the authors had already selected a similarly complex relationship, Saudi Arabia, because of their client's existing work on and in interest in the war in Yemen.
- → **Geographical diversity**. Some countries were excluded simply because the authors wanted to ensure a geographical balance. For example, the authors selected Nigeria instead of relatively similar partners like Cameroon and Niger.
- → Policy relevance and feedback from academics and practitioners. The PAE is intended to be a policy-relevant project. As such, the authors excluded some of the above alternative cases simply because they were not raised as frequently by policymakers in Washington, indicating that they might be less relevant to the security assistance and civilian protection community.
- → Authors interests and expertise. The final reason for why the authors did not ultimately select some of the above cases is because they wanted to select cases in which they were interested in either learning more about, or cases which would allow them to deepen existing expertise.



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