

HUMAN RIGHTS WATCH

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Re: US Counterterrorism Assistance to Yemen

Dear Secretary Clinton and Secretary Gates:

We write to express concerns related to reports that the United States is considering a significant expansion of military and counterterrorism assistance to the government of Yemen. An appropriate program of military and economic assistance could help the Yemeni government counter the threat posed by al Qaeda in the Arabian Peninsula (AQAP) while advancing the rights and aspirations of its people. Unless it leverages necessary reforms in Yemen, however, such assistance may facilitate continued violations of human rights and play into AQAP's strategy of converting grievances against the Saleh government into hatred of the United States.

We recognize that the Obama administration has a responsibility to respond to national security threats originating in Yemen, including the recent discovery of explosives that were intercepted in the United Kingdom and Dubai. But the administration should not repeat in Yemen the mistakes the Bush administration made in Pakistan and Afghanistan – whether by providing unconditioned military assistance to an authoritarian government more focused on defeating its political enemies than on countering armed militant groups, or by underestimating the impact of civilian casualties and unjust detention practices on popular support for counterterrorism efforts.

Should a similar path be taken in Yemen, “tactical victories may prove to be strategic setbacks,” as Gen. David Petraeus has cautioned in the Afghan context.

We welcome the Obama administration’s commitment to provide \$110 million in humanitarian and economic aid to Yemen and its support for an international fund to support longer-term development in that impoverished country. We also appreciate the statements made by administration officials over the last year emphasizing respect for human rights and the rule of law in Yemen.

Nevertheless, we are deeply concerned that proposals to commit massive amounts of military and counterterrorism assistance to Yemen in the absence of a reciprocal commitment by the government of President Ali Abdullah Saleh to end human rights abuses will undercut US efforts to promote the reforms needed to make Yemen an effective partner against terrorism. We understand the temptation to ramp up the fight against AQAP quickly. But a response that aligns the United States with a Yemeni government that is perceived by its people as repressive and unaccountable risks provoking a backlash that could further destabilize the country and strengthen the very forces you are trying to weaken.

This is already occurring in some parts of the country, in particular in the wake of counterterrorism operations in southern Yemeni governorates such as Shabwa, Abyan, al-Dhali’ and Hadhramawt, where the Southern Movement, a loose coalition calling for secession from Yemen, has described attacks on suspected AQAP members as attacks on the southern Yemeni population.

We support the intergovernmental Friends of Yemen’s recent call on the Saleh government to show improvements in human rights and take concrete steps toward fostering comprehensive national dialogue, forging lasting peace in the north, and ending corruption and impunity before the Friends meet again in Riyadh in February 2011. But if assistance to Yemen is not conditioned on genuine achievements in these areas, the efforts of the United States and other Friends of Yemen will be ineffective.

With that in mind, we offer the following specific policy recommendations:

1. As development assistance to Yemen increases, use aid and diplomacy to address human rights abuses such as unlawful killings, arbitrary arrests, and torture. Assistance and diplomacy should address the political, not just the economic, grievances that drive instability in Yemen.
2. Support the establishment in Yemen of a human rights monitoring mission by the United Nations Office of the High Commissioner for Human Rights with a mandate to publicly report on human rights abuses by all parties to Yemen's conflicts, and press the government of Yemen to cooperate in the establishment of such a mission.

3. Do not partner with or provide assistance to Yemeni security agencies, such as the Central Security Forces, the Political Security Organization, and the National Security Organization, implicated in unlawful killings, arbitrary arrests of journalists and political dissidents, torture, and other serious human rights abuses. Publicly speak out when such abuses occur.
4. Add effective human rights components to any bilateral aid for security forces, such as law enforcement and military training and equipment, including non-lethal methods of crowd control, respect for the laws of war, measures to combat torture and ill-treatment, and internal accountability.
5. Ensure—and publicly stress—strict end-use requirements to ensure Yemen does not use US-provided equipment in its internal conflicts against the Huthi rebels and southern secessionist movement. Immediately suspend assistance if these requirements are violated.
6. Urge the Yemeni government to end human rights violations committed in the north and south and to address the legitimate grievances that fuel instability in both regions.
7. Increase emphasis on the importance of an independent judiciary with the resources and competence to address accountability for human rights violations, including arbitrary arrests and torture.
8. Urge the government to ensure that impartial humanitarian agencies have access to all places of detention in Yemen, and end the use of private or unauthorized detention sites.
9. Repatriate, resettle, or appropriately prosecute the Yemenis held without charge at Guantanamo.

We also suggest seven broader principles that we hope will guide US engagement with Yemen in the years ahead:

1. Do not turn Al Qaeda's enemies into its friends

The lessons of Afghanistan, Pakistan, and myriad other internal conflicts is that armed militant groups thrive when the government does not enjoy the support of their people. This is particularly applicable in Yemen. Should the United States align itself too closely with the government of President Ali Abdullah Saleh, without squarely addressing the country's serious human rights violations and its broader political and economic problems, AQAP will grow stronger, not weaker.

Indeed, many Yemenis see their government as a greater threat to their security than AQAP. Government repression has often targeted – and alienated – Yemenis who might otherwise be supportive of government efforts against AQAP.

For example, the Yemeni government's five-year-old civil war with the Huthi movement of Zaidi Muslims in the north targets some of AQAP's most ingrained foes. Zaidi religious leaders ruled Yemen for a millennium, until the republican revolution

in 1962. Zaidi activists in the 1990s, under the leadership of the Huthi family, started a movement to counter the spread of Saudi-inspired and Yemeni government-supported Wahhabi influence in northern Yemen. In 2004, President Saleh reportedly tried to recruit jihadi fighters to help him fight the Huthi rebels.

Recurrent bouts of fighting in the north had displaced nearly 330,000 people as of August 2010. The government's last military campaign against the Huthis – launched in August 2009 under the name "Operation Scorched Earth" – resulted in serious allegations of violations of the laws of war. Human Rights Watch researchers in northern Yemen in October 2009 gathered eyewitness accounts indicating instances of indiscriminate government aerial bombing and artillery shelling and the use of child soldiers, as well as Huthi laws-of-war violations.

Yemen's southern secessionist movement, including mostly secular elites of the former Marxist South Yemen, has also traditionally been at odds ideologically with Islamist armed militants including al Qaeda. President Saleh, during the 1994 civil war with the south, deployed Islamist armed militants returned from Afghanistan to crush southern forces. Southern grievances from that time led to largely peaceful mass protests in the south starting in 2007, but the Saleh government's brutal suppression of these protests – shooting unarmed protestors, denying injured protestors medical care, shutting opposition newspapers, silencing dissidents, and waves of arbitrary arrests – has alienated large swathes of the south from the government in the capital, Sana'a, further diminishing its influence. It also seems to have created a bond between the Islamist militants and the separatists that AQAP is exploiting.

In August 2010, for example, government forces launched a nearly three-week shelling campaign against alleged AQAP targets in Laudar, a town in the southern Abyan province that is also home to southern separatists, that killed an estimated three dozen people, including some civilians. The military campaign also damaged or destroyed hundreds of homes and forced tens of thousands of residents to temporarily flee. Some separatists reportedly joined AQAP in battling the security forces. The following month, government forces attacked suspected al Qaeda hideouts in the town of Hawta in southern Shabwa province, displacing thousands more families.

Southern movement leaders issued statements equating the attacks in Laudar and Hawta with attacks on all southerners. At a protest in the southern capital of Aden on September 23, some southerners called on the Friends of Yemen for help and accused the government of targeting them under the pretext of fighting terrorism.

The US government should press President Saleh to put an end to his policies of repression in the north and south, and to address legitimate economic and political grievances in both regions. And it should make clear to the Yemeni people that it is

doing so. Otherwise AQAP will continue to cast Saleh's allies as accomplices in serious human rights abuses.

2. Learn from Pakistan

The US government's uncritical partnership with Pakistan's former military ruler Pervez Musharraf was mistaken and counterproductive. The Obama administration has sought to increase emphasis on support for democratic institutions and the rule of law there rather than alignment with a single leader or exclusive reliance on the country's armed forces. The same approach is needed in Yemen.

President Saleh now appears more committed to addressing the security threat posed by AQAP. But much like Pakistani leaders in the past, he has a long history of striking deals with selected members of armed Islamist groups, while rounding up hundreds of low-level suspects on little or no evidence and jailing them for months or years without charge. Human Rights Watch interviewed the family of one young man who was illegally held for 18 months because security forces mistook him for a notorious AQAP member, and we also spoke with numerous men who were taken hostage by security forces in order to secure the surrender of their relatives.

Saleh's government prosecutes terrorism suspects – as well as Huthi rebels, southern secessionists and in some cases journalists – before a Specialized Criminal Court that does not meet international fair trial standards. Defense lawyers report that they are often denied access to their clients' files, and that judges ignore their complaints of forced confessions, torture, and other serious violations of their clients' rights.

Rather than go after top AQAP members, President Saleh has until recently directed his security forces to concentrate on his domestic political opponents (many of whom, as previously noted, are ideologically opposed to AQAP). Without significant pressure and vigilance, he is likely to exploit any new international support to intensify domestic repression of freedom of speech and expression. Indeed, on January 4, 2010, within days of President Barack Obama's expressions of support for Saleh's government, security forces opened fire on hundreds of protestors peacefully demanding the reopening of Yemen's largest independent newspaper, *Al-Ayyam*. Twelve days later, still under the spotlight of increased international attention, a new Special Press Court, where one finds many of the same procedural flaws as at the Specialized Criminal Court, sentenced Anisa 'Uthman of the weekly *Al-Wasat* to three months in prison for an article that "offended" the president.

In May, President Saleh announced an amnesty for scores of journalists he had arrested over the previous year in the worst media crackdown in two decades. But the intimidation, beating, and arbitrary incommunicado detention of journalists quickly resumed.

In August, Yemen's counterterrorism forces arrested a journalist who reports on security issues and a cartoonist who is his friend and held them incommunicado for 20 days. The journalist, Abd al-Ilah al-Shayi' of the official Saba news agency, appeared bruised at his first court hearing a month after his arrest and said that government forces had beaten him.

Prosecutors cited evidence that al-Shayi' had interviewed AQAP members and sympathizers in accusing him of being a media propagandist for the group. Among those al-Shayi' had interviewed was Anwar al-Awlaki, a radical cleric whom the US has reportedly targeted for killing and who Yemen has since indicted *in absentia* on terrorism-related charges. Security forces held the cartoonist, Kamal Sharaf, for 50 days without charge, defying a court order to release him after prosecutors offered no evidence against him.

The United States should not give unqualified support for President Saleh's government, but instead demand an end to torture, arbitrary arrests, and the government's crackdown on the rights to freedom of expression, association, and peaceful assembly. It should ensure that foreign aid does not strengthen, and is not perceived as strengthening, the repressive apparatus of the state. Diplomats and other government officials should increase their meetings with and expressions of support for Yemeni journalists and civil society leaders, emphasizing the need for the government to respect and protect fundamental rights and the rule of law.

3. Civilian casualties hurt as much in Yemen as they do in Afghanistan

In Yemen, as in Afghanistan, civilian casualties incurred in fighting Islamist militants may turn people who normally would not support groups such as AQAP against the government and against its backers. Following the US-assisted missile strike on AQAP in Abyan on December 17, 2009, which the Saleh government later acknowledged had accidentally killed at least 41 additional people, many of them women and children, secular southern Yemeni activists closed ranks with armed Islamists and denounced the strike as an attack on their movement. There is credible evidence that the strike involved a cluster munition—a largely indiscriminate weapon that by its very nature poses unacceptable dangers to civilians.

Another US-assisted attack in central Marib province in May 2010 killed a deputy governor, rather than the AQAP member who had been its target, prompting retaliation by the victim's tribe that included attacks on strategic pipelines.

Airstrikes must be carried out in conformity with international law. Whether or not a given airstrike is legal depends, in part, on the context in which it is conducted: specifically, whether or not it is carried out in the context of an armed conflict. It is of great concern that the US government continues to stretch the concept of armed conflict to cover military operations undertaken outside of traditional war zones. Even if these areas of Yemen can be considered war zones where the laws of armed

conflict apply, the US military's tactical directive regarding civilian protection in Afghanistan sounds a important cautionary note: "We must avoid the trap of winning tactical victories – but suffering strategic defeats – by causing civilian casualties or excessive damage and thus alienating the people."

This lesson acquires new importance as the US contemplates dramatically increasing military aid to Yemen and extending its use of Unmanned Combat Aircraft Systems (drones) to that country.

International human rights law permits the use of lethal force outside of zones of armed conflict when it is strictly and directly necessary to save life. In particular, the use of lethal force is legitimate if the targeted individual presents an imminent threat to life and there is no other means, such as capture or non-lethal incapacitation, of meeting that threat. In such situations, we recognize that, when used appropriately, drones offer certain advantages over manned aircraft (or cruise missile strikes) that can help the military minimize civilian casualties in combat operations.

Nevertheless, any involvement of US forces in air strikes in Yemen would increase the US government's responsibility – both legally and in the eyes of the Yemeni people – to ensure that civilians are spared. Moreover, the ability of US forces to avoid civilian casualties in Yemen may be hampered by their lack of a ground presence, which increases the risk of poor intelligence and of local actors manipulating international forces.

Under these circumstances, it is especially important for the Obama administration to be transparent about the legal reasoning behind targeted killings in Yemen (whether by drones or any other means) and about the procedural safeguards applicable to their use. Who may be targeted by these strikes? Do those persons represent a clear and imminent threat to life, and is there a reason why less-than-lethal force could not be applied? May someone be targeted if he or she is found in an area where the alternative of arrest by law enforcement authorities is available? How far does the administration extend the concept of "armed conflict" and of "battlefield" to determine when a suspect may be killed instead of arrested? If any suspected terrorist on a global "battlefield" may be targeted, would it be acceptable for other countries, say Russia or China, to kill people they consider to be linked to terrorism on foreign soil, and if not, what is the distinction? Given their lack of ground presence, how will US forces determine the impact of strikes on non-militant residents of these areas, and investigate allegations of indiscriminate and disproportionate harm? Will the US provide compensation to civilians who are unintentionally harmed?

The answers to these questions would not reveal anything of any operational value to AQAP. They would simply help establish that this administration recognizes that

there are legal limits on its actions and good strategic reasons to embrace those limits.

4. Internationalize the civilian effort

The United States and other countries already involved in Yemen should seek the assistance of states that could help promote greater respect for human rights by the Yemeni government. For instance, neighboring Saudi Arabia should be pressed to use its influence with San'a to help end human rights violations in the context of the northern and southern conflicts, while insisting on deeper United Nations and European Union engagement. The international community should press Yemen to allow impartial humanitarian agencies access to all places of detention. The UN should deploy a countrywide human rights monitoring mission, with strong backing from the secretary-general, and bring its political and mediation resources to bear in resolving human rights grievances underlying the northern and southern conflicts that fuel instability in Yemen. The UN has significant experience in these sectors, and a direct UN role will be less controversial for the Yemeni government than a direct role for outside powers, especially the US and the UK. The US and other Friends of Yemen should urge the UN to assume such a role and also should pledge funding for such a constructive UN involvement in Yemen.

5. Increase aid, but remember that militancy is driven by politics not poverty

The US and other Friends of Yemen will not win Yemenis' trust if aid to their country is chiefly for military and security purposes. There is broad recognition that development aid should address the problems Yemenis face in their daily lives, to improve access to water, health, education, roads, and jobs. At the same time, the “soft” side of international engagement will fail if it focuses exclusively on non-controversial social and economic issues, and avoids addressing the political grievances that drive both peaceful opposition to government repression and fuel support for militancy.

International assistance should thus also focus on bringing an end to human rights violations and improving governance in Yemen. For example, donors should support law enforcement training and strengthening judicial accountability as part and parcel of its counterterrorism engagement, especially for non-lethal methods of crowd control in dealing with the protests in the south, as well as mechanisms to prevent and redress torture and to hold perpetrators accountable.

6. Yemen needs support at least as much as the US needs Yemen

The United States needs Yemeni cooperation against AQAP, and the Saleh government will try to take advantage of that need to insist on cooperation on its terms. But the Yemeni government also needs support from the United States and the international community. The government is struggling to control parts of its territory and wants help against its internal foes, including the Huthi rebels, AQAP, and southern secessionists. It is running out of oil to finance its operations and

water to support its growing population. Meanwhile, asylum seekers, most from the Horn of Africa, flood into Yemen by the tens of thousands each year; the country is home to at least 170,000 refugees.

Although international donors promised Yemen US \$5 billion in 2006, the country has to date received only 15 percent of that sum. The Saleh administration also wants the US to help persuade the Gulf Cooperation Council states, which are part of Friends of Yemen, to allow free movement of labor in the region so that Yemenis can migrate for jobs.

All of this places the US and other donors in a strong bargaining position. The US should offer assistance, but with hard conditions designed to address the problems discussed above. This is necessary not simply because the US has multiple goals – counterterrorism, human rights and development – that need to be balanced. It is important because absent improvements in governance and development, the security goal of countering AQAP will not be achieved.

7. Keeping Yemenis at Guantanamo gives al Qaeda a propaganda tool

In the aftermath of the attempted Christmas Day 2009 attack on a US airliner bound for Detroit, the Obama administration suspended the planned repatriation of Yemenis from the US prison at Guantanamo Bay. Yemenis now account for one-half of the 174 detainees at Guantanamo. None of the Yemenis is currently facing charges, and 57 of them had been cleared to return home before the Christmas Day attempt. The failure to repatriate or resettle them remains one of the largest obstacles to closing Guantanamo.

The attempted Christmas Day bombing and the most recent attempt to airship bombs to the US in printer cartridges have understandably affected the political climate in the United States. But these attempts did not fundamentally change what is at stake in returning Yemeni Guantanamo detainees. As was the case before the attempted attack, repatriating or resettling Yemenis poses security risks but it is necessary for closing Guantanamo. And ending indefinite detention by closing Guantanamo remains, as the administration itself continues to emphasize, a national security imperative for the United States.

Some Yemenis sent home may be open to recruitment by AQAP, especially if, like past returnees, they receive no support from the Yemeni government to rebuild their lives. But the US has already released thousands of detainees from its detention facilities in Iraq and Afghanistan with the same risk that some may join militant groups. Moreover, it was a released Guantanamo detainee who reportedly provided authorities with the tip that led them to discover the cartridge bombs. By contrast, if the Yemenis remain in Guantanamo – and especially if Guantanamo becomes essentially a camp for Yemenis only – AQAP will be handed a big propaganda opportunity for recruitment.

A stronger overall US strategy towards Yemen would allow the Obama administration over the next several months to work with the Yemeni government on a plan to safely repatriate or resettle any detainees it does not charge, starting with those already cleared for release. The US government should recognize the importance of providing detainees with financial and other assistance to help them reintegrate into society and make them less vulnerable to recruitment by militant groups. If necessary, Yemen or a third country could place restrictions on detainees' movements to protect national security.

Thank you for your attention to these important matters. We would be happy to provide further information on any of the issues or cases discussed in this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ken Roth', with a stylized flourish at the end.

Ken Roth

cc: Carl Levin, Chair, Senate Armed Service Committee
Ike Skelton, Chair, House Armed Service Committee
John Kerry, Chair, Senate Foreign Relations Committee
Howard Berman, Chair, House Committee on Foreign Affairs