Human Rights in a Shifting Landscape

Recommendations for Congress

A Report of the CSIS HUMAN RIGHTS INITIATIVE
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Acknowledgments

This report is made possible by general support to CSIS. No direct sponsorship contributed to this report.

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Congress Must Lead on Human Rights in the Face of Rising Authoritarianism

AMY K. LEHR
Director, Human Rights Initiative

Human rights are part of the American DNA. The United States, under Eleanor Roosevelt’s leadership, chaired the drafting of the Universal Declaration of Human Rights. Not surprisingly, it reflects many constitutional rights enjoyed by U.S. citizens. The drafting committee also included representatives from China, the Soviet Union, Lebanon, and other countries to ensure that the values enshrined in the document were truly universal. The international human rights system has helped make those values part of the global lexicon, often with strong bipartisan U.S. leadership.

Congress has long advocated for human rights to play an integral role in U.S. foreign policy with significant success. This advocacy began during the Nixon administration and eventually led to the creation of the U.S. Department of State’s Bureau of Democracy, Human Rights, and Labor. Congress also passed vital legislation that embeds human rights considerations in our foreign assistance, such as the Leahy Laws, which are intended to prevent U.S.-funded assistance from reaching specific security force units or individuals who have committed gross violations of human rights. This historic leadership urgently needs to be revitalized and expanded. A much broader swathe of Congress should recognize that human rights are not only inherently important to protect every human’s dignity and worth, but also are a powerful geopolitical tool to project U.S. values and influence. To respond to rising authoritarian threats, a broad bipartisan coalition of members of Congress should reaffirm the vitality of human rights for a values-based U.S. foreign policy and should act together to forward this agenda, as outlined below.

This compendium identifies opportunities for Congress to support human rights, from the independent perspectives of CSIS regional and topical experts, who selected their focus

areas. The collection is not comprehensive. It does not cover every urgent human rights issue that Congress should address, and indeed emphasizes proactive opportunities to broadly address human rights in policy rather than purely reactive measures in response to specific crises. For instance, our experts do not focus in depth on the details of the conflict in Yemen, mass incarceration of Uyghurs in Xinjiang, and other pressing crises. Nevertheless, taken as a whole, the pieces provide new thinking, grounded in deep subject matter expertise, on how to revitalize human rights in our policy.

Congressional action is more vital than ever in today’s geopolitical climate. China, Russia, and other governments present authoritarian models as alternatives to compete with democracy. China and Russia persuade other nations to follow their model through both cultural diffusion and economic benefits, while quietly undermining democratic and multilateral institutions—or wielding “sharp power.”

They share their expertise at undermining democracy with other states. China accompanies sales of surveillance technology to foreign governments with training on how to implement a ubiquitous surveillance society under the guise of “crime prevention” and “safe cities.” Russia peddles its skills at disinformation to undermine elections and confidence in state institutions, as well as its playbook for slowly squeezing civil society into oblivion. China also is increasing its influence over the rules of the international human rights system at the UN and other multilateral institutions in an alleged effort to recalibrate global standards in its favor.

As authoritarianism rises, journalists and civil society are under attack around the world. Attacks on journalists have increased by 13 percent over the past year alone. The space for civil society to operate is on a sharp downward trend, with 111 out of 196 countries rated as “closing” or “closed.” Only 4 percent of the world’s population lives in countries where governments fully respect the freedoms of association, peaceful assembly, and expression. The trend is worsened by the rise of anti-rights groups that masquerade as civil society but in fact exist to undermine civil society and the rights it protects.

In the face of these challenges, stronger U.S. leadership is urgently needed. The Trump administration has been unwilling to identify the mass killings, rapes, and expulsion of Rohingya in Myanmar as genocide, despite the evidence. Top positions in the Bureau of Democracy, Human Rights, and Labor at the State Department long went unfilled, suggesting its role was not a priority.

Most recently, the State Department announced the creation of a new Commission on Unalienable Rights, which seeks to reexamine whether human rights discourse aligns with “the nation’s founding principles of natural law . . ..” Given that the United States led

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6. Department of State, National Archives and Records Administration, Department of State Commission on Un-
the drafting of the Universal Declaration of Human Rights, this seems unnecessary. The commission is likely to lead to a divisive and unproductive debate that distracts us from addressing the very real undermining of human rights and democracy around the world and the alliances we have built based on those shared values. There are many other, more productive avenues through which the Trump administration can and should support the universal and inalienable values that human rights enshrine.

A dedicated but small bipartisan coalition in Congress has continued to prioritize human rights in foreign policy. In 2018, Congress passed the Elie Wiesel Genocide and Atrocities Prevention Act to improve the U.S. prevention of and reaction to mass atrocities. Congress also passed the Global Magnitsky Act in 2016, a powerful new tool that enables targeted sanctions of human rights abusers and corrupt officials around the world. To its credit, the Trump administration has imposed Global Magnitsky sanctions on over 100 entities.

In some recent instances, Congress's attempts have not met with immediate success. Congressional requests for sanctions against Chinese officials and companies involved in the mass detention of Uyghurs and other religious groups in Xinjiang Province have gone unanswered. Congress used its power under the Global Magnitsky Act to request that the administration investigate the killing of Jamal Khashoggi, but the administration has not complied.

These are all vital efforts to push for continued attention to human rights in foreign policy. But more is needed. It is time to vigorously reassert U.S. congressional leadership on global human rights. A broader coalition in Congress must act on opportunities to expand the human rights foreign policy toolkit, often in ways that will have a long-term legacy and help address future fluctuations in executive commitment to these issues. Promoting human rights is in the long-term self-interest of the United States, as it will help counter today's authoritarian trends and create stronger allies for the United States that share its worldview and priorities.

In this compendium, CSIS experts identify myriad ways in which the United States can act to promote human rights in foreign policy and why it should do so. We focus particularly on the unique opportunities for Congress to advance this agenda. Through both the contributions in this compendium and conversations with our scholars, several themes emerged.

Several experts highlight that values are in fact a principal facet of international influence and power. Jon Alterman argues that the United States as a “cultural icon, an economic model, and a political beacon” enhanced U.S. influence around the world. This global influence and legitimacy have been supported by the willingness of the U.S. government to critique the human rights practices of its allies, including in the Middle East, through efforts like the State Department’s annual human rights reports.

Mike Green notes that the United States’ strong position in Asia derives in great part from its longer-term support for democratic development. He highlights how Congress can encourage the inclusion of human rights in the Free and Open Indo-Pacific Strategy through appropriations and hearings, among other measures. He also describes

empirical data showing that the elites in many Asian countries are now proponents of
democracy and human rights, providing an opportunity to work with regional allies to
advance these values.

Victor Cha similarly underlines the fact that human rights are a vital and unavoidable
part of negotiations with North Korea and actually strengthen the United States’ hand.
He highlights a number of ways in which Congress can encourage the administration to
reinstate human rights as a key element of the negotiations.

Several experts call for more “carrots” as well as “sticks” in our human rights toolkit. They
profess a need to not just punish the worst transgressors but lure the middle of the pack
towards improved practices. Such inducements are increasingly important in today’s
geopolitical context, where economic incentives such as the Belt and Road Initiative may
pull countries under authoritarian influence. The United States needs to offer a tempting
counter-model. This means doubling down on soft power and offering benefits for
governments that improve their human rights record.

Some such measures already exist. Support from the Millennium Challenge Corporation
is conditioned on factors such as rule of law, anti-corruption efforts, and civil liberties. Congress could consider new ways to incentivize governments. For example, the
United States could expand the existing focus on labor laws in our trade negotiations to
include a broader spectrum of human rights. Europe conditions Generalized System of Preferences (GSP) benefits on human rights performance, which can create significant
leverage if wielded thoughtfully. Funding the Better Utilization of Investments Leading to
Development (BUILD) Act and prioritizing countries based on their human rights records
would also incentivize governments to improve their practices while providing better-
operating environments for U.S. businesses.

Judd Devermont calls for these incentives to be accompanied by elevated use of traditional
soft power focused on combatting corruption, supporting good governance, and enabling
civil society. Funding to support good governance and civil society through the National
Endowment for Democracy (NED), the U.S. Agency for International Development
(USAID), and others should be increased, but this is not the current trend for some
regions. For example, U.S. funding for USAID’s governance and civil society programming
in Africa typically hovered around only $250-350 million a year, but in 2018, this sum was
cut in half. Moreover, USAID should be provided with the flexibility to seek new ways to
fund and support civil society under attack around the globe. Supporting civil society is
good for democracy and even good for business. For example, if journalists are jailed, their
important role in identifying corrupt deals will be undermined.

Of course, punitive measures remain important. Conditioning arms sales on the human
rights records of receiving countries could prove a powerful tool, as CSIS’s Melissa
Dalton cogently argues. This would build on the existing success of the Leahy laws. A
mixed pallet of incentives and punitive measures would help the United States engage
with particular countries on human rights in a proactive and long-term manner by

enabling initial incentives that can be followed by punitive measures if agreed-upon progress is not forthcoming.

Legislation that would strengthen human rights does not always have “human rights” in the title. Indeed, it is vital that a human rights perspective is not siloed but rather integrated into other areas of law and policy. Congressional action in a number of areas such as business law and immigration could have substantial human rights benefits, while also diminishing the influence of transnational criminal networks that undermine rule of law around the globe.

For example, Erol Yayboke highlights the possibility of combatting both organized crime and human trafficking through effective immigration reform. Heather Conley’s recent report on Russian influence highlights the need for disclosure of the beneficial ownership of companies.\(^9\) This would help identify sanctions-evaders hiding their ill-gotten funds in the United States and block illicit financial flows that otherwise enable corruption and organized crime to flourish. More transparency in the financial system would combat corruption and malign foreign influence—and ultimately help support a human rights-conducive environment abroad.

Similarly, there are opportunities to better integrate a human rights perspective into our counter-terrorism efforts abroad. For example, Judd Devermont notes that the majority of African youth joining terrorist groups overseas do so because their governments indiscriminately arrest and detain their family members or friends.\(^10\) As a result, counterterrorism efforts by U.S. partners who engage in frequent abuses may be making the problem worse, not better.\(^11\) U.S. support abroad to better integrate respect for human rights into counterterrorism efforts may prove critical to diminishing recruitment by terrorist organizations. Congress can do so by focusing attention on these abuses and pushing for an end to support for several African Troop Contributing Countries (TCCs) because they have been involved in sexual exploitation and abuse scandals, undermining their respective peacekeeping mission’s effectiveness.

Even our ability to battle global pandemics is undermined if we fail to respect human rights ourselves and do not foster inclusive global approaches to public health. When traditionally marginalized groups are pushed back into the shadows due to discrimination, treatment fails to reach them. In the case of HIV/AIDS, this means that the pandemic worsens. Congress can address this challenge through legislation, hearings, and public statements that keep a focus on human rights and highlight when the executive branch and other governments restrict access to essential health services for marginalized groups.

Finally, Congress can help the United States put its own human rights house in order so that our conduct reflects our ideals. This, in turn, enables us to speak about human rights


abroad without being accused of hypocrisy and helps us lead by example. Mark Schneider notes steps that Congress can take to ensure that the U.S. government does not condone torture and that, if any officials do so, they are held to account. Similarly, Congress should pass legislation related to the use of facial recognition for surveillance that creates democratic boundaries and oversight. This leadership would help the United States push for other countries to pass similar laws, which could help slow the rise of ubiquitous surveillance and authoritarian tendencies abroad.

In the following pages, one consistent theme emerges over and over again: there has never been a more important time for the United States—and especially Congress—to lead on human rights.
Why the United States Needs a Balance of Power That Favors Freedom in Asia

MICHAEL J. GREEN
Senior Vice President for Asia and Japan Chair

Two fallacies have long perverted the discourse over the role of human rights in U.S. foreign policy towards Asia. The first is the assertion that grand strategy requires expunging values from the conduct of foreign policy or, as Robert Osgood put it in his seminal work of post-war realism, that the United States has to distinguish between its "self-interest" and “idealism.”12 The second fallacy is that Asian values are distinct from “Western” or “universal” values—a dominant theme in post-war regional studies, captured best by Lucian Pye’s influential 1985 volume Asian Power And Politics: The Cultural Dimensions Of Authority, which explored the seemingly immutable preferences for centralization and authoritarianism in China, Japan, Korea, and Southeast Asia.

Osgood had an enormous influence on subsequent students of realism in foreign policy, and Pye stamped generations of leading scholars of East Asia. They were right that grand strategy requires precision and that cultural factors in Asia are critical variables in the political and economic development of the region. They were wrong, however, in dismissing the central role of values in the international relations of Asia and U.S. foreign policy towards the region.

Key American strategic thinkers on Asia and the Pacific recognized from the beginning of the Republic that there was an ideational contest unfolding in the region as the old Sino-centric order collapsed: that power and influence would derive from new definitions of the legitimacy of the nation-state. Thomas Jefferson, John Quincy Adams, Matthew Perry, Alfred Thayer Mahan, and others fused values and foreign policy strategy, arguing that self-governed republics would be resilient enough to resist European imperial expansion and would more naturally align with the United States.

There is no disguising the commercial, military, and often racist perversions of this principle over the past two centuries, but the fact remains that the United States’ dominant position in Asia and the Pacific today is the result of longer-term support for democratic development across the region as much as it arises from commercial or military victories. In 1945, the only democratic states on the other side of the Pacific were Australia and New Zealand. Today, all of the middle and major powers of Asia are democratic, despite imperfections in the exercise of that democracy, except for China. As former Secretary of State Condoleezza Rice put it, the United States has benefited from a “balance of power that favors freedom.”

Hegemonic control of Asia has always been tied to values. Japan’s brief success in 1941-42 was the result not only of battlefield victories, but also a narrative that Japan was the champion of anti-colonialism and self-determination for Asians. Historians of different ideological stripes agree that the U.S. failure in Vietnam was directly tied to the collapsing democratic legitimacy of the South Vietnamese government. In contrast, the U.S. victory in the Cold War in Asia would not have been possible without pressure from Washington for democratization in Korea, the Philippines, and Taiwan in the 1980s (democratization that inconveniently proved Pye’s thesis wrong).

Asia is again entering a great ideational contest as China asserts that it is the protector of Asian values against the West. Beijing’s rhetorical devices are similar to those employed by Japan in the 1940s or the Soviets in the Cold War (and briefly by some Japanese again in the 1980s): decrying “universal values,” promoting “non-interference in internal affairs,” and promising a “community of common destiny” (Xi Jinping’s version of Japan’s wartime Greater East Asian Co-prosperity Sphere). Beijing brings greater economic firepower to this contest than either Japan or the Soviet Union did, but also comes from a position of deep insecurity about communist party rule at home and a much less favorable external environment in which to promote authoritarian models of government. In CSIS polls of strategic elites in Asia, for example, China was the clear outlier when it came to support for norms such as “free and fair elections,” “human rights,” or “good governance.”

Chinese intellectuals aligned more closely with their Indian, Thai, or Indonesian counterparts on the importance of “noninterference”—a warning that in postcolonial and developing Asia, there is still suspicion of the advanced democracies. But the fact remains that Asians themselves are now great champions of the democratic values that once were dismissed as alien and Western.

The setting is therefore favorable for a strategy that integrates support for human rights with the promotion of prosperity and security in Asia. However, there are four headwinds that will make this strategy challenging in the years ahead:

1. Civil society space is closing in more countries than it is opening as authoritarian and even some democratic governments develop new tools to contain and intimidate political parties, the press, and NGOs.

2. China’s massive Belt and Road investment initiative is enabling authoritarian states to defy international pressure for reform and opening and is corrupting some democratic states that have weak institutions (though there have been positive reversals in Malaysia and Sri Lanka, for example).

3. Democratic unity has proven somewhat elusive as Japan, Korea, Indonesia, and other governments in the region have struggled to find ways to operationalize their common support for democratic norms (support for governance and democracy work is still overwhelmingly North American and European, and few regional governments are willing to risk diplomatic relations over individual human rights cases).

4. U.S. support for democracy promotion has waxed and waned over the past two administrations, though Congressional attention has not.

**A New Strategy to Advance Democratic Norms in Asia**

A more effective U.S. strategy to advance democratic norms in Asia will require six core elements:

1. **Use an “all of the above” approach:**
   - Increase transparency and advocacy, including Radio Free Asia, despite jamming or criticism by governments.
   - Increase support for governance and democracy and strengthening of civil society, working with governments where possible.
   - Continue spotlighting the most egregious abuses (particularly in Xinjiang and North Korea), utilizing satellite imagery and other technologies.
   - Target use of visa sanctions and the Global Magnitsky Act (with a preference for the former when speed is necessary).
   - Continue appeals at all levels (to include the president, if possible) for the release of political prisoners (successful appeals are challenging, but abandoning the imprisoned defines deviancy down and implies a loss of U.S. willpower).

2. **Improve unity of effort with allies, partners, and the private sector:**
   - Enhance coordination of governance and democracy efforts with the Quad countries of Japan, Australia, India, and with South Korea and other like-minded states to focus on resilience and accountability in states targeted by Belt and Road.
   - Deliberate in-country coordination with like-minded states and chambers of commerce on the agenda for advancing human rights, rule of law, and accountability.
   - Support eclectic non-U.S. efforts at regional democracy-promotion such as Indonesia’s Bali Democracy Forum, even if the sponsors choose to invite nondemocratic participants or otherwise defy U.S. conventions or practices.
   - Coordinate speeches at Shangri-La, EAS, and other regional summits to ensure reinforcing narratives with allies and partners on democratic norms.
• Enhance democratic unity through joint promotion of shared norms among political and intellectual leaders within the region.

3. Use presidential summits as leverage for progress:
   • Summits with the U.S. president are valuable accomplishments for any leader; multiple agendas (trade, defense, diplomacy) are always at play, but summits should not be given away without measurable benchmarks on human rights and democracy (this mistake is already being made with Kim Jong-un, Duterte, and others).
   • The benchmarks for progress should be achievable but persistently advanced.
   • It goes without saying that the president must be invested in the effort.
   • Ronald Reagan used summits with Chun Doo-hwan to advance democracy in Korea and George W. Bush did the same with Vietnam’s Prime Minister to secure greater religious freedom for Christians in Vietnam. Both were strategically important relationships but would not have been sustainable without progress on democratic norms.

4. Coordinate defense engagement and democracy agendas:
   • Support sustained flag-rank officers’ dialogue with all regimes, but ensure a shared roadmap with Indopacom so that specific military activities are linked to achievable milestones with respect to human rights and democracy.
   • Distinguish between and among military units in authoritarian states, supporting IMET (military education) and other exchanges with units or officers that promote civilian control and human rights.
   • Work with Japan, Australia, South Korea, India, and other allied and partner militaries to ensure that their engagements reinforce U.S. themes on democracy and human rights.

5. Use sanctions lifting to empower institutions and groups that support democracy and development, not as a reward for authoritarian regimes:
   • Example One: lifting the investment ban on Burma in 2012 put cash in the pockets of the regime, whereas lifting the export ban would have empowered women in the garment industry.
   • Example Two: Seoul’s proposal to relax the UN Security Council Sanctions to allow South Korea to reopen the Kaesong Industrial Park or Mount Kumgang Tourism Project will put cash directly into the North Korean regime’s nuclear programs, whereas humanitarian programs to fight tuberculosis will empower doctors and save lives.

6. Anticipate and set markers on human rights problems—do not just react:
   • Tibet: Chinese law states that the Chinese Communist Party (CCP) will choose the next Dalai Lama; His Holiness has said his successor will likely be from a free society; Tibetan Buddhists will erupt in protest when Beijing imposes a pretender; Beijing will likely respond repressively. There should be a plan and expectations.
- Thailand: Elections in March were imperfect but will be portrayed within the region as a restoration of democracy in Bangkok five years after the last coup; the United States and like-minded partners should encourage achievable standards and next steps after the election.

Many of these strategic elements necessitate congressional support and oversight, including:

- Appropriations for democracy and governance activities and Radio Free Asia;
- Hearings on current and emerging human rights challenges in the region;
- Attention to human rights and democracy issues across the armed services and other committees (beyond just the House Foreign Affairs Committee and Senate Foreign Relations Committee);
- Confirmation hearings for officials responsible for Asia policy; and
- Congressional and staff delegations to the region.

Historically, the U.S. Congress has disrupted the strategies of administrations that are not attentive to human rights and democracy but enhanced the approaches of those administrations that are. The current administration’s Free and Open Indo-Pacific strategy is a useful framework within which to embed the approach described above, but that will not happen without congressional action.
Congressional Action on North Korean Human Rights

VICTOR CHA  
*Senior Adviser and Korea Chair*

Five years after the UN Commission of Inquiry report created a groundswell of international concern regarding human rights abuses and international crimes in North Korea, the momentum to bring human dignity to the citizens of this country has dissipated. The UN Security Council failed to renew a debate on the issue in its chambers last year. Since the start of U.S.-DPRK diplomacy in early 2018, the Trump administration seems disinterested in the issue, deeming it distracting at best and disruptive at worst to the core nuclear diplomacy. And the Republic of Korea has cut over 90 percent of its government support for human rights programs to help its northern brethren. Amid these developments, however, Congress has remained a steadfast agent for the improvement of human conditions in North Korea, reauthorizing the North Korea Human Rights Act (H.R. 2061) with unanimous votes in both chambers in 2018.

The summit diplomacy between President Donald Trump and North Korean leader Kim Jong-un—two meetings in Singapore in June 2018 and in Hanoi, Vietnam in February 2019—presents an opportunity for Congress to reenergize the issue in ways beneficial to U.S. interests. While tangible progress fulfilling the denuclearization, pledges made by North Korea in Singapore and Hanoi should be the priority of U.S. diplomacy, this goal cannot be achieved without substantive addressing of human rights issues.

*Core Principles for Congress*

Four principles should propel Congress’s approach to human rights for the DPRK. First, integrating human rights into our strategy is not a choice but a necessity. As a beacon of human freedom in the world, the United States has a moral obligation to place human rights at the top of its agenda with all partners. Not doing this has already encouraged regimes to take liberties and engage in gross human rights abuses (e.g., the Uyghur internment camps in China).

Second, Congress should continue to exercise oversight on the administration’s policy to ensure that the denuclearization and human rights agendas are inextricably intertwined.
Whether through its exports of forced labor or commerce related to sanctioned entities, revenues gained from human rights abuses help to finance the regime’s proliferation activities. Furthermore, respect for international norms, such as the nonproliferation efforts of the International Atomic Energy Agency (IAEA), of which the DPRK was a member and which includes 171 countries, and the Universal Declaration of Human Rights, to which the DPRK is still formally committed, legitimize and internationalize the commitments the DPRK needs to make. Failure to keep human rights commitments provides funding for nuclear proliferation and, moreover, is a lost opportunity for the DPRK to learn how to follow its international commitments and extricate itself from its pariah status in the community of nations.

Third, by calling for human rights improvements in North Korea, Congress will be strengthening U.S. leverage in the negotiations. As North Korea’s reaction to the groundswell of international sentiment in 2014 created by the UN Commission of Inquiry report and Congress’s legislation on North Korean human rights displayed, the regime senses vulnerability on this issue like no other. The otherwise reclusive regime sends its most senior officials abroad to European capitals to lobby in the UN to prevent votes against their government on human rights abuses—something they have not done with regard to UN votes banning their nuclear weapons and ballistic missile programs.

Fourth, Congress must impress upon the administration that mainstreaming human rights in our North Korea agenda is politically smart. Given the Congress’s unanimous support to update and reauthorize the North Korean Human Rights Act this year, there is little likelihood that Congress will support any U.S.-DPRK agreements coming out of presidential summity that do not address human rights. Moreover, sanctions lifting will not be possible under U.S. law without certifications on human rights improvements.

Supporting, Not Undercutting the Negotiations

Congress can push forward with a human rights agenda on North Korea without feeling like it is complicating the administration’s nuclear diplomacy. On the contrary, to integrate human rights is to support the president’s objectives as specified in the Singapore summit declaration. There is a common misperception that including human rights distracts from the main issues or “offends” the North Koreans and prevent them from participating in negotiations. This is incorrect for three reasons.

First, to address human rights is critical to achieving the two leaders’ commitment to a peace declaration on the Korean peninsula and a transformed U.S.-DPRK relationship. It is inconceivable politically that Congress could support achieving normalized diplomatic relations without an improvement in the human rights condition there.

Second, to achieve the administration’s stated objective of final and fully verifiable denuclearization requires a more transparent and regime-compliant North Korean system. The success of a verification protocol for denuclearization would require a more open society than exists in North Korea today. Moreover, improvements in the human rights condition would make a denuclearization commitment by DPRK more credible as it would reflect a historic sign of the leadership’s commitment to real reform and fully joining the community of nations.
Third, to demand human rights improvements is the only realistic way to facilitate the world’s economic development and assistance to North Korea. President Trump has touted the potential for North Korea to become an “economic rocket” if it commits to denuclearization. However, U.S. companies, aid organizations, and international financial institutions like the World Bank and IMF will not, in accordance with the laws passed by Congress, be able to aid, invest, or trade with the North given rampant human rights abuses such as forced labor in the supply chain.

**What Congress Should Demand**

In the follow-on negotiations to the Singapore and Hanoi summits, the United States must consider concrete, actionable items to mainstream human rights concerns in bilateral relations with Pyongyang. Congress can support this through the following expectations:

**Demand Rights Up Front.** The United States must establish a rights-up-front approach in future dealings with North Korea, acknowledging that achievement of the normalization, denuclearization, and peace regime objectives of the 2018 Singapore declaration requires an improvement in human rights.

**Make a Tangible First Step Together.** The United States must seek an initial tangible step with North Korea (e.g., cooperation on issues of people with disabilities and other issues which are likely less threatening to the regime) in order to set a new precedent in negotiations and to establish an agenda of non-nuclear issues for cooperation with the DPRK.

**Establish a Longer-Term Dialogue.** The United States must establish a human rights dialogue as a mandatory part of any path to normalization of political relations with North Korea. This dialogue should seek the achievement of specific goals as stated in the UN Commission of Inquiry report. Since the Commission of Inquiry report, Pyongyang has quietly become more engaged in cooperating with foreign NGO humanitarian efforts and information-gathering on human rights standards. This suggests the North Koreans may be increasingly receptive to a dialogue about human rights and international monitoring standards for health and food assistance. This dialogue could also be used to help North Korea remedy violations in the supply chain that would prevent private investment.

**Appoint a U.S. Human Rights Envoy.** The White House must appoint a Special Envoy for North Korea human rights issues as mandated by the Congress, but which has remained unfilled since the last administration. The continued absence of an envoy is the clearest signal of disinterest by the administration and takes the pressure off of others to take up the human rights agenda with the DPRK. Congress should push for this appointment.

**Resume Humanitarian Assistance.** The United States should remove obstacles it has created to limit private NGO humanitarian assistance, support UN humanitarian efforts, and consider providing U.S. government aid when appropriate. Such assistance must meet international standards for verification and monitoring.

**Set the Bar for Allies and Partners.** The U.S. must signal to China and the ROK that its engagement with North Korea and the achievement of the U.S.-DPRK summit objectives of denuclearization and peace on the peninsula are not possible without tangible human rights improvements.
rights improvements. Congress must call on China to stop the practice of refoulement (sending back refugees in contravention of international law) and call on South Korea to stop suppressing NGO human rights activities at home.

Set the Broader Playing Field. A human rights agenda will be most effective as a global effort. The United States must re-energize the issue in the United Nations by seeking positive votes in the UN Security Council to debate North Korean human rights issues. The ultimate purpose of these actions might be to create a Helsinki-like process addressing North Korea integration into East Asia.

A Truly Different Policy
In the course of denuclearization diplomacy with North Korea over the past three decades, every U.S. administration has said it would not succumb to buying the same horse again. President Trump has broken past policy conventions by engaging in “top-down” summit diplomacy with a country where only one person makes decisions of consequence. The Congress can help the president live up to his advertising of a “very different” policy to North Korea by integrating human rights into the diplomacy in ways that support the goal of final and fully verifiable denuclearization.
Human Rights in the Middle East

The Long View

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For the last century, a duality has lain at the foundation of U.S. foreign policy. The U.S. government maintained robust relations with other governments, but it was helped by a not-so-secret weapon. The image of the United States as a cultural icon, an economic model, and a political beacon stood alongside the government channel as a force-multiplier of U.S. influence around the world, reaching deeply into public perceptions. The U.S. government did its part with traditional diplomacy and institutional support, but the government’s effectiveness was due in part to the fact the United States as a nation has long been a force on the world stage, independent of whatever power the government wielded.

The U.S. government has capitalized on this uniquely powerful duality by maintaining ties with governments while always keeping an eye on foreign publics as well. It was the U.S. government working with governments and the people that facilitated the peaceful end of the Cold War in Europe. It was working with governments and the people that helped spread prosperity and democracy in East Asia. From the days of decolonization after World War II to the fall of the Soviet Union, the U.S. government has been conscious of the power that the idea of the United States has around the world, and it has maintained a useful tension between working with governments while still being conscious of the United States’ impact on populations.

In a January 2019 speech in Cairo, Secretary of State Mike Pompeo abandoned that useful tension. He criticized the human rights performance of hostile governments (Syria and Iran) and voiced full-throated support of all the rest, which he termed partners and allies. He criticized the Obama administration for its “eagerness to embrace only Muslims and not nations,” but his concept of “nations,” consistently expressed throughout the speech, was not the broader understanding of nations that the United States has long maintained, of people and their rulers. In his construction, it was limited to governments.

There is an irony underlying all of this. A U.S. administration with an unprecedented amount of distrust for the workings of the U.S. government is seeking to double down on its
ties to Middle Eastern governments, which, in almost all cases, lack the honesty, efficiency, and efficacy of their U.S. counterparts. The concept of a “deep state,” rogue intelligence operations, officially sanctioned torture, bribery and corruption, executive meddling in the judiciary, and a host of other government abuses are both commonplace and tolerated in the Middle East. They are rare and prosecuted in the United States. Juxtaposing the administration's suspicion of one and affinity for the other is more than a little jarring.

But the speech also represented a stark departure from the empathy that the United States has brought to dissatisfied global publics for centuries. The Declaration of Independence is an intentionally universal document, proclaiming the right of populations to “alter or abolish” governments to which they do not consent, or which seem unable to “effect their Safety and Happiness.” It is not the prevalence of monarchies in the Middle East that has traditional given pause; instead, it is the rigged elections (when they take place), the commonness of political arrests, the prevalence of censorship, and the dysfunction of court systems that has troubled most U.S. officials. As a consequence, they have walked a middle line by maintaining close ties to governments while remaining open to legitimate popular appeals. U.S. diplomats strived simultaneously to help improve the governmental capacity of allies while also helping citizens improve their own capacity to promote change, working through nongovernmental organizations.

The goal was not popularity, and that is a good thing. There hasn’t been much. Approval of the United States is often in the low double-digits among the populations of key allies. Still, U.S. policy served to nudge governments and their publics toward a middle ground where each sought to be more accommodating of the other. The U.S. government has traditionally kept a distance from the region’s most oppressive regimes, and it has been publicly critical of abuses among allies and adversaries alike.

To be sure, there have been times when people inside and outside of the government have abandoned that balance. For example, in the late 1980s, the Middle East scholars Daniel Pipes and Laurie Mylroie argued that the United States should “tilt” toward the murderous and repressive Saddam Hussein as a counterweight to Iran.16 Iraq, they argued, had become “the de facto protector of the regional status quo” and was a potential partner. Six months before, the U.S. Department of State’s Human Rights Report had stated that in Iraq, “Antiregime activity is dealt with harshly, often by extralegal means, including torture and summary execution, employed by a large internal security police force and the intelligence services.” Looking back, the approach to curry favor with such a repressive regime—in order to counter another repressive regime—seems deeply misguided and doomed to failure.

And yet, that seems precisely the path that Secretary Pompeo’s speech advocates: In order to rally forces against Iran, friendly but repressive governments are unequivocally embraced as partners and allies, and the U.S. vision for the region is reduced to a game of checkers. Our friends are other governments, we need them, and we have no business second-guessing them. As an approach, it is one-dimensional, it yields quick results, and it is easy to keep score. But that doesn’t mean it’s right.

Admittedly, there is not much evidence that the United States has fundamentally changed a Middle Eastern government’s approach to human rights. Similarly, there is not much evidence that U.S. support for human rights has won it hordes of fans in the Middle East (or many other places for that matter). But it has not been for naught.

The sustained U.S. interest—among the government and the public—in human rights has affected the calculations of governments around the world, including in the Middle East. There is abundant evidence that the U.S. attention to human rights pushed governments to act in ways that they otherwise would not have, helped induce them to improve their governance, and made them somewhat more accommodating of demands from below. U.S. attention contributed to a Cairo court’s dismissal in December 2018 of charges against 43 NGO workers (Americans, Egyptians, and other foreign nationals alike) who were working to broaden participation in Egypt’s 2011 elections, and to the freedom from detention of dual nationals Mohamed Soltan and Aya Hijazi in 2015 and 2017 respectively. U.S. attention has helped shape the way the Saudi government has emphasized the rise of women’s rights in the Kingdom, as well as the way it responded to the October 2018 murder of U.S. resident and Washington Post columnist Jamal Khashoggi. In Jordan, which has an intimate security relationship with the United States and several regional allies, the annual U.S. human rights report is unsparing, nudging the Jordanian government to do things as diverse as improve prison conditions, ensure due process to the accused, and allow for free expression. It is true that the annual human rights reports, after now more than 40 years, continue to find violations around the world. Even so, it has shined a bright light of inquiry on suspect practices, and the U.S. government has been able to sustain—and even grow—an appreciation that it was not merely guided by narrow, immediate, and direct benefit.

Secretary Pompeo’s Cairo speech represented a deviation from a long U.S. tradition. It may be the beginning of a new trend, but if it is, it is hardly an improvement.
Since the late 1950s, every White House has framed its human rights agenda in sub-Saharan Africa idiosyncratically. During the Cold War, U.S. officials talked up decolonization and racism as human rights issues in part to court newly independent states, increase U.S. clout in multilateral settings, and compete with the Soviet Union. In the Bush, Clinton, Bush, and Obama administrations, U.S. officials elevated democracy and civilian protection as human rights tenets to showcase U.S. global leadership, increase opportunities for U.S. investment, and address the underlying drivers of extremism. President Trump’s narrower definition of relevant governance issues—namely, to counter waste and inefficiency and ensure value for the U.S. taxpayer—similarly is a reflection of his priorities to put U.S. interests first and distinguish U.S. foreign policy from China’s in sub-Saharan Africa.

The U.S. Congress and human rights activists have access to different tools to press for more U.S. engagement on human rights. Both should pay close attention to how the administration publicly talks about human rights because it provides a window into why and when the White House will act in defense of human rights. More importantly, it reveals what arguments may resonate with policymakers who express skepticism about the value of integrating human rights in U.S. foreign policy. Congress, of course, is able to act independently from the White House. It can leverage its authority to call hearings, issue statements, travel to afflicted regions, and strengthen legislation on human rights in Africa. The activist, on the other hand, must target Congress and the White House and may find it is more effective to mirror the White House’s emphasis on cutting waste and acting as a responsible steward for the U.S. taxpayer’s money.

The Role of Human Rights in President Trump’s Africa Strategy

In December 2018, national security adviser John Bolton warned that the United States “will not allow hard-earned taxpayer dollars to fund corrupt autocrats, who use the money to fill their coffers at the expense of their people or commit gross human rights
abuses.” His comments echoed the National Security Strategy, which vows that the United States will suspend aid rather than “see it exploited by corrupt elites.” The Administration has made South Sudan a test case for this approach. In May 2018, the White House stated that it will not continue in a partnership with leaders who are only interested in perpetuating an endless war characterized by ethnically-motivated atrocities.” Bolton doubled down, affirming that “we will not provide loans or more American resources to a South Sudanese government led by the same morally bankrupt leaders, who perpetuate the horrific violence and immense human suffering in South Sudan.”

U.S. officials have made similar comments about Sudan, saying that “it is absolutely unacceptable for security forces to use excessive violence to crack down on demonstrators, to use detention without charge, certainly unacceptable to use brutality, torture.” Special Assistant to the President and National Security Council Senior Director for African Affairs Cyril Sartor called these human rights abuses a “deal breaker” that would hinder the process leading to the lifting of Sudan’s designation as a state sponsor of terrorism, which is seen as a major obstacle to Sudan’s economic recovery.

While the administration’s approach has the potential to enshrine respect for human rights—particularly the avoidance of gross abuses—as a prerequisite for foreign assistance, it will face considerable hurdles to implement. In South Sudan, for instance, there are no easy alternatives for continuing to deliver life-saving assistance for South Sudan’s 4.4 million people. The U.S. government either will have to work with a venal government to reach the most people, establish an independent delivery mechanism that will cover fewer people while costing more, or halt assistance entirely and leave the South Sudanese people at mortal risk of starvation. This predicament will also surface when the administration tries to restrict its bilateral U.S. security assistance only to “nations that act as responsible regional stakeholders.”

As was the case during the Cold War and the post-9/11 atmosphere, the Trump administration may find itself stuck with autocratic regimes as key security and economic partners. The United States supports governments in the Sahel and Lake Chad Basin that have violated human rights and closed political space. For instance, Mali and Burkina Faso’s security services have committed extrajudicial killings, enforced disappearances and arbitrary arrests, and engaged in torture.

22. World Food Programme, WFP South Sudan Situation Report #234 (World Food Programme, 2018), https://docs.wfp.org/api/documents/a506c91542554d1e979abbcc2b50a1eb/download/?_ga=2.205425936.1682242995.1550874907-777988734.1550874907.
year.\(^{24}\) Niger’s government arrested civil society leaders and pursued criminal proceedings against leading opposition figures.\(^{25}\) Mauritania continues to fall short in its efforts to eradicate forced labor, including hereditary slavery.\(^{26}\) While the United States has ended trade benefits for Mauritania, it pledged to almost double security assistance to $111 million for the five governments as part of the G-5 Sahel Joint Force.\(^{27}\)

**The Way Forward**

When the United States talks about human rights, it reveals its overarching priorities and principles. When John Bolton pledged that the White House “will make certain that all aid to the region—whether for security, humanitarian, or development needs—advances these U.S. interests,” he opened the door for a dialogue on how human rights fits into the U.S. foreign policy calculus.

**Leading from the Hill, Reframing the Argument**

The U.S. Congress has a proud tradition of defending human rights in sub-Saharan Africa. Most notably, Congress in 1986 overrode President Reagan’s veto to impose sanctions on the apartheid regime in South Africa.\(^{28}\) It continued to affirm its commitment to human rights when it twice punished Nigeria for human rights abuses and its subsequent failure to hand over former Liberian president Charles Taylor to the Special Court for Sierra Leone to face charges of international crimes.\(^{29}\) Through the Leahy Laws, Congress requires the Departments of State and Defense to refrain from providing assistance to units involved in extrajudicial killings and other human rights abuses.\(^{31}\) In 2018, five U.S. senators traveled to Zimbabwe to signal U.S. interest in the country’s election.\(^{32}\) They subsequently convened hearings and reauthorized the Zimbabwe Democracy and Recovery Act (ZDERA) to update the framework for U.S. relations with the government of Zimbabwe.\(^{33}\) The U.S.

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Congress should build on this legacy, using statements, hearings, legislation, and official trips to insist human rights remain part of the U.S. foreign calculus.

The advocacy community, unlike Congress, has a tougher task to press for the inclusion of human rights in U.S. foreign policy. It may be advantageous to mirror the government’s framing to advocate for a closer alignment of human rights and foreign policy goals. While far from ideal, there is some merit to reshaping one’s arguments to match the administration’s foreign policy objectives to have greater effect.

Below are three ways that Congress and the advocacy community can cast human rights within the Trump framework:

1. **Promoting Prosperity.** In 2017, sub-Saharan African countries comprised nearly half of the bottom quartile of the Transparency International Corruption Perceptions Index.\(^{34}\) If the United States seeks to open markets for American businesses and improve the business climate, the U.S. government must stand firm against corruption and abusive government practices that make it difficult for the U.S. private sector to engage. For instance, several technology companies are struggling to invest in and have access to cobalt and other strategic minerals in the Democratic Republic of the Congo because of inhumane conditions and widespread child labor. Additionally, U.S. companies stand to lose significant revenue in countries that shut down the internet for political reasons. According to the Collaboration on International ICT Policy in East and Southern Africa (CIPESA), shutdowns in 10 sub-Saharan African countries eroded business confidence and led to deficits of over $235 million.\(^{35}\) U.S. companies are loath to invest in climates that suffer from instability and unpredictability, both frequent symptoms of corruption and widespread abuse.

2. **Strengthening Security.** The region’s governments are pushing its people into the hands of terrorist groups by indiscriminately harassing, detaining, or killing their citizens. According to a UNDP study on extremism in the region, 71 percent of respondents said they joined an extremist group because the government arrested or detained a family member or friend.\(^{36}\) If the United States aims to undermine extremist recruitment and weaken Islamic State and al Qaeda affiliates in sub-Saharan Africa, it must call out extrajudicial killings and abuse by the region’s governments. Moreover, the United States should not support several African Troop Contributing Countries (TCCs) because they have been involved in sexual exploitation and abuse scandals, undercutting their respective peacekeeping mission’s effectiveness.\(^{37}\)

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3. **Striving for Stability.** The region experienced an overall deterioration in the quality of almost all indicators of political and economic governance, according to a recent academic study. If the United States wants foreign assistance to disproportionally benefit states that promote democratic ideals, support fiscal transparency, and undertake economic reforms, it must invest more in democracy and governance. The most recent USAID data indicates that U.S. funding for governance and civil society programming in the region typically hovered around only $250-350 million a year, and in 2018, this sum was cut in half. Furthermore, the United States could increase its support for journalists who hold the government accountable and expose Chinese predatory behavior. In early 2019, Kenyan journalists uncovered a contract between Nairobi and Beijing that could result in Chinese ownership of the Port of Mombasa if Kenya cannot repay its loans from the Chinese-built Standard Gauge Railway. This type of reporting should be supported.

Addressing Human Rights Is Inherent to Success against HIV Worldwide

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The Context

Human rights have been part and parcel of the global response to the HIV/AIDS pandemic since the illness was discovered in 1981. Due to stigma and discrimination faced by those infected or affected by the virus in the earliest days and the high burden of the disease on often-marginalized populations, it has never been possible to speak about addressing HIV/AIDS without also discussing the human rights issues that help fuel the spread of the disease 40 years on. Respecting the individual dignity and human rights of every HIV patient is essential, but combating stigma and discrimination is also key to preventing infection and overcoming barriers that hinder service access, such as treatment. Current global goals, promoted by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and subscribed to by country and donor governments, including the U.S. government, include a human rights component. The world is organized around reaching the “Fast Track” goals to eliminate stigma and discrimination, dramatically reduce new HIV infections, and increase the numbers of people on antiretroviral treatment (ART). However, the world is off track to achieve these goals globally by 2020 and, without fundamentally addressing human rights barriers, there is risk that the pandemic could resurge out of control.

It has been four years since UNAIDS launched the Fast Track goals on World AIDS Day 2014. The Fast Track goals include the 90-90-90 goal to get 90 percent of those living with HIV tested and knowledgeable of their status, 90 percent who know they are living with the virus on ART, and 90 percent of those on ART virally suppressed; reduce new infections to 500,000 per year; and eliminate stigma and discrimination. UNAIDS’s “Communities at the Centre” report, released on the eve of the International AIDS Society’s July 2019 science conference in Mexico City, provides a reality check. As of the end of 2018, progress toward 90-90-90 stood at 79-62-53, meaning that while tremendous

strides have been made to increase the number of people on ART, overall, only 53 percent of those living with HIV are virally suppressed. We know this is crucial because those with undetectable viral loads are unable to pass on the virus\textsuperscript{42} to others.

With the advent of ART, global drug cost reductions, and new policies to treat all who test positive for the virus, the focus has been on the expansion of HIV treatment in recent years. While there have been significant increases in those on ART, the challenge in reaching the treatment and viral suppression coverage rates is that the denominator keeps increasing. New infections have not come down, especially for adults. Despite incremental declines in rates of infection each year, adult infection rates are stuck at approximately 1.7 million per year\textsuperscript{43}—far from the goal of 500,000 needed to break the pandemic.

The ability to reach the prevention and treatment targets is affected by a variety of factors, including infringements on human rights that hinder delivery of and access to services for marginalized populations who are typically most-at-risk for infection. The third Fast Track goal—eliminating stigma and discrimination—is intended to address some of the human rights constraints. Societal discrimination persists in many countries, as does institutionalized discrimination in the form of laws criminalizing certain behavior, such as homosexuality, sex work, and drug use. Such laws push populations into hiding and make it difficult or even criminal to reach them with HIV services. Rhetoric from political leaders condemning certain behavior and threatening individuals with prison or worse can amplify the legal restrictions or create a de facto policy.

At a time when more prevention services are needed to reduce new infections dramatically, laws and rhetoric have a chilling effect and hinder access to these vulnerable groups. More than 50 percent of annual new infections in 2018 occurred among key populations who are at much greater risk of HIV infection\textsuperscript{44} than those in the general population, which is a concerning proportional increase compared to recent epidemic demographics. Female sex workers are at 21 times greater risk, while transgender women are at 12 times greater risk, and people who inject drugs and men who have sex with men (MSM) are 22 times more at risk of infection. Many of these key population groups choose to avoid health care services\textsuperscript{45} due to stigma and discrimination, thus limiting opportunities to prevent and treat HIV and meet the overall Fast Track goals.

There are numerous examples where laws and rhetoric have fueled higher HIV rates as affected populations are driven underground and away from services. I was working in Uganda when the Parliament passed and the president signed the Anti-Homosexuality Act. Among other restrictions and penalties, the law threatened the chiefs of party of organizations providing services with extensive jail time and fines for “promoting homosexuality,” which could include providing HIV preventative messages and condoms. While the act was eventually overturned by the Constitutional Court, the ambiguity about how the law would be enforced affected public health services for the period it was law.

\textsuperscript{43} UNAIDS, Communities at the Centre – Global AIDS Update 2019.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
A more recent example comes from Tanzania, where in early November 2018, Paul Makonda, the regional commissioner of Dar es Salaam, announced the creation of an anti-gay surveillance squad charged with rounding up homosexuals. Sodomy is already illegal in Tanzania and punishable by up to 30 years in prison. Makonda’s announcement follows other anti-gay and anti-human rights rhetoric and policies from President John Magufuli and his administration since he was elected in 2015. In 2016, the government of Tanzania banned HIV/AIDS outreach and services to MSM, such as the distribution of lubricants that are core components of HIV prevention campaigns, including by partners supported by the U.S. President’s Emergency Plan for AIDS Relief (PEPFAR).

There have been other attacks on human rights in Tanzania such as forced pregnancy tests for secondary school students that have resulted in pregnant girls being banned from attending school and returning postpartum. Staying in school is proven to be protective for girls against HIV infection, which is particularly important because adolescent girls and young women are up to 14 times more at risk for HIV infection than boys their same age in some countries. Societal and gender norms around girls’ education and limitations on women’s rights and access to sexual and reproductive health services, gender-based violence, and restrictions on economic opportunity add to the susceptibility.

The implications of these policies can be seen across the globe. The fastest growing regional epidemic in the world is in Eastern Europe and Central Asia, driven by crackdowns in Russia on MSM and injection drug users that drive those populations into the shadows and prevent them from accessing prevention services.

Beyond overt targeting of key population groups, legislation in many countries increasingly restricts nongovernmental organization (NGO) and civil society activity and limits free speech, press, and organization. As the work of CSIS’s International Consortium on Closing Civic Space highlights, these restrictions on vulnerable groups and civil society organizations that seek to advocate for them, along with attacks on journalists, are on the rise globally. These restrictions have an impact on the ability of U.S.-supported health programs to operate freely and meet the needs of affected populations. The challenge of reaching marginalized groups is likely to grow, not diminish, particularly if the United States does not exercise leadership.

**U.S. Leadership**

One would expect the U.S. government to be at the forefront of challenging these laws, policies, and rhetoric. U.S. leadership in the global fight against HIV/AIDS has been transformative and the U.S. government remains the top funder of global HIV programs.

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through PEPFAR and the Global Fund to Fight AIDS, Tuberculosis, and Malaria (the U.S. government supports approximately one-third of its funding). U.S.-supported programs have largely driven the increases in treatment access and preventive services over the last 16 years. To its credit, the U.S. government has supported many activities to advance human rights for the benefit of HIV goals and specifically increase access and services for key population groups through both PEPFAR and the Global Fund.

PEPFAR states on its website that it “stands firmly and unequivocally with and for key populations.” PEPFAR created a Key Population Investment Fund (KPIF) in 2016 to “address the underlying issues that prevent people from accessing HIV services, including formal/informal fees, human rights violations, stigma, discrimination, and violence.” According to its July 2018 fact sheet, PEPFAR believes “When any person is stigmatized or unable to access services due to discrimination, the health and dignity of everyone in the community are threatened and the epidemic continues to expand rather than contract.” PEPFAR faced criticism for letting the KPIF languish for two years, but promised to spend more than $360 million dollars in 2019. In addition, PEPFAR supported the DREAMS (Determined, Resilient, Empowered, AIDS-Free, Mentored, and Safe) initiative targeting reductions in new infections among adolescent girls and young women in 15 African countries, who are the most-at-risk population in Sub-Saharan Africa.

The United States also has a new plan to end the AIDS epidemic in the United States by 2030, which President Trump announced his February 2019 State of the Union address. As the first major domestic initiative in 30 years, the plan targets 48 high burden counties, two cities (Washington, D.C., and San Juan, Puerto Rico), and seven states with rural epidemics focuses new attention on HIV. Progress against HIV in the United States has stagnated over the last five years. The challenge is that the U.S. HIV epidemic primarily affects black and Latino MSM and other often-marginalized groups who face societal stigma and discrimination especially in the seven Southern states.

Despite these positive domestic and global HIV initiatives, there are overarching concerns about how broader U.S. policy or inaction regarding human rights may affect the new plan and PEPFAR’s abilities to reach its target populations. Under the Trump administration, we have seen overt undermining of human rights protections as well as ignoring of alarming abuses occurring in other countries that would have triggered reactions from previous administrations. Some of these do not have direct health ramifications, but others do, such as the Trump administration’s reinstatement and expansion of the Mexico City Policy. Policies preventing transgender individuals from serving in the U.S. military and removal of protections for transgender students under Title IX not only discriminate
against Americans but also send\textsuperscript{55} signals to other governments that they will not be condemned for discrimination against such populations.

The White House did not directly address the recent controversy in Tanzania affecting the health services to MSM, although the U.S. Department of State’s spokesperson did issue a statement on behalf of the U.S. government stating deep concern over “escalating attacks and legislative actions by the government of Tanzania that violate civil liberties and human rights, creating an atmosphere of violence, intimidation, and discrimination.”\textsuperscript{56} The statement said the U.S. government is “troubled by the continued arrests and harassment of marginalized persons, including lesbian, gay, bisexual and transgender people, and others who seek to exercise their rights to freedom of speech, association, and assembly. Legislation is being used to restrict civil liberties for all.”

However, the statement did not address the likely effects on health and HIV/AIDS of the regional commissioner’s rhetoric, including on U.S.-supported programs. Nor was there an associated statement from the White House condemning the actions like we have seen previously, such as President Obama’s condemnation\textsuperscript{57} of Uganda’s Anti-Homosexuality Act in 2014. There also have not been any statements by members of Congress condemning the Tanzanian actions. However, we have seen action by other governments and multilateral institutions. Tanzania’s second-largest donor, Denmark,\textsuperscript{58} announced it was withholding nearly $10 million in development assistance to Tanzania, and the European Union withdrew its ambassador.\textsuperscript{59} The World Bank suspended visits to the country as well as a $300 million education loan because of the ban on pregnant girls attending school.

**Opportunities for the United States**

The U.S. government and the Trump administration have a tremendous opportunity to lead the push toward the achievement of the Fast Track goals over the next two years. It is an opportune time to demonstrate financial and moral leadership because the United States will host the July 2020 International AIDS Conference in San Francisco and Oakland (AIDS 2020). The conference will put U.S. policies and funding front and center, including highlighting how U.S. government leadership on the underlying human rights issues has eroded in recent years. To be successful before the 2020 deadline, the Trump administration and Congress will need to directly address the human rights issues affecting domestic and global HIV trends, which will help sustain its leadership position heading into AIDS 2020.


Human rights have to be a core tenant of sustained U.S. HIV leadership and funding, especially when it comes to preventing new HIV infections, which is going to make or break our success domestically and globally. We are not going to be successful if we don’t reach those who are most at risk of infection. That means tackling head-on the societal and institutional stigma, discrimination, and criminalization that stand in the way to reaching those individuals. The United States can strengthen its leadership on human rights and HIV as follows:

1. The White House should take action against human rights violations that undermine PEPFAR and the Global Fund’s HIV activities, including through written and verbal statements, diplomatic engagement in Washington and in the host country, and possibly reductions in funding in extreme cases.

2. The administration must work with state and local governments and officials to address stigma and discrimination, particularly in the Southern United States, to ensure that the new domestic plan is successful in preventing and treating HIV among MSM and other marginalized individuals.

3. The president should nominate and fill two critical vacancies at the U.S. Department of State: the Assistant Secretary of State for Democracy, Human Rights, and Labor and the Special Envoy for the Human Rights of LGBTI Persons.

4. PEPFAR’s KPIF must be implemented successfully through the U.S. Agency for International Development (USAID) and Centers for Disease Control and Prevention (CDC) in 2019 as promised.

5. Members of Congress should look for opportunities in legislation, hearings, and public statements to keep a focus on human rights and hold the executive branch and other governments accountable for actions and activities that restrict access to essential health services. Congress also has an oversight role in ensuring UNAIDS is at the forefront pushing for human rights protections and service access for all populations affected by the virus.
U.S. Defense Policy and Human Rights

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The realities of the twenty-first century security environment increasingly highlight challenges to the frameworks and tools the United States historically has used to ensure that its defense policies and operations are conducted in accordance with U.S. values. These values include the protection and promotion of human rights and international humanitarian law (IHL). The U.S. Congress should take a series of steps to press the U.S. administration to reinforce adherence to human rights and IHL and to improve its oversight over U.S. defense policy and military operations.

Challenging Environment

Four factors, in particular, may imperil the U.S. commitment to human rights in pursuit of its defense and national security objectives.

First, strategic competitors such as China and Russia do not play by the same rule set as the United States. China and Russia are willing to sell arms and broker security partnerships with other countries while blind to their type of governance or respect for human rights. Russia has deliberately struck civilian targets in Syria in support of Syrian president Bashar al-Assad’s efforts to retake and consolidate territory. China is conducting large-scale incarceration and persecution of its Muslim Uyghur population.

Current U.S. national security and defense strategies frame competition with China and Russia as the main drivers of U.S. policy. Even if the United States chooses not to play at the same normative level as these competitors, the risks to a principled defense policy are subtler. It may be tempted to overlook or enable the gradual erosion of principles and norms that undergird human rights or international humanitarian law in order to further U.S. competitive goals. The temptation may be greatest in areas of the world where China and Russia currently may have an upper hand or more leverage with local partners. Local partners may seek to highlight to the United States that dealing with China and Russia is far easier, increasing the pressure on the United States to short-circuit its assessment, review, and oversight processes that are intended in part to ensure human rights principles are upheld.
Second, non-state actors write their own rules, challenging the United States in counterterrorism and other military operations. The Islamic State has notoriously used civilian targets as shields, including hospitals and schools, and implanted improvised explosive devices to booby trap the area. The Islamic State’s embedding among civilian populations and structures severely complicated U.S. and coalition operations to eliminate the Islamic State’s territorial control. It also illuminated several of the dynamics the U.S. military will have to contend with in future urban warfare environments. The coalition approach involved local Iraqi and Syrian partners conducting ground operations and intelligence with small teams of U.S. advisers, which was combined with coalition air strikes. U.S. policy pressure to accelerate clearing the Islamic State’s territorial control may have led to operational calculations that resulted in an inadvertent lowering of controls for civilian harm. Airstrikes in Mosul and Raqqa may have been the most precise in history but also leveled significant portions of both cities, which will take decades to rebuild. They also left behind considerable explosive remnants of war (ERW). The Islamic State’s embedding in civilian targets certainly complicated the coalition’s campaign, but questions remain as to the calibration of policy and operations to protect civilians. Significant differences between third-party sources and coalition sources in counting civilian casualties highlighted these concerns. International efforts to document civilian casualties and remove ERW are ongoing.

Third, the United States is increasingly relying on the “by, with, and through” model of using allies and partners to secure U.S. security objectives. Congress’s concern about the U.S. partnership with Saudi Arabia in the latter’s intervention in Yemen highlights this challenge. While common values undergird U.S. alliances in Europe and East Asia, other local partners may not uphold good governance, rule of law, and respect for human rights standards. This becomes especially difficult to navigate when the United States is partnering with non-state actors because the legal, policy, and operational toolset for incentivizing partners to abide by human rights principles is narrower or still undefined. Even in cases where the United States and its partner share clear political interests and threat perceptions, the partnership may nonetheless present risks as a function of institutional or internal political variables (especially in so-called fragile states). If left unattended or unanticipated, these can quickly descend into direct challenges to human rights principles that cannot be ignored and can undermine any initial peace established.

Fourth, embracing emerging technologies is vital to the United States maintaining its global, competitive edge but must be designed for safety and ethical considerations. The U.S. administration’s new artificial intelligence initiative notes the importance of ensuring safety, security, civil liberties, privacy, and confidentiality protections. Policies and defense investments pursued in support of this effort must avoid repeating the hard lessons of drone warfare. The United States came relatively late to publicly disclosing its legal and policy frameworks for lethal drone use after years of developing and using the technology, including how it calibrated appropriate use to minimize civilian harm.


Concerns remain about the foundational analysis and process to ensure civilian casualties are minimized in drone warfare. Better and earlier transparency could help prevent civilian casualties.

These factors test U.S. resolve to adhere to its principles, including upholding strong commitments to the protection and promotion of human rights in the conduct of defense policy and military operations.

**The Value Proposition**

Reinforcing the principled foundations of U.S. defense policy and military operations will strengthen U.S. leadership and thus its ability to pursue its objectives. U.S. partnerships with other countries are strongest when they are undergirded by common values (e.g., the North Atlantic Treaty Organization (NATO) alliance). Upholding human rights standards is a core tenet of professionalism in the U.S. military. U.S. foreign partners are more capable and achieve more enduring results when they are professionalized to respect human rights principles.

U.S. failure to uphold human rights in pursuit of its defense policy and military operations makes it easier for competitors and adversaries to point to U.S. hypocrisy, which undermines U.S. leadership potential and the ability to forge and retain partnerships and alliances. It also undermines military professionalism, capability, and effectiveness that erodes competitive advantage, internal morale, and perceptions among the U.S. public. Finally, when the United States or its partners fail to abide by human rights standards, abuses may actually help drive more conflict in the long-term.

**Where Congressional Action Is Most Needed**

Given the array of challenges to the principled basis of U.S. defense policy and military operations, congressional action is most needed in the following areas:

*Competition.* As Congress reviews U.S. policies and budget requests to resource competition vis-à-vis China and Russia, it should seek to buttress a values-based approach as an integral aspect of those strategies. To complement the Department of State and U.S. Agency for International Development programming to reinforce good governance and human rights, Congress should review, authorize, and resource the Department of Defense (DoD) conduct of information operations to expose how China and Russia are undermining human rights, civil liberties, and sovereignty globally and among their own populations.

*Counterterrorism.* Counterterrorism operations to degrade non-state actors such as the Islamic State and al Qaeda affiliates must similarly be nested in a broader approach that incorporates information operations to expose the illegitimacy and predatory nature of these actors. They should be tied to a broader political strategy that reinforces principles through good governance and human rights programming within local, legitimate authorities to secure operational gains over the long term in ways that local authorities can sustain.

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Emerging Technologies. Vital to the pursuit of this values-based approach to state-based competition and counterterrorism is the United States continuing to hold itself to the highest possible standards in its own policies and operations. When harnessing the potential of emerging technologies to build competitive military capabilities, the United States must include policy frameworks; program design; and safety, oversight, and transparency measures to ensure responsible use. Civilians with human rights and ethics expertise should be included in these processes to drive better and more credible outcomes.

Civilian Casualties. In addition, DoD is implementing the requirements of the FY2019 National Defense Authorization Act to improve its policy and oversight of minimizing civilian casualties. In early February, DoD submitted its required report to Congress on its development and implementation of its new policy on civilian casualties. Late last year, DoD appointed Principal Deputy Under Secretary of Defense for Policy David Trachtenberg as the senior civilian official responsible for overseeing implementation of the new policy. These promising steps forward must be matched by rigorous implementation, oversight, and resourcing.

Security Partnerships. The legal basis and mechanisms underlying U.S. security partnerships with foreign countries in principle ensure that those countries adhere to and promote human rights. These safeguards include IHL, the Leahy Law, and NDAA-mandated human rights training for all partners receiving security cooperation. However, in practice, the United States unevenly prioritizes human rights in security partnerships. For example, Leahy vetting is not required for Foreign Military Sales (FMS) or Direct Commercial Sales (DCS) of military equipment and does not apply to non-state actor security partnerships. Instead, human rights considerations are part of the routine policy review that the U.S. government conducts before approving FMS or DCS transactions, at the discretion of policymakers.

As seen in previous legislation and recent objections to continued U.S. support for the Saudi-led coalition’s operations in Yemen, members of Congress are increasingly setting limits on U.S. security partnerships due to concerns about civilian harm. New approaches should incentivize compliance within the U.S. system and with security partners, leveraging assessment, monitoring, and evaluation tied to outcomes that include governance, rule of law, and human rights goals.

Security partnerships should create space for adaptation based on a continual assessment of institutional and environmental risks. Greater public oversight and constraints also can help preserve the legitimacy of security actors over time and through significant shifts in the political landscape. Partnerships should be assessed in terms of the characteristics and institutional culture of the partner force; the role of the partner force relative to the country’s political elite or governing bodies; the relationship of the force with its own civilian population; and the odds and scenarios under which a partner’s security forces, especially the military, may be deployed internally to contend with crises. Once assessed, the United States should continually adapt its arrangements accordingly and in collaboration with the partner, with safeguards, clear expectations of compliance with international law, and, where necessary, an exit strategy.
Recommendations for Congress

Congress should take the following actions to protect and promote human rights in U.S. defense policy and military operations.

- Press the U.S. administration to prioritize and fully resource programming that advances good governance, human rights, and humanitarian principles;
  - U.S. comparative advantage rests in large part on its value system; building resiliency; buttressing sovereignty; and promoting liberty, freedom, and forms of governance similar to our own in regions where China and Russia seek to compete—as this strengthens our alliances.
  - This includes both information operations that expose competitors’ disregard for human dignity and an affirmative set of policies and programming that advance human rights.
- Require via the NDAA that defense investments in emerging technologies require public disclosure of legal and policy frameworks to guide their safe and principled use and to minimize civilian harm;
- Ensure via the FY2020 NDAA and appropriations that DoD has the necessary resources to implement its policy and processes for minimizing civilian casualties, as per the FY2019 NDAA;
  - This should include requiring independent studies of potential causes of disparity between third-party public estimates and official government estimates of civilian casualties resulting from U.S. operations as well as collecting lessons learned from urban operations and security partnerships to inform future policy.
- Make U.S. arms transfers contingent on compliance with international humanitarian and human rights law;
- Require the integration of Leahy vetting and broader human rights criteria into assessment, monitoring, and evaluation planning and process for both DoD and State security cooperation and security assistance;
  - Integrating these requirements will help provide a holistic picture of the disposition, context, and trajectory of U.S. security partnerships.
- Require Leahy vetting for Foreign Military Sales and Direct Commercial Sales;
- Ensure that funding for civilian harm mitigation capacities are included in defense appropriations legislation; and
- Continue to request public reports on the IHL and human rights conduct of U.S. partners.
Human Rights and U.S. Foreign Policy

The Use of Torture

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The late senator John McCain spoke on the floor of the U.S. Senate multiple times against the use of torture as not only conflicting with U.S. national values but also with U.S. national security interests. Yet, we have been through a roller-coaster of different administrations insisting that they are abiding by the legal prohibition against the use of torture or that “waterboarding” and other “enhanced interrogations” do not constitute torture or that extraordinary circumstances justify its use.

This is not a new issue: one only has to look at the Eighth Amendment to the U.S. Constitution which reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Traditionally, the United States has disavowed the use of torture and other cruel and unusual punishment. It is the rule accepted as law in our own country. A variety of Supreme Court rulings, at least from 1879 on, underscore that there are punishments and treatment of prisoners that are unacceptable regardless of the objective because they violate the Eighth Amendment. With respect to the treatment of prisoners of war, George Washington stated clearly, “treat them with humanity.” Lincoln said even more definitively, “Military necessity does not admit of cruelty . . . nor of torture to extort confessions. . . .”

Unfortunately, there have been numerous exceptions in practice, and each time they occur, as Senator McCain stated, they demean this country, damage our image and our interests, and increase risks to our own troops.

At least as important is the knowledge that the gross violation of individual human rights and of humanitarian law—particularly the use of torture—constitute a major element of

internal and international conflict and a major obstacle to reconciliation in the aftermath of conflict.

Two days after his inauguration, President Obama signed Executive Orders on detention and interrogation policy with 16 generals and admirals standing beside him. Those orders directed the closing of the Guantanamo Base detention facilities and perhaps most importantly revoked Executive Order 13440, signed by President Bush. The Bush executive order had reinterpreted Common Article 3 of the Geneva Conventions in order to permit harsh interrogations, waterboarding, and other measures which previously were barred because they constituted torture. Guantanamo, of course, remains open today.

A Justice Department memo of the time, sought to justify the use of waterboarding and other such interrogation measures in the aftermath of 9/11 and also to justify removing prisoners to other countries where the use of torture was not specifically prohibited.

That legal framework harkens back to the Mad Hatter in Alice in Wonderland: “If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn’t. And contrary wise, what is, it wouldn’t be. And what it wouldn’t be, it would. You see?”

And thus, according to the Justice Department memo, what had been torture no longer was because that which had constituted torture no longer did. You see?

Human rights advocates argue that the use of torture is always illegal—not permitted for extreme circumstances, not for a temporary period, not for prisoners of war, not for terrorists, not for enemy non-combatants, not in Guantanamo, not in Abu Ghraib, not in Bagram—nowhere, no time, no one.

Let me be clear. Waterboarding is torture, as are other harsh interrogation methods: placing someone’s head underwater to the point of asphyxiation is “cruel and unusual” and it is, as former attorney general Eric Holder testified, “torture.” The attorney general stated in his confirmation hearing, “If you look at the history of the use of that technique, used by the Khmer Rouge, used in the Inquisition, used by the Japanese and prosecuted by us as war crimes. We prosecuted our own soldiers for using it in Vietnam. . . . waterboarding is torture.”

Yet, just last year, former vice president Cheney acknowledged having supported those harsh interrogation techniques, including waterboarding, and argued for their continued use. And we know that President Trump has asserted that torture is effective, contrary to most professional soldiers, including former defense secretary James Mattis. The only good news regarding the statements from President Trump was that he acknowledged that for such interrogation methods to be used, the law would need to be changed.

The Geneva Conventions, particularly Common Article 3, outlaw torture. Our military officers traditionally have been the strongest supporters of the Geneva Conventions and Common Article 3 because adherence protects U.S. soldiers as well.

Beginning with Article 5 of the Universal Declaration of Human Rights, the post-World War II collective effort at prevention states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 7 of the International Covenant on Civil and Political Rights (ICCPR) restates that prohibition.

Adopted in 1966 by the UN, it was not until 1977 that President Jimmy Carter signed the ICCPR, which the United States had been instrumental in drafting, and submitted it to the U.S. Senate for ratification. It was finally ratified in 1992 and signed by President George H. W. Bush, with the United States becoming party to those human rights obligations on June 8, 1992.

The clearest international and domestic legally binding commitment for the United States in force today is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

That treaty defines, specifies, and details the obligations on state parties, including the United States. Both Democratic and Republican presidents supported its coming into force, from its drafting in 1977, its adoption by the UN in 1984, signature by President Reagan in 1984, submission for ratification to the U.S. Senate by President Bush and signature by President Clinton of the ratified treaty on October 21, 1994, followed by the enactment of implementing legislation (18 U.S.C. 2340) making it part of the U.S. criminal code.

It was under that statute that federal prosecutors successfully prosecuted the son of Liberian dictator Charles Taylor, who was sentenced to 97 years in prison for torture carried out in Liberia. There are dedicated career civil servants working in the Office of Special Investigations in the Justice Department’s criminal division and in the Human Rights Division of Immigration and Customs Enforcement (ICE) in the Department of Homeland Security, and in the Global Criminal Justice Bureau of the Department of State who make a career out of pursuing war criminals, human rights violators who have gotten into the United States, and those, like “Chuckie” Taylor, who torture. Non-governmental organizations (NGOs) also played a significant role in helping to find victims who were willing to testify against Taylor.

If those actions represent the United States being true to the best in its history, there is another, darker history of exceptions where torture and other cruel and inhuman treatment occurred—going back to the wars against Native Americans, to instances of abuse in Vietnam, to maintaining relationships during the Cold War with military regimes. The last often included the training of police forces or military units of those regimes.

71. General Assembly Resolution 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, introduced December 10, 1984, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx.
whose graduates then were involved in torture—whether in Greece under the colonels or in the military dictatorships of Argentina, Chile, Paraguay and Uruguay, Nicaragua, Guatemala, the Philippines, Indonesia, and South Korea.

So, where do we stand today in the aftermath of rendition and “enhanced interrogations” by the Central Intelligence Agency (CIA) in this century, actions which came nearly eight years after the United States became a party to the UN Convention Against Torture?

The first remedy to the disclosure of abuses by U.S. forces in Iraq and Afghanistan was the adoption in 2006 of amendments to the Army Field Manual in the Detainee Treatment Act. These amendments prohibited any member of the U.S. military, but not specifically including the CIA, from using interrogation methods not approved in that manual or inflicting cruel and unusual punishment on anyone in U.S. custody.

A second was the classified report issued by the Senate Select Committee on Intelligence on the CIA’s “Detention and Interrogation Program.” This was accompanied by an unclassified summary of findings and conclusions. The unclassified portion released in December 2014 was unambiguous in its condemnation of the “program of indefinite secret detention and the use of brutal interrogation techniques in violation of U.S. law, treaty obligations, and our values.”

In 2015, concerned about future administrations and in keeping with the recommendations that emerged from the Senate study, senators Diane Feinstein and McCain submitted an amendment in the National Defense Authorization Act (NDAA), now section 1045 of PL 114-92. This prohibits any U.S. government agency, including the CIA, from using any interrogation methods that would be barred by the Army Field Manual. While the criminal code adopted following the ratification of the Torture Convention should be sufficient to bar any and all torture by U.S. government personnel, the Senators argued that following the CIA actions after post-9/11, it needed to be specifically prohibited by law. In that regard, one can still worry that the Department of Homeland Security and the FBI are specifically excluded from the provisions of the Feinstein/McCain amendment with respect to not being limited to interrogation methods of the Army Field Manual. They remain bound, however, by the Torture Convention and by the U.S. criminal code and thus would be liable to criminal prosecution for using methods constituting torture and cruel and unusual punishment.

The issue of torture returned to the headlines with the nomination last year of Gina Haspel for director of the CIA. She was a career intelligence officer whose alleged involvement in rendition and the earlier CIA program of “enhanced interrogations” generated high tension. Finally, she made the statement that, even if directed by President

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Trump, she would not permit the CIA to return to the use of torture. And she said that included waterboarding. That commitment was critical to her confirmation by six votes, with most Democrats and three Republicans opposed.

Which brings me to the issue of impunity. The Torture Convention not only prohibits tortures and other cruel and unusual punishment, but Article 7 also calls for torturers to be prosecuted or to be extradited for prosecution.

We have seen in various instances the argument put forward that torture should be allowed, at least when there was “a ticking bomb” for which information was critical to find and disarm it. As many CIA and military analysts and psychiatrists have written, information produced through torture is often unreliable because it is produced by someone willing to say anything he or she thinks you want to hear in order to halt the pain. In the Obama administration, almost all of those deemed responsible for torture were given immunity by executive order if they had been following the “permission slips” issued by the Justice Department as to what was permitted under “enhanced interrogation” procedures. After the Holder Justice Department investigated two cases involving prisoners who died after torture, the Department declined to institute any prosecution.

Thus, no one in the U.S. government was ever prosecuted for carrying out abuses that nearly everyone agreed constituted torture and thus were prohibited under U.S. law.

As a result of torture, some terrorists have not been prosecuted. The top Bush administration official in charge of deciding whether to bring Guantanamo Bay detainees to trial concluded that the U.S. military tortured a Saudi national who allegedly planned to participate in the September 11, 2001 attacks. Susan J. Crawford in her first interview after being named convening authority of military commissions by Defense Secretary Robert M. Gates in February 2007 said, “His (Mohammed al-Qahtani’s) treatment met the legal definition of torture. And that’s why I did not refer the case for prosecution.” He remains in custody in Guantanamo.

However, the question remains why she did not recommend the torturers for prosecution or court-martial. The Armed Services Committee should request information from the Defense Department as to whether, if such findings occur in the future, prosecutions of civilian officials or court-martial proceedings of military officers would follow. For anyone who has known someone who has undergone torture, the impact on their lives is unquestionable, even years afterward. As you talk with the victims, it is seared into the listeners’ memory as well, even more so when the torture has been so recent that the victims still bear the physical marks of the torture they have endured. It is no wonder that the late senator McCain was a persistent opponent of its use.

78. Ibid.
79. Ibid.
In April 1974, as a member of Senator Ted Kennedy’s staff, I was sent to Chile by the Senate Judiciary Committee to investigate the human rights abuses, which had been committed by the military junta there. The Pinochet regime believed that the ends justified the means and guaranteed our delegation access to prisoners.

I had access to a house in Calle Agustinas where doctors who had worked in Chile’s Ministry of Health were held and tortured, a detention center run by military intelligence in Calle Londres, a basketball arena where virtually all of the 140 prisoners previously had been tortured, and a cell in the Santiago penitentiary where a dozen military officers were literally stuffed—all having suffered brutal treatment. That cell held the general whose daughter, Michelle Bachelet, served two terms as president of Chile and now is the UN high commissioner for human rights. Her father was held in that cell before his death following torture two months earlier.

When I returned to Washington, I wrote a summary memorandum to Senator Kennedy along with a much longer report. The paragraph on torture reads: “Despite junta assurances, and despite a very clear memorandum stating that mistreatment of prisoners is not to be permitted, torture continues. Not only were we told by 8 of 10 detainees held in the basketball stadium that they had been tortured during interrogation, but we saw two young men who had been tortured as recently as three and five days earlier.”

“One had fingernails swollen and fingertips burned from matches and needles inserted. Both had wrists rubbed raw from being hung for hours, and both were black and blue from being beaten. They also said they had been tortured with electric shock during the interrogations. In all cases where we spoke with detainees—whether they were run by the army, navy, or military intelligence—torture accompanied interrogations.”

The Senate held hearings after that trip, and bipartisan support resulted in amendments halting all military and government aid to Chile. We also secured the paroling into the United States of some 400 political prisoners from some of the jails we visited.

The United States must hold true to the historical principle of respecting the dignity of individual human beings, even of those who hate us. In doing so, the United States best preserves its ideals, best promotes its interests, and best protects its security.

There are three paths that need to be pursued in attempting to prevent torture in the future, and they all relate to ending impunity for the torturers and for those who authorize that torture.

First, we must seek to strengthen those national and international institutions whose responsibility is to monitor and enforce the Convention against Torture. In every instance, they should be urged to publicize the names of the torturers. Congressional hearings should be held with national and international witnesses, including the UN special rapporteur on torture, to recommend what other actions should be taken to hold torturers accountable.

Second, there is a need for continuing efforts by human rights groups, civil society, the press, and public officials to publicize the use of torture by any country, including our own, and those who carry out those abuses. Where the allegations involve U.S. officials, investigations should be undertaken by the Justice Department or, where Justice Officials
are involved, by a special prosecutor. Congress should condition Justice Department funding on instituting that procedure.

Third, if there is a path that most needs to be explored more effectively, it is how to reduce the level of impunity for those who are complicit in the use of torture. An internal Justice Department report on the conduct of senior lawyers who approved waterboarding and other harsh interrogation tactics raised serious legal questions regarding their conduct. At a minimum, the report noted they may have violated Justice Department professional standards.

The American Bar Association should formally declare that issuing opinions that flagrantly conflict with customary international law, such as opinions permitting torture, is unethical and inconsistent with the standards that one expects of members of the bar.

The lawyers who justify this and the torturers themselves should be held accountable. Medical professionals and scientists who use their professional skills to support torture—to judge that the body of a prisoner will take more—violate their oaths and could be held accountable by their professional associations.

Hopefully, the 2015 legislation, the Haspel nomination hearings, and the condemning of torture by military officers will spell the end to an inglorious chapter in our national history.
Addressing the Root Causes of Migration to Strengthen National Security

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Watching people move freely on makeshift rafts across a river separating Guatemala and Ciudad Hidalgo in Mexico, it is easy to imagine how migrants find themselves in precarious situations. Many travel with only what they can carry on their backs. Many travel with young children on their hips. Many travel in the shadows.

U.S. policy on the rights of migrants—especially irregular migrants like those crossing into Ciudad Hidalgo and moving further north—has been inconsistent at best. Both political parties have at times called for comprehensive reform that would include greater legal migration pathways, but these discussions always have a way of devolving into reactionary measures rather than true efforts to address why migrants leave and how to regularize the pathways they take. Even in the absence of the broader reforms needed to regularize migration pathways, the United States can and should take steps to address the root causes of migration. However, the Trump administration’s recent efforts to cut U.S. foreign aid to the Northern Triangle do exactly the opposite; the programs they are targeting for cuts address precisely the governance, violence, corruption, poverty, and other issues that are at the roots of migration. A previous increase in U.S. assistance to address these issues led to a drop in the murder rate in several Northern Triangle countries, suggesting initial success. The aid cuts will damage new leaders in the region who genuinely seek to address the systematic abuses by gangs and endemic poverty that drive their citizens to flee. By limiting legal pathways and by refusing to address root causes, the United States

is thus failing to address why migrants leave, failing to address what happens to them in transit, and, in doing so, failing to protect its own national security.

Indeed, not only will the current U.S. approach make it impossible to address the root causes of migration, but it will also render futile U.S. efforts to diminish human trafficking and organized crime. Shutting down legal pathways to migration simply pushes people into the shadows and the hands of traffickers, rather than stopping their movement.

If root causes of migration are not addressed, and legal pathways for movement are not available to vulnerable people who see no other choice but to leave home, they will put themselves at great risk out of desperation. And it is worth considering how their journey through the shadows ends up strengthening nefarious networks that pose great risks to U.S. national security.

Evidence suggests that increasing legal pathways increases the likelihood that migration becomes more safe, orderly, and regular. In contrast, a reduction in legal pathways only pushes people—determined to move at all costs—into the shadows. As such, irregular migration can (and often does) lead to the repeated violation of vulnerable people’s human rights while strengthening actors engaged in human trafficking and other illegal activities. These actors are both a threat to migrant safety and a threat to our national security.

Migrant smuggling is among the most profitable illicit activities in the world. Just two of the principal smuggling routes generate around $6.75 billion a year for criminals. Such profits have led to increasing organization, sophistication, and transnationalization of migrant smuggling networks. Strengthened illegal smuggling networks mean that migrants—like the Honduran family in Mexico and those that follow them—bear the brunt of human rights violations, including violence and abuse, rape, theft, kidnapping, extortion, and trafficking in persons. But of course, strengthening such networks also has implications for U.S. citizens and U.S. security, as these same groups also smuggle drugs and weapons and are often tied to gangs.

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Irregular migrants are particularly vulnerable to modern slavery, both in terms of sex trafficking and compelled labor. The “fight against modern slavery is thus integrally related to global initiatives to promote orderly, safe, and regular migration,” according to the International Labour Organization. Even if not enslaved, migrants are often the subject of abuse and other human rights violations, especially in the informal economy where most search for income opportunities. Since they enter these opportunities through irregular means, they are often exposed to difficult working conditions, exploitation, and other abuses without legal protection. The protection of human rights can contribute to the empowerment and social protection of marginalized groups like migrants, not to mention being an effective tool for poverty reduction. Not protecting those rights can have the opposite effect.

Recent U.S. border policies restricting regular migration have increased the vulnerability of smuggled migrants and thus made them (especially women) easy targets for sex traffickers who often cooperate with smugglers. The sex trafficking market works on the basis of supply and demand, and the increased criminalization of mobility is at least partially responsible for an increase in victims of sex trafficking. The Coalition Against Trafficking in Women (CATW) found that 73 percent of interviewees had been physically abused at least once by traffickers.

In addition to these human rights violations, migrant trafficking networks are often involved with or linked to groups specializing in other illegal activities. According to a 2018 global study by the United Nations Office on Drugs and Crime, “smuggling networks have links with large violent criminal organizations that they have to pay for the ‘right’ to safe passage for migrants, for example, along the border between the United States and Mexico.”

Several studies and scholars have successfully demonstrated direct links between the drug and smuggling markets. The best-documented instance of convergence is Mexican drug organizations imposing a fee on smugglers to allow them to cross the border. Numerous testimonies of migrants forced to carry backpacks full of drugs across the border have also been recorded. According to the director of the Mexico Security Initiative at the University

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93. Ibid.
of Texas at Austin,96 “these are the migrants who were priced out of the smuggling market as border security blocked off the easiest crossing routes, and then effectively funneled into drug trafficking operations as cheap, expendable labor.” Migrant trafficking has even been linked to the trafficking of previously stolen weapons-grade nuclear material in Europe (e.g., highly enriched uranium was seized in the Black Sea region as late as 201397), all of which have financed activities via profits from migrant smuggling.

Looking retrospectively at U.S. border policy, a recent study concluded that overwhelming demographic, economic, geographic, and historic realities have made the choice between regular migration and no migration impossible for so many like the Honduran family in Mexico.98 The decision is often more about the terms on which migration occurs rather than whether to leave at all—the latter of which, in many cases, is not a considered option. The study’s authors found that “regular migration channels have curbed irregular migration,” especially “when paired with robust enforcement.”

Figure 1. Regular migration channels have curbed irregular migration at the US-Mexico border—when paired with robust enforcement

Data sources through 2012 given in Gutierrez et al. (2016) op. cit., updated to 2016 with the DHS Yearbook of Immigration Statistics and DHS Immigration Enforcement Actions reports for 2015 and 2016. “Visas” are low-skill seasonal work visas

Source: Clemens and Gough, Can Regular Migration Channels Reduce Irregular Migration? Lessons for Europe from the United States.

Immigration enforcement measures that have so far been the focus of the Trump administration have historically had limited effect unless combined with substantial and

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98. Clemens and Gough, Can Regular Migration Channels Reduce Irregular Migration? Lessons for Europe from the United States.
flexible legal pathways. Increasing regular migration pathways is an efficient way to deter irregular migration, limit the power of criminal organizations to profit from migrants, and protect the rights of migrants. If the US wants to protect its national security by reducing funding for human traffickers and drug smugglers, it can start to do so by increasing opportunities for safe, orderly, and regular pathways for migration.

Meanwhile, it should also maintain funding to address root causes of migration in the Northern Triangle, so that migration is not necessary in the first place. This is simply common sense.
About the Authors

Amy K. Lehr is the director of the Human Rights Initiative (HRI) at CSIS. The HRI was launched in June 2014 and is the only program of its kind in the Washington think tank community. From this unique position, HRI brings together key actors, catalyzing creative, game-changing solutions to the globe’s most pressing human rights challenges through a cross-sectoral and multidisciplinary approach. Amy comes to CSIS after a decade with Foley Hoag LLP’s unique corporate social responsibility (CSR) practice. In this role, she carried out groundbreaking work across sectors, engaging with international financial institutions, corporations, non-governmental organizations, and governments, to help them develop best practices and apply international law to address global human rights challenges. Her expertise includes labor rights, privacy and freedom of expression and association, forced labor in global supply chains, security and human rights, land rights, and indigenous rights issues. She has carried out field work across the globe, including conducting human rights impact assessments for large projects. Previously, Amy served as legal adviser to the UN special representative on business and human rights, John Ruggie, and in that role helped develop the UN Guiding Principles on Business and Human Rights. She also served as a fellow at the Harvard Kennedy School's Corporate Social Responsibility Initiative. She previously worked for development NGOs in Burma (Myanmar) and Thailand, including Save the Children. She was a term member at the Council on Foreign Relations. Amy received her AB from Princeton University and her JD from Harvard Law School.

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Alterman has lectured in more than 30 countries on five continents on subjects related to the Middle East and U.S. policy toward the region. He is the author or coauthor of four books on the Middle East and the editor of five more. In addition to his academic work, he is sought out as a consultant to business and government and is a frequent commentator in print, on radio, and on television. His opinion pieces have appeared in the New York Times, Washington Post, Wall Street Journal, Financial Times, and other major publications. He is a member of the Editorial Advisory Board of Arab Media and Society and is a former international affairs fellow at the Council on Foreign Relations, where he is now a life member. He received his AB from Princeton University's Woodrow Wilson School of Public and International Affairs.

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Sara M. Allinder is executive director and senior fellow of the CSIS Global Health Policy Center. She has extensive experience with the U.S. government in global health, foreign policy, international development, human rights, and program management. For 10 years, she worked on the U.S. President’s Emergency Plan for AIDS Relief (PEPFAR) in Washington and in Uganda, where she served as country coordinator of the $353 million PEPFAR program (2013–2015). She led a staff of more than 200 in preparing the 2013–2015 Country Operational Plan (COPs), served as senior adviser to the ambassador, contributed to the response to the Anti-Homosexuality Act, led development of Uganda’s DREAMS strategy targeting adolescent girls and young women, and revitalized engagement with civil society organizations. In four stints at the Office of the U.S. Global AIDS Coordinator (2003–2016), Allinder was a senior adviser on PEPFAR management and operations issues, including field-based staffing.

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