



human rights *first*

American ideals. Universal values.

BLUEPRINT

# How to Conduct Effective Counterterrorism that Reinforces Human Rights

BLUEPRINT FOR U.S. GOVERNMENT POLICY

DECEMBER 2014

## Human Rights First

### American ideals. Universal values.

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

*Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.*

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*“Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant Presidents unbounded powers more suited for traditional armed conflicts between states.”*

President Barack Obama,  
National Defense University,  
May 23, 2013

## Introduction

The current national security environment prioritizes military responses to terrorist threats, through a legal and policy framework that puts the United States on a perpetual war footing. The emphasis on ad hoc, military action has arguably increased, rather than diminished the attraction to terrorism and has proven problematic for human rights abroad and at home. Meanwhile the long-term tasks of addressing conditions conducive to violent extremism and of helping other states develop their own ability to prevent and confront violent extremism has received insufficient consideration and resources. A state of permanent warfare skews toward policies designed to eliminate—rather than manage and mitigate—threats, an unrealistic goal that leads to unbalanced and unhealthy policy results. The longer the United States remains on a war footing, the more likely it is that extraordinary powers become the norm. In the worst case, this means that policies which are the hallmarks of dictatorships and enemies of human rights—such as detentions without charge or trial, extrajudicial killings, torture, military tribunals, and mass surveillance—also become normalized.

In recent years, American military and diplomatic leaders have encountered the high costs of over-broad recourse to the use of force: partners and allies becoming reluctant to cooperate on counterterrorism operations, authoritarian leaders cynically pointing to U.S. excesses to justify their own repressive policies, and loss of support and trust in American efforts among global publics. At home, counterterrorism professionals continue to point to a range of core competencies—non-military

policies that are essential to our security—that are under-emphasized and under-resourced.

The United States has now been involved in more than a decade of war. Despite 9/11-era al Qaeda being diminished to “a mere shadow of its former self,”<sup>1</sup> our country’s counterterrorism strategy still heavily relies on kinetic options, justified under the 2001 Authorization for the Use of Military Force (AUMF), which was enacted specifically to target the perpetrators of the 9/11 attacks and those who harbored them.<sup>2</sup>

Now, regionally-focused groups like the so-called Islamic State in Iraq and the Levant (ISIL) and others across South Asia, Africa and the Middle East, are painted with the same brush, despite having widely-differing capacity, capability and aims. None has the reach of the organization that planned and conducted the 9/11 attacks<sup>3</sup> and “[t]he threat complex, sophisticated and large scale attacks from the core of al-Qa’ida against the US Homeland is significantly degraded.”<sup>4</sup>

Too much of the United States’ strategy and public discussion of counterterrorism continues to operate as part of the post-9/11 war

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<sup>1</sup> President Barack H. Obama, “State of the Union Address,” US Capitol, Washington, DC, February 12, 2013, <http://www.whitehouse.gov/the-press-office/2013/02/12/remarks-president-state-union-address>.

<sup>2</sup> Authorization for Use of Military Force (Pub L. 107-40, September 14, 2001), 107th Congress, (2001-2002).

<sup>3</sup> *2013 Worldwide Threat Assessment of the US Intelligence Community: Hearings Before the Senate Select Committee on Intelligence*, 113th Cong., 1st Sess. pp. 3-4 (March 12, 2013) (statement of Dir. of Nat’l Intel. James R. Clapper). <http://www.intelligence.senate.gov/130312/clapper.pdf>.

<sup>4</sup> *2014 Worldwide Threat Assessment of the US Intelligence Community: Hearings before the Senate Select Committee on Intelligence*, 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., pp. 4 (January 29, 2014) (statement of Dir. Of Nat’l Intel. James R. Clapper) available at: <http://www.intelligence.senate.gov/140129/clapper.pdf>.

paradigm. The problem of terrorism is real but current threats are not the same as those posed by the al Qaeda of 2001, more than 13 years ago, and cannot be defeated with the same response. Even when concerns arise that call for immediate action, the United States must not allow itself to be distracted from the task of shifting to a legal and policy framework for counterterrorism that reinforces human rights. Observing and prioritizing the advancement of human rights is not only central to stemming the spread of violent extremism, it is fundamental to American values.

To this end, this blueprint proposes specific policy changes in three areas: ensuring counterterrorism partnerships and assistance promote, rather than undermine, human rights; aligning core counterterrorism competencies with the goal of promoting rule-of-law societies; and shifting counterterrorism policy out of a wartime legal framework, which makes human rights abuses more likely and harder to redress.

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## Summary

The long-term success of counterterrorism strategies demands two things: the preservation of our free, open, rule-of-law-based society at home; and the strengthening of societies whose governments seek to overcome, and provide palatable alternatives to, violent extremists. Without the first, we sacrifice American values, and without the second, experience shows that the United States sacrifices much blood and treasure attempting to counter threats without actually ending them. Human rights are at the root of success in both areas. After dispiriting reversals, and re-emergence of threats, the rights-compliant counterterrorism model offers a

chance to step back from short-term threat control and refocus on long-term threat mitigation—as well as returning to the core ideals that Americans risk their lives abroad and at home to protect and defend.

## RECOMMENDATIONS

Ensure counterterrorism assistance promotes—rather than undermines—the rule of law and human rights.

- Design partner country counterterrorism assistance programs to include significant support for rule-of-law institutions and human rights training for military and police forces—including helping partner agencies create mechanisms analogous to the uniformed military legal corps, complaint and review boards, and civilian oversight mechanisms; assisting national human rights institutions and independent civil society organizations to oversee their countries' counterterrorism policy; supporting the International Institute for Justice and the Rule of Law;<sup>5</sup> and increasing the judicial capacity of partner nations to hold their counterterrorism forces accountable. The United States should work with allied countries such as the United Kingdom, France, Canada, and Australia, which have significant counterterrorism experience, to develop counterterrorism strategies and assistance programs that leverage relationships with these nations for our mutual benefit.
- In situations where other states are involved in armed conflicts with terrorist and/or insurgent groups, include well-resourced

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<sup>5</sup> International Institute of Justice and the Rule of Law (IJJ), <http://www.theijj.org/>.

training in international human rights law and international humanitarian law as an integral component of any form of military or other security assistance provided to that government.

- Redress the imbalance in funding under the proposed Counterterrorism Partnership Fund (CTPF), which currently provides for only 10 percent of its resources to be used for civilian agencies.<sup>6</sup>
- Conduct comprehensive interagency reviews of policy toward U.S. partners whose human rights records at home are deeply problematic and who promote or give financial support to violent extremists abroad, in order to develop strategies to confront those problems. These reviews and strategies should be supported by the following steps:
  - Insist, in diplomatic discussions and in the terms of counterterrorism assistance, that counterterrorism partners confront concerns about their own militaries, security forces, and police functioning as breeding grounds for violent extremism and terrorism.
  - Include in the annual State Department Country Reports on Terrorism information on actions taken by the U.S. government to improve counterterrorism-related human rights protections in partner nations.
  - Develop more specific impact assessment criteria for evaluating the effects of providing military or other counterterrorism assistance on human rights protections.
- Broaden U.S. embassies' dialogues with civil society and human rights groups in partner countries to include discussion of counterterrorism cooperation, the effects of U.S. assistance, and to solicit recommendations for how the United States can advance human rights protections through its counterterrorism assistance.
- Reform the export control process by strengthening existing restrictions and providing more funding for monitoring of the use of weapons and other equipment after sale, in order to reduce the potential for U.S. conventional arms exports to fuel conflicts, grievances and violations of rights, which in turn provide recruiting grounds for terrorism.
- Support reform and expansion of the Leahy Law, so that it can be comprehensive, efficient and redressable in its guidance of U.S. counterterrorism assistance. The president should support reform legislation which:
  - Expands scrutiny of counterterrorism assistance to cover peacetime intelligence agency efforts.
  - Invests in remediation procedures to retrain, re-evaluate, and eventually restore access to units denied assistance under the Leahy Law vetting process.
  - Harmonizes State and Defense Department procedures, and funds enough staff to implement the law's provisions promptly.

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<sup>6</sup> Heather Higginbottom, Statement to the House Budget Committee, The President's Funding Request for Overseas Contingency Operations Hearing, July 17, 2014 [hereinafter *Higginbotham Statement*] available at: <http://www.state.gov/s/dmr/remarks/2014/229371.htm>.



Align key aspects of whole-of-government counterterrorism with the goal of enabling rule-of-law societies which respect human rights.

- Modernize counter-threat finance to increase pressure on state supporters of violent extremist groups, and promote inter-state cooperation to halt support for those groups from private individuals and institutions.
  - Where disclosure would not jeopardize efforts to prevent terrorism or cut off funds to terrorist groups, confront partner nations with information on their role in enabling or actively financing violent extremists, through U.S. diplomatic channels, and hold partner governments accountable.
  - Urge reform of counterterrorism finance tools such as the Financial Action Task Force (FATF) to ensure governments do not use these tools as a justification for actions that crack down on legitimate civil society organizations and political expression.
- Ensure that policies intended to deter individuals from traveling abroad to participate in terrorist acts do not violate civil liberties and human rights.
- Expand the resources available to local civil society groups and other community-based stakeholders to counter violent extremism and develop programming designed and/or implemented by those local groups.
- Standardize interagency and nongovernmental partner cooperation as an integral part of counterterrorism strategy.

Clarify and limit where the United States is engaged in “armed conflict.”

- Complete, and share with Congress and the American public in appropriate form, a comprehensive threat assessment that reflects current realities.
- Support sunset, rather than expansion, of the 2001 Authorization for Use of Military Force (AUMF).
- Urge Congress to repeal the 2002 Iraq AUMF and to debate and pass narrowly tailored authorizations for any future uses of armed force (as, for example, with ISIL) that explicitly define the scope of operations, specify mission objectives, provide greater transparency and congressional oversight, and comply with domestic and international law.
- Address global public concerns about legality and legitimacy of U.S. use of force, including by:
  - Accepting the applicability of international human rights law to U.S. actions outside the United States.
  - Disclosing the legal standards and criteria that the U.S. government uses to determine who may be targeted with lethal force.
  - Enabling meaningful oversight, the right to review, and effective investigation of and redress for civilian harm.
- Close the detention center at Guantanamo Bay and publicly explain the procedures and rules for detention of terror suspects apprehended overseas.
- Support the Congress to pass laws that reinforce the ban on torture and cruel, inhuman, and degrading treatment.

## How to Conduct Effective Counterterrorism that Reinforces Human Rights

Ensure counterterrorism assistance promotes—rather than undermines—the rule of law and human rights.

Building counterterrorism partnerships that premise U.S. assistance on respecting human rights provides immediate and tangible benefits to U.S. counterterrorism strategy. Partnering with other nations encourages burden sharing, placing an onus on U.S. partners to diminish terrorist networks in their countries, while allowing the United States to focus its resources on areas of more immediate need.

Counterterrorism partnerships also open communication channels and intelligence sharing mechanisms, giving U.S. agencies further tools to identify and mitigate threats. When grounded in human rights and the rule of law, these partnerships legitimate U.S. counterterrorism efforts in the eyes of U.S. citizens and the international community. But all too often, U.S. partners are engaging in or promoting human rights abuses that, left unaddressed, are counterproductive to combating terrorism. For example, Nigeria's military and police have been accused of both colluding with Boko Haram and committing human rights abuses in combatting them, while some members of Gulf militaries have defected to ISIL. Moreover, too often, repressive U.S. allies have cracked down on legitimate dissent in the name of counterterrorism, targeting and jailing human rights activists on terrorism charges. Repressing peaceful dissent is ultimately self-defeating as it is likely to fuel grievances that can result in violent extremism.

Thus, securing human rights protections also helps reverse the conditions that give rise to violent extremism.

Maintaining a perpetual war footing has depleted our resources and created unreasonable demands for the United States to have a military response to terrorist threats everywhere. Instead, the United States should focus on building counterterrorism partnerships to capitalize on allied resources, while fully enforcing existing human rights conditions on aid and directing assistance specifically to promote respect for human rights.

### Recommendations

- Design counterterrorism assistance programs to include significant support for rule-of-law institutions in partner countries, and human rights training for military and police forces. This support should include: helping partner agencies create mechanisms analogous to the uniformed military legal corps, complaint and review boards, and civilian oversight mechanisms; assisting independent national human rights institutions and independent civil society organizations to oversee their countries' counterterrorism policy; increasing the judicial capacity of partner nations to hold their counterterrorism forces accountable for human rights abuses they commit; and supporting the International Institute for Justice and the Rule of Law (IIJ), which offers counterterrorism training, primarily in the Middle East and North Africa, focused on strengthening the rule of law, in order to more effectively combat terrorism.<sup>7</sup> The United States should work with allied

<sup>7</sup> See <http://www.theij.org/> for more information on the IIJ's work.



countries such as the United Kingdom, France, Canada, and Australia, which have significant counterterrorism experience, to develop counterterrorism strategies and assistance programs that leverage relationships with these nations for our mutual benefit.

- In situations where other states are involved in armed conflicts with terrorist and/or insurgent groups, the United States should include well-resourced training in international human rights law and international humanitarian law as an integral component of any form of military or other security assistance provided to that government.
- Redress the imbalance in U.S. funding currently represented by the proposed Counter-Terrorism Partnership Fund (CTPF), which currently provides for only 10 percent of its resources to be used for civilian agencies like the State Department and the United States Agency for International Development (USAID).<sup>8</sup> A more balanced focus on the work of these agencies in tandem with, rather than as a supplement to, military action would allow the United States to make the most of its available resources and lessen reliance on the military to solve all threat-related problems.
- Conduct comprehensive interagency reviews of policy toward U.S. counterterrorism partners whose human rights records at home are deeply problematic and who promote or give financial support to violent extremists abroad, in order to develop strategies to confront those problems. These reviews and strategies should be supported by the following steps:
  - Insist, in diplomatic discussions and in the terms of counterterrorism assistance, that partners confront concerns about their own militaries, security forces and police functioning as breeding grounds for violent extremism and terrorism.
  - Include in the annual State Department Country Reports on Terrorism, information on actions taken by the U.S. government to improve counterterrorism-related human rights in partner nations.
  - Develop more specific impact assessment criteria for evaluating the effects of providing military or other counterterrorism assistance on human rights protections.
  - Broaden U.S. embassies' dialogues with civil society and human rights groups in partner countries to include discussion of counterterrorism cooperation, the effects of U.S. assistance, and to solicit recommendations for how the United States can advance human rights protections through its counterterrorism assistance.
- Reform the export control process to reduce the potential for U.S. conventional arms exports to fuel conflicts, grievances and violations of rights, which provide recruiting ground for terrorism. This can be done by strengthening the application of unilateral restraint foreseen in Presidential Policy Directive 27. This directive says that "the United States will exercise unilateral

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<sup>8</sup> Higginbotham Statement, *supra* note 6.

restraint in the export of arms in cases where such restraint will be effective or is necessitated by overriding national interests.”<sup>9</sup> Forestalling human rights violations that encourage violent extremists is certainly an “overriding national interest” of the United States. The president should ensure that the export control process is sufficiently rigorous by returning items likely to be used in repressing civilians—communications and surveillance equipment, for example—to the more restrictive U.S. Munitions List and keeping small arms on that list. Licenses for exports from the Munitions List require a process of State Department scrutiny, which includes analysis of human rights implications. The president should also support more funding for end-use monitoring of exports by the State Department.

- Support reform and expansion of the Leahy Law, so that it can be comprehensive, efficient and redressable in its guidance of U.S. counterterrorism assistance. The Leahy Law prohibits the United States from providing equipment or training to foreign military and police units where there is credible evidence that the units have committed gross violations of human rights and have not been investigated or held accountable for these violations. These “gross human rights violations” are limited to a very short list of the most abhorrent crimes, being torture, rape, murder, enforced disappearances, indefinite arbitrary detention and other gross

violations of life and liberty.<sup>10</sup> By requiring individual units to be examined, the Leahy Law permits the United States to provide assistance to units that pass Leahy Law “vetting,” while providing an incentive for foreign governments to bring the perpetrators of gross human rights violations to justice. From 2011 to 2013, approximately 530,000 foreign military and police units from 158 countries were vetted under the Leahy Law.<sup>11</sup> The president should support reform legislation which:

- **Expands scrutiny of counterterrorism assistance to cover peacetime intelligence agency efforts.** Given the central role intelligence cooperation plays in counterterrorism, and the lack of effective oversight of intelligence agencies in many countries, the Leahy Law should be expanded beyond military and police units, to also cover assistance to these agencies.
- **Invests in remediation procedures to retrain, re-evaluate, and eventually restore access to units denied assistance under the Leahy Law vetting process.** Preventing units from

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<sup>9</sup> Executive Office of the President, Presidential Policy Directive 27 (Jan. 15, 2014), *available at*: <http://www.whitehouse.gov/the-press-office/2014/01/15/presidential-policy-directive-united-states-conventional-arms-transfer-p>.

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<sup>10</sup> FAA Section 502B(d)(1) (22 U.S.C. 2340(d)(1)).

<sup>11</sup> *Foreign Military Training and DoD Engagement Activities of Interest, 2012-2013*, U.S. Department of State, *available at*: <http://www.state.gov/t/pm/rls/rpt/fmrpt/2013/>, cited in Stephen Rickard, Statement to the House Foreign Affairs Subcommittee On Africa, Global Health, Global Human Rights and International Organizations. Human Rights Vetting: Nigeria and Beyond Hearing, July 10, 2014, *available at*: <http://docs.house.gov/meetings/FA/FA16/20140710/102447/HHRG-113-FA16-Wstate-RickardS-20140710.pdf>. More than 99 percent of units vetted were approved to receive U.S. assistance, with 2,516 units found to have probably committed gross atrocities.

receiving U.S. assistance is not a goal in itself, but an incentive to reverse a culture of abuse and impunity. Where partner countries lack the mechanisms of accountability or resources to investigate, try, and discipline members of their militaries, security forces, and police, the United States should support development of a professional disciplinary system. Existing resources—a course module from the Defense Institute for International Legal Studies—are generally inadequate to remediate units which have been denied assistance. The process should require and resource a human rights assessment by the State Department’s Bureau of Democracy, Human Rights, and Labor, followed by the design of a strategy focused on developing institutions that are central to accountability in the military and civilian security sectors. The administration should consider expanding programs in the Defense Department (such as the Defense Institute Reform Initiative, Ministry of Defense Advisors Program, and the Warsaw Initiative Fund), its supporting institutions (including the Center for Civil-Military Relations at the Naval Postgraduate School and the Army Judge Advocate General Corps (JAGC) school), and through USAID, which train law enforcement and internal inspection units to properly respond to allegations of torture and abuse.

- **Harmonizes State and Defense Department procedures, and funds enough staff to implement the law’s provisions promptly.** The different provisions governing Leahy Law

implementation by the Departments of State and Defense should be unified, and the process of remediation should be closely coordinated between the two departments. Implementation of the Leahy Law has also been poorly funded. The Bureau of Democracy, Human Rights and Labor vets approximately 200,000 units and individuals per year, with only nine Washington personnel and five globally, supported by a point of contact in each embassy and 75 people in the Treasury Department responsible for verifying the identity of each individual proposed for sanctions to avoid mixing up two people with the same name. Where the Leahy Law has been properly resourced, the impact has been significant: in Colombia, the U.S. embassy in Bogota has two full-time staff positions dedicated to vetting up to 35,000 individuals annually,<sup>12</sup> which has resulted in an improved human rights climate, along with “gains in security and stability.”<sup>13</sup> The Leahy Law vetting office should be funded at the level of \$5 million per year,<sup>14</sup> so that the number of vetters can be increased and approval of units expedited.

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<sup>12</sup> Nina M. Serafino et al., “Leahy Law” *Human Rights Provisions and Security Assistance: Issue Overview* (Washington, D.C.: CRS, 2014), p. 15. available at: <http://www.fas.org/sgp/crs/row/R43361.pdf>.

<sup>13</sup> John J. Hamre, forward to Peter DeShazo, Johanna Medelson Forman, Phillip McLean, *Countering Threats to Security and Stability in a Failing State: Lessons from Colombia* (Washington, D.C.: The CSI Press, 2009), p. v, available at: [http://csis.org/files/publication/090930\\_DeShazo\\_CounteringThreats\\_Web.pdf](http://csis.org/files/publication/090930_DeShazo_CounteringThreats_Web.pdf).

<sup>14</sup> This is the amount provided in the FY15 Senate Foreign Operations and State Appropriations bill.

Align key aspects of whole-of-government counterterrorism with the goal of enabling rule-of-law societies which respect human rights.

In the years since the 9/11 attacks, the United States and its allies have developed creative tools to prevent violent extremist ideologies from taking root in societies and impede violent extremist groups from gaining the resources needed to commit large-scale, long-range attacks. Strategies to counter violent extremism, like constraining resource flows to violent extremist groups and depriving them of a steady flow of foreign recruits have played a key role in significantly degrading core al Qaeda<sup>15</sup> and also in preventing the emergence of full-blown al Qaeda affiliates in Indonesia, the Philippines, and elsewhere.

These tools are a key part of successful counterterrorism and are crucial to preventing the next core al Qaeda, Taliban or ISIL from emerging. But when implemented or scaled up without integrating human rights protections, such policies not only result in violations of human rights but they become fodder for violent extremists, who exploit them to recruit vulnerable individuals to their cause. Recommendations for making each of these policy areas sustainable are below.

### Recommendations

- **Modernize counter-threat finance to heighten pressure on state supporters of violent extremist groups and promote interstate cooperation to halt support**

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<sup>15</sup> 2014 Worldwide Threat Assessment of the US Intelligence Community: Hearings before the Senate Select Committee on Intelligence, 113<sup>th</sup> Cong., 1<sup>st</sup> Sess., pp. 4 (January 29, 2014) (statement of Dir. Of Nat'l Intel. James R. Clapper) available at: <http://www.intelligence.senate.gov/140129/clapper.pdf>.

### from private individuals and institutions.

In the decade before 9/11, al Qaeda was able to raise between \$300-\$500 million from private donors in Saudi Arabia alone, which it used to fund operations in Europe, North America, Africa, the Middle East and South Asia.<sup>16</sup> A decade later, counter-threat finance has made significant progress toward halting this flow of funds. But the rise of ISIL, the Khorasan Group, and Jabhat Al-Nusra, among others, demonstrates a continuing problem: funding connected with or directly from states, including U.S. partners such as Qatar, the United Arab Emirates, and Saudi Arabia. The administration should:

- Where disclosure would not jeopardize efforts to prevent terrorism or cut off funds to terrorist groups, confront partner nations with information on their role in enabling or actively financing violent extremists, through U.S. diplomatic channels, and hold partner governments accountable.
- Urge reform of counterterrorism finance tools such as the Financial Action Task Force (FATF) to ensure that governments do not use counterterrorism finance tools as a justification for actions that crack down on legitimate civil society organizations and political expression. Too often, repressive U.S. allies have cracked down on legitimate dissent in the name of counterterrorism, targeting and jailing human rights activists on terrorism

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<sup>16</sup> Jean-Charles Brisard, *Terrorism Financing: Roots and trends of Saudi terrorism financing*, (December 19, 2002), available at: <http://www.investigativeproject.org/documents/testimony/22.pdf>.

charges. Repressing peaceful dissent is ultimately self-defeating as it is likely to fuel grievances that can result in violent extremism.

- **Ensure that policies to deter individuals from traveling abroad to participate in terrorist acts do not violate civil liberties and human rights.** In September 2014, President Obama personally chaired a United Nations (U.N.) Security Council session that led to the adoption of a resolution intended to help stem the tide of individuals traveling to participate in terrorist acts and training, as well as related conflicts, outside their own countries (i.e. “foreign terrorist fighters.”) The resolution requires states to enforce criminal penalties for a wide range of acts, including attempting to travel abroad to participate in terrorist activities or training and providing or collecting funds to finance such travel. Although the resolution states that these actions should comply with international human rights and humanitarian law, there is no explicit tool—such as a mandate for oversight by a particular U.N. body and/or reference to particular standards—to help ensure that compliance occurs. The acts prohibited are also defined so broadly that the resolution may be used to justify discrimination, oppression of dissent, unjustifiable restrictions on freedom of movement, and other human rights abuses in the name of counterterrorism.

The United States has said that its existing laws—such as legislation that prohibits material support for terrorism—are sufficient to meet the requirements of the resolution. But these laws are also problematic for human rights and have made it more difficult to facilitate humanitarian assistance

and protect refugees. For example, U.S. laws include an over-broad interpretation of what constitutes “material support” and fail to balance the harm of even miniscule “material support” against the significant needs of populations and benefits to U.S. interests, of independent humanitarian action. Even more problematic is how countries without independent judiciaries and weak rule of law—including U.S. coalition partners Saudi Arabia and Egypt—may use the resolution as an excuse to crack down on peaceful dissent. The president should:

- Ensure that the domestic implementation of the resolution does not infringe on human rights within the United States.
- Take action to ensure that other states do not use the resolution to justify human rights violations. U.S. embassies should monitor, report and raise concerns about the human rights aspects of implementing the resolution. The president should also encourage the U.N. Counterterrorism Committee, with assistance from the U.N. Counterterrorism Committee Executive Directorate (CTED), to publish and promote guidelines on how to secure human rights while implementing the resolution and to visit countries to assess the impact of implementation on human rights.
- Encourage the U.N. High Commissioner for Human Rights (OHCHR), the U.N. High Commissioner for Refugees (UNHCR), the Special Rapporteurs on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and on

- Extrajudicial, Summary or Arbitrary Executions, and the Working Group on Arbitrary Detention to monitor the implementation of the resolution, to ensure that other states do not use the resolution as a pretext for stifling political opposition or human rights defenders, revoking individuals' citizenship or to prohibit the movement and/or protection of refugees.
- **Expand the resources available to local civil society groups and other community-based stakeholders to counter violent extremism and develop programming designed and/or implemented by those local groups.** Countering Violent Extremism, or CVE, aims to reduce the number of terrorism supporters by addressing the reasons people become attracted to terrorism in the first place: poor social, institutional and economic conditions, political and/or religious repression, and the influence of terrorist leaders who promise to improve these conditions and provide greater meaning and purpose to new recruits' lives. Through dialogue, education and the support and leadership of local communities, CVE can be critical to stopping the growth of terrorist organizations. CVE can also advance human rights. Rather than relying on lethal force to eliminate suspected terrorists in ways that often harm innocent civilians and may violate international law, CVE can provide affected communities with tools and support to resist violence and create more constructive solutions to local problems. However, CVE done poorly can exacerbate

the problems of hostility and mistrust it is intended to ameliorate—and even violate the rights of those it aims to protect.<sup>17</sup> Any programming that aims to counter violent extremism should:

- Bar efforts to seek intelligence through local organizations providing CVE; these efforts are counterproductive and engender mistrust in the target community.
- Empower and equip women to participate in CVE efforts. Experts in the field emphasize the importance of engaging women for successful CVE.<sup>18</sup>
- Focus on strengthening communities' capacity to prevent and resist violent extremism by supporting civil society to address the local conditions that lead youth to consider extremist violence. CVE programs should also assist civil society organizations to develop tools for handling the aftermath of violence in their communities, through initiatives such as trauma healing and peace and tolerance education.
- Support and promote investment in public-private partnerships such as the Global Community Engagement and Resilience Fund (GCERF), designed to harness capabilities and resources in support of community-based projects affecting at-risk populations susceptible to radicalization and recruitment by

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<sup>17</sup> Georgia Holmer. "Countering Violent Extremism: A Peacebuilding Perspective." United States Institute of Peace. 29 August 2013, *available at*: <http://www.usip.org/publications/countering-violent-extremism-peacebuilding-perspective>.

<sup>18</sup> *Id.*



- violent extremists, through youth engagement, education, vocational training, and women’s advocacy.<sup>19</sup>
- Encourage the reform of security entities charged with counterterrorism and CVE. Training police and security forces to deliver services in a framework that respects human rights and the rule of law and in collaboration, where appropriate, with civil society and community leaders, is critical to helping bridge the divide between the security sector and civil society.
- **Standardize interagency and nongovernmental partner cooperation as an integral part of counterterrorism strategy.** Interagency collaboration and nongovernmental organization (NGO) partner cooperation are both vital components of an effective and sustainable national counterterrorism strategy. Admiral James Stavridis has discussed the importance of this cooperation, noting that achieving our national security objectives requires “(the Department of) State in diplomacy; USAID in developing the economy and education systems; DEA (Drug Enforcement Agency) on crop substitution to move farmers away from growing poppies; and the CIA to understand what is happening on the ground.”<sup>20</sup> As such, we must push our agencies to ensure

that NGOs, international organizations, and the private sector are fully engaged “to complete a vision of American leadership in the world.”<sup>21</sup> Through formalized cooperation, agencies such as USAID, the State Department, and others better suited to non-kinetic operations and public-private partnerships are empowered to use their competencies to achieve constructive, rather than destructive, outcomes. Those agencies that are competent in kinetic activities can then focus their efforts to use force only when absolutely necessary for counterterrorism operations. The effectiveness of this approach was illustrated in Afghanistan, where Provincial Reconstruction Teams (PRTs)—comprised of both military and civilian personnel—were instrumental in establishing the necessary conditions in communities to foster resistance to violent and radical philosophies imbued by the Taliban and other violent extremist groups. To strengthen interagency cooperation and NGO collaboration, the administration should:

- Provide integrated training in interagency cooperation and civil-military relations to both military and civilian personnel in post-conflict operations.
- Create a public diplomacy program that reinforces host nation capacity building and integration with NGO partners to further counterterrorism objectives.
- Increase contingency funding for the Department of State, for diplomatic engagement and security operations in

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<sup>19</sup> U.S. Bureau of Public Affairs, Office of the Spokesperson, *Co-Chairs’ Fact Sheet: Creating a Global Fund for Community Engagement and Resilience*, Feb. 21, 2014, available at: <http://www.state.gov/r/pa/prs/ps/2014/02/221903.htm>.

<sup>20</sup> Admiral James Stavridis, *What the President Meant to Say...*, May 2014, available at: [http://www.foreignpolicy.com/articles/2014/05/28/what\\_the\\_president\\_meant\\_to\\_say\\_west\\_point\\_speech](http://www.foreignpolicy.com/articles/2014/05/28/what_the_president_meant_to_say_west_point_speech).

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<sup>21</sup> *Id.*

order to respond to public diplomacy opportunities and to emerging crises.

### Clarify and limit where the United States is engaged in “armed conflict.”

Throughout the nation’s history, the United States has worked to codify a clear separation between wartime and peacetime in its laws and international law. During wartime, these laws afford the country more flexibility in the use of force, detention, and trial of the enemy. However, perpetuating this state is dangerous. It skews our policymaking framework towards immediate and often shortsighted responses, rather than long-term policy efforts, which prevent threats from emerging. The more the United States invokes a state of armed conflict to take advantage of these relaxed constraints, the more likely it is that extraordinary powers become the norm and, in the worst case, policies drift towards those of dictatorships and enemies of human rights: detentions without charge or trial, extrajudicial killings, torture, military tribunals, and mass surveillance.

Course-correction can only be achieved through limiting the applicability of the United States’ claimed armed conflict authorities to situations where armed conflict actually exists under international law—where hostilities are of sufficient intensity between the United States and another state or sufficiently organized armed group.<sup>22</sup> This view reflects an emerging

consensus among national security law experts with government experience, who also believe that there should be increased transparency and congressional oversight regarding the mission, location(s), and parties against whom the administration believes the United States to be in an armed conflict, and the legal basis for these claims.<sup>23</sup> Below we set out steps the administration should take to sunset the 2001 AUMF and clarify and limit where the United States is at war. These measures will also increase international public support for the totality of U.S. counterterrorism efforts by showing more clearly the legality and legitimacy of our actions.

### Recommendations

- **Complete, and share with Congress and the American public in appropriate form, a comprehensive threat assessment that reflects current realities.** The ouster of the Taliban and the subsequent killing or capture of core al Qaeda’s senior leadership severely crippled the organization. As a result, al Qaeda has fragmented into regional affiliates whose ties to core al Qaeda are tenuous at best.<sup>24</sup> Today, al Qaeda could be more accurately described as a brand that has been co-opted or franchised by regional actors.

Core al Qaeda envisioned a global jihad and the establishment of a grand caliphate,

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<sup>22</sup> ICTY, *The Prosecutor v. Dusko Tadic*, Judgment, IT-94-1-T, 7 May 1997 [*hereinafter Tadic*], para. 561-568. The existence of an armed conflict against a non-state armed group under international law is determined by two criteria: (1) there must be hostilities, which reach a minimum level of intensity, such as when hostilities are of a collective character or when the government is obliged to respond with military force, rather than with mere police forces; and (2) the non-state groups involved in the conflict must be considered “parties to the conflict”, meaning that their armed

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forces are sufficiently organized, as evidenced by the existence of a certain command structure, and are capable of sustaining military operations.

<sup>23</sup> Jack Goldsmith, Ryan Goodman, and Steve Vladeck, *Five principles that should govern any U.S. authorization of force*, Wash. Post, Nov. 14, 2014 [*hereinafter Goldsmith, Goodman, Vladeck Principles*], available at: <http://wapo.st/>.

<sup>24</sup> Dept. of State, *Country Reports on Terrorism 2012*, Rep., at Ch. 6 (2013), available at: <http://www.state.gov/j/ct/rls/crt/2012/>.

but the current terrorist environment is comprised of a patchwork of entities, with regional interests and divergent goals. Though some regional terrorist groups, such as ISIL and Yemen-based Al Qaeda in the Arabian Peninsula (AQAP), claim aspirations to attack the United States, the U.S. Intelligence Community's 2013 Worldwide Threat Assessment notes that these regional groups generally lack the capacity, capability, and strategic priority for such an attack. Their competing internal and regional objectives, as well as limitations on managing, coordinating, and deploying trained operatives in the United States, mitigate the imminence of such a threat. The Worldwide Threat Assessment also notes the threat posed by homegrown violent extremists (HVE) but suggests that the risks posed by these individuals are moderate and that they can be properly managed within existing law enforcement and intelligence institutions.<sup>25</sup>

Americans outside the counterterrorism community, however, have been subjected to a barrage of conflicting and sometimes inflammatory or erroneous information about the capabilities, cohesion, and intentions of various violent extremist groups. This needs to be corrected, not in a once-a-year report but in sustained public communication to Congress and the American people.

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<sup>25</sup> 2013 *Worldwide Threat Assessment of the US Intelligence Community: Hearings Before the Senate Select Committee on Intelligence*, 113th Cong., 1st Sess. p. 4 (March 12, 2013) (statement of Dir. of Nat'l Intel. James R. Clapper).

■ **Sunset, rather than expand, the 2001 Authorization for Use of Military Force (AUMF).** The continued relevance of the 2001 AUMF is becoming increasingly questionable, particularly as combat operations in Afghanistan wind down. In *Hamdi v. Rumsfeld*, Justice O'Connor, in a concurring opinion, said of the 2001 AUMF, "If the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, that understanding [of who may be detained until the cessation of hostilities] may unravel."<sup>26</sup> This concern has been echoed by Brigadier General Mark Martins,<sup>27</sup> chief prosecutor for the military commission trials at Guantanamo Bay, and former Pentagon General Counsel Jeh Johnson,<sup>28</sup> now Secretary of Homeland Security.

The 2001 AUMF is, on paper, confined to organizations responsible for committing or helping with the 9/11 attacks and those who harbored them. The administration has officially interpreted those organizations to include al Qaeda and "associated forces," including groups such as AQAP in Yemen, and more recently, ISIL in Iraq and Syria, even

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<sup>26</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004).

<sup>27</sup> Karen DeYoung, *Afghan War's Approaching End Throws Legal Status of Guantanamo Detainees into Doubt*, Wash. Post, Oct. 18, 2013, available at: [http://www.washingtonpost.com/world/national-security/afghan-wars-approaching-end-throws-legal-status-of-guantanamo-detainees-into-doubt/2013/10/18/758be516-2d0a-11e3-97a3-ff2758228523\\_story.html](http://www.washingtonpost.com/world/national-security/afghan-wars-approaching-end-throws-legal-status-of-guantanamo-detainees-into-doubt/2013/10/18/758be516-2d0a-11e3-97a3-ff2758228523_story.html).

<sup>28</sup> Hon. Jeh Charles Johnson, General Counsel, U.S. Dep't of Def., *The Conflict Against Al Qaeda and its Affiliates: How Will It End?*, Speech Before the Oxford Union (Nov. 30, 2012), available at: <http://www.lawfareblog.com/2012/11/jeh-johnson-speech-at-the-oxford-union/>.

though these groups have little to no connection to the 9/11 attacks. The vast majority of terrorist groups do not pose the kind or degree of threat to the United States that either necessitates or justifies “war,” even if from time to time, a specific threat may justify use of force. Americans are not at war with Boko Haram, for example, or the dozens of violent extremist groups that would like nothing more than the notoriety that comes with being made an enemy by the United States and the recruiting and funding boost that this would bring. Establishing a sunset for the 2001 AUMF will require Congress and the administration to consider, at some near future date, whether it remains an appropriate and lawful authorization to deal with the threats that exist.

- **Urge Congress to repeal the 2002 Iraq AUMF and to debate and pass narrowly tailored authorizations for any future uses of armed force (as, for example, with ISIL) that explicitly define the scope of operations, specify mission objectives, ensure greater transparency and congressional oversight, and comply with domestic and international law.** Congressional leaders have stated their intention to legislate an AUMF that targets ISIL. A prudent national security response would be to clearly identify the threat, debate it, and if Congress so decides, pass a narrowly tailored force authorization to address the threat. Human Rights First endorses the “Principles to Guide Congressional Authorization of the Continued Use of Force Against ISIL,”<sup>29</sup>

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<sup>29</sup> Harold Koh, et. al., *Avoiding Unnecessary Wars and Preserving Accountability: Principles for an ISIL-Specific*

which were prepared by several prominent legal experts, including those who held senior legal positions in the U.S. government. These Principles share much in common with other proposals put forward by former Bush Administration lawyers.<sup>30</sup> Any new AUMF should:

- **Be limited to specified group(s) and explicitly define the scope of operations.** The experience of the 2001 AUMF has demonstrated that how, where, and when the United States intends to use military force in accordance with domestic and international law can easily become unclear—and that clarity is important for maintaining the legitimacy of a military mission with the American public, with allied and partner countries, and with the people outside the United States who themselves are affected by terrorist groups. Because so much of American leadership is grounded in the perception of American respect for the rule of law, it is vital that any AUMF written to confront current threats be limited to specified group(s) and be narrowly crafted to ensure that force is used in ways that are consistent with congressional intent, international law, and human rights norms. A well-articulated and understood strategy is key to achieving this, along with

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*AUMF*, Just Security, Nov. 10, 2014, *available at* <http://justsecurity.org/17257/aumf-principles/>.

<sup>30</sup> See Robert Chesney, Jack Goldsmith, Matthew Waxman and Benjamin Wittes, *A Draft AUMF to Get the Discussion Going*, *Lawfare*, Nov. 10, 2014, *available at* <http://www.lawfareblog.com/2014/11/a-draft-aumf-to-get-the-discussion-going/>; Goldsmith, Goodman, Vladeck Principles, *supra* note 23.

legislative language that limits the scope of time, geography, and groups targeted under the authorization.

The absence of temporal limits in the 2001 AUMF has proven to be a basis for uses of force over many years, which most members of Congress could hardly have anticipated and about which Congress did not deliberate. Congress should include in any new AUMF a time limit, or sunset clause, which would ensure future timely congressional debate on the nature of the threat and any further response. Such a requirement is not unprecedented: for example, the 1983 AUMF for Lebanon authorized the president to use force for up to 18 months, unless extended by Congress.<sup>31</sup> Geographic limits have been included in many prior congressional force authorizations.<sup>32</sup> Such limits can help ensure that any current or future administration cannot interpret an AUMF to apply to other parties in other situations where the United States is not engaged in armed conflict, as required by international law—i.e. where hostilities are of sufficient intensity between the United States and another state or sufficiently organized armed group.<sup>33</sup>

Any new congressional force authorization should also be as specific as possible about the objectives for which force is being authorized. The president should

communicate these objectives to Congress with a request for the authorities that he considers are necessary to achieve them. Pre-2001 force authorizations have included such objectives, along with the requirement that the president determine when these objectives have been fulfilled and report this determination to Congress.<sup>34</sup>

Moreover, any new AUMF should specify whether or not force is also authorized against “associated forces” of the targeted group. These associated forces should be defined to include only those that are actively fighting alongside the targeted group, as parties to the armed conflict, in accordance with international law. Military force should not be authorized against other groups that are not parties to the armed conflict. The president has authority under Article II of the Constitution to use force under certain circumstances and without congressional authorization to repel imminent attacks. Congress should not authorize force pre-emptively against unknown enemies.

- **Ensure greater transparency and congressional oversight.** One key lesson from the United States’ post-9/11 military engagements is the need for additional transparency on the part of the administration as well as oversight by the Congress regarding the use of

<sup>31</sup> Multinational Force in Lebanon Resolution, P.L. 98-119, 97 Stat. 805, October 12, 1983 [S.J.Res. 159].

<sup>32</sup> The National Security Network has determined that 60 percent of historical force authorizations have contained geographic limitations. See [http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR\\_FINAL.pdf](http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR_FINAL.pdf).

<sup>33</sup> *Tadic*, *supra* note 22.

<sup>34</sup> For example see Authorization To Employ the Armed Forces of the United States for Protecting the Security of Formosa, the Pescadores, and Related Positions, P.L. 84-4, 69 Stat. 7, January 29, 1955; Joint Resolution to Promote Peace and Stability in the Middle East, Public Papers of the Presidents of the United States. Dwight D. Eisenhower. 1957, Washington. U.S. Government Printing Office, 1958, pp. 6, 11-15; and Gulf of Tonkin Resolution, P.L. 88-408, 78 Stat. 384, August 10, 1964.

force. It is a basic principle of democracy that the American public and Congress be informed of the scope, progress, and human cost of any conflict in which their armed forces are engaged. Any AUMF should mandate that the president provide to Congress and to the American people, in unclassified form, regular reports regarding the status of progress towards the mission's objectives, the groups or nations that fall within the scope of the AUMF, the numbers of civilian and combatant casualties, and the legal basis for targeting particular groups and individuals or using force in particular countries.

- **Comply with domestic and international law.** The Constitution requires that Congress declare war, not the executive. If the AUMF is not narrowly tailored to a particular group or threat, it risks creating a carte blanche for use of force by the executive that will undermine the Constitution's intention that this power rest with Congress. A broad law authorizing force against all alleged terrorists or against groups that espouse a particular ideology runs afoul of separation of powers principles. As noted above, international law demands that states exercise wartime authorities only when engaged in a fight whose intensity meets international criteria for an armed conflict, and only for the duration of that armed conflict.<sup>35</sup> In addition, the United States must comply with the international rules governing

the interstate use of force, as laid out in the U.N. Charter. Any new AUMF should send an important signal that the United States abides by the rule of law in using force by explicitly requiring compliance with international law.

- **Address global public concerns about legality and legitimacy of U.S. use of force.** In recent years, global public hostility to U.S. targeted killings and the use of force in counterterrorism has continued to grow in both allied and affected countries. In addition to casting doubt on the viability and usefulness of international norms, this growing resentment has made it more difficult for allies and partners to work with the United States. Legislative debates across Europe reflect, and U.S. diplomats report, reluctance to support U.S. military actions because many believe that the United States uses force illegally and with insufficient attention to civilian lives. To improve the United States' cooperation with allies and strengthen counterterrorism as well as international rule of law, the administration should adopt policies that explicitly clarify how the United States complies with international law, cares for the lives of civilians, and reviews and redresses mistakes when they occur. The administration should:
  - **Accept the applicability of international human rights law to U.S. actions outside the United States.** The U.S. government continues to maintain that many international human rights treaties do not apply to U.S. actions overseas.<sup>36</sup> This position is

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<sup>35</sup> *Tadic*, *supra* note 22.

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<sup>36</sup> Charlie Savage, *U.S., Rebuffing U.N., Maintains Stance That Rights Treaty Does Not Apply Abroad*, NY Times,



contrary to that of U.S. allies and coalition partners, as well as established jurisprudence from international courts and human rights treaty bodies.<sup>37</sup> If this approach were adopted universally, it would provide all states with the impunity to violate the prohibitions on arbitrary killing, unfair trials, and imprisonment without judicial review when these are carried out outside their territory, a result that has been labeled “untenable and perverse.”<sup>38</sup> This position not only isolates the United States from its allies and the broader international community, but also damages the legitimacy of U.S. claims to leadership on the rule of law. The Obama Administration should accept the extraterritorial applicability of the International Covenant on Civil and Political Rights (ICCPR)—including with respect to lethal targeting—and uphold the United States’ reputation as a global leader in the protection of human rights and fundamental freedoms.

- **Disclose the legal standards and criteria that the U.S. government uses to determine who may be targeted with lethal force.** Disclosure of legal and policy standards, and how they are applied, is necessary for an informed democracy. The

administration should disclose the full Presidential Policy Guidance on targeted killing operations and release the remaining Office of Legal Counsel opinions on the legality of lethal targeting. Disclosure of this information is also an essential first step toward ensuring accountability and redress for any human rights violations.

- **Enable meaningful oversight, the right to review, and effective investigation of and redress for civilian harm.** Global publics, allies and affected communities believe that the United States may be consistently undercounting, overlooking or concealing civilian casualties. Refusal to acknowledge civilian harm is contrary to the rule of law, denies victims the justice they deserve, and compounds anger in impacted communities. These effects heighten the need for effective mechanisms to track and respond to civilian harm. The Obama Administration should publicly disclose the identity and number of individuals killed or injured in targeted killing operations and the measures in place to prevent civilian casualties. The administration should also demonstrate that it conducts prompt, independent and impartial investigations whenever there is credible information of a violation of international law caused by the United States’ use of lethal force. It should also demonstrate publicly that it provides redress when such violations occur.

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March 13, 2014, available at: <http://www.nytimes.com/2014/03/14/world/us-affirms-stance-that-rights-treaty-doesnt-apply-abroad.html>.

<sup>37</sup> Beth Van Schaack, *The Extraterritoriality of Human Rights Obligations*, Just Security, March 4, 2014, available at: <http://justsecurity.org/7618/extraterritoriality-human-rights-obligations/>.

<sup>38</sup> *Id.*

■ **Close the detention center at Guantanamo Bay and publicly explain the procedures and rules for detention of terror suspects apprehended overseas.**

Human Rights First has articulated a comprehensive plan for the Obama Administration to close the Guantanamo Bay detention facility before the president leaves office. Moreover, the military commissions at Guantanamo continue to operate poorly, resulting in protracted trials that are beset with delays and problematic ethical issues.<sup>39</sup> Of the eight individuals convicted in military commissions, two have already had their convictions overturned because their crimes were not internationally recognized war crimes when committed. Conversely, since 9/11 the United States has successfully convicted more than 67 terror suspects who were apprehended overseas,<sup>40</sup> including Osama bin Laden's son-in-law, Suleiman Abu Ghayth, who was prosecuted and sentenced to life in prison in U.S. federal court in 2014, just over one year after being captured. Other terror suspects captured overseas who are currently being held in detention facilities in the United States include Ahmed Abu Khattala, in connection with the 2012 attack on the U.S. mission in Benghazi, and Abu Anas al-Libi, for his involvement in the 1998 bombings of the U.S. embassies in Kenya and Tanzania. The apprehension of these and other terrorism suspects from

overseas demonstrates that Guantanamo is an unnecessary component of U.S. counterterrorism strategy. The president should publicly acknowledge this, finally close the Guantanamo Bay detention center, end the use of military commissions, and articulate to the American people the procedures and rules for detention of terror suspects apprehended overseas.

■ **Support the Congress to pass laws that reinforce the ban on torture and cruel, inhuman, and degrading treatment.**

Existing statutes, both state and federal, prohibit the use of torture and cruel, inhuman, or degrading treatment. However, all these statutes were in place after the 9/11 attacks, and lawyers in the White House, Department of Justice, Department of Defense, and CIA were able to skirt them to advise that the use of so-called "enhanced interrogation techniques" was legal. The president and Congress should work together to ensure that all acts of torture and cruel treatment are prohibited under all circumstances, and that effective measures are available to hold perpetrators accountable and provide remedies in instances of violations.

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<sup>39</sup> Human Rights First, *Fact Sheet: Key Facts on Military Commissions v. Federal Courts*, available at: <http://www.humanrightsfirst.org/sites/default/files/KeyFactsMilitaryCommvFedCourts.pdf>.

<sup>40</sup> Human Rights First, *Fact Sheet: Federal Courts Continue to Take Lead in Counterterrorism Prosecutions*, available at: <http://www.humanrightsfirst.org/wp-content/uploads/Federal-Courts-Continue-to-Take-Lead-in-CT-Prosecutions.pdf>.

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## Conclusion

Military leaders, counterterrorism professionals, law enforcement officials, and intelligence experts all stress that, in the long run, it is in the realm of ideas that violent extremism must be defeated. The ideas of human rights and the rule of law, and their applicability to every person, are an essential part of what the United States can offer in that struggle—because they

are both universal and at the foundation of what it means to be American.

The challenge for American counterterrorism policy is moving human rights and the rule of law from being ideas we casually reference to integrated principles by which the United States conducts itself and strategies to confront terrorism effectively. Through this process, the United States can offer other nations a model to follow, and be a leader and partner in the fight against terrorism.



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