

**DISCUSSION PAPER #3:
HUMAN RIGHTS AND DEMOCRACY
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As Americans, we believe that all people should enjoy freedom of speech, expression, and religion, and freedom from tyranny, oppression, torture and discrimination. U.S. foreign policy should reflect and promote these core values, not only because it is the morally correct thing to do, but because it serves U.S. national interests. Violent extremism that threatens U.S. national security flourishes where democratic governance is weak, justice is uncertain, and legal avenues for change are in short supply. Efforts to reduce poverty and promote broad-based economic growth are more effective and sustainable in a political environment in which fundamental freedoms and the rule of law are respected, government institutions are broadly representative, and corruption is held to a minimum.

American values, interests and leadership are strengthened by enlarging the community of nations that govern by consent and respect international norms and obligations toward their own citizens. Human rights concerns, however, have rarely been decisive in foreign policy decision-making. The United States has never explicitly cited a “consistent pattern of gross violations” of human rights—the current legal threshold for prohibiting assistance—as the reason for cutting off aid to a country, and many countries with poor human rights records continue to receive U.S. assistance.

At the same time, assistance programs to support human rights and democracy have faced a variety of obstacles:

- “Democracy assistance” tends to be defined narrowly in terms of political parties, elections and government institutional capacity building, while undervaluing equally important aspects including independent and balanced media; impartial and competent judicial processes that deliver access to justice; respect for fundamental human rights, including freedom of association and expression; and a vibrant civil sector that engages meaningfully with government and policy discussions.
- Financial resources and technical capacities are fragmented among a wide range of different offices, bureaus, agencies and departments, which are often engaged in similar activities without sufficient coordination.
- There are major gaps in coverage, with minimal capabilities to train police, protect victims of abuses, support front-line human rights defenders or promote the development of a free press.
- The State Department devotes significant time and resources to producing reports on a wide variety of human rights issues, but few of these reports are used to shape and inform policy.
- There are insufficient resources to enforce some statutory requirements, while others contain loopholes and ambiguities that prevent effective implementation.
- There are few incentives for Foreign Service Officers to specialize in human rights or democracy, and little training and resources available for those who do.

- The democracy office at the United States Agency for International Development (USAID) has been marginalized by placement in a bureau with short-term priorities.
- Last but not least, democracy promotion activities have often been so closely directed and controlled by the U.S. government that they can undermine the independence and legitimacy of the organizations they seek to strengthen.

To remedy these problems, several competing objectives must be balanced:

Flexibility and consistency: Many argue that the United States, in order to maximize its international credibility, must apply a consistent standard of human rights and democracy across the board. Yet a country that fares poorly in one area may do better in another, and tools must be flexible enough to recognize and reward progress where it occurs while encouraging improvement where it is needed.

Engagement and perceived complicity: The United States may be able to help remedy human rights violations or to support democratic reforms through affirmative assistance in countries with poor records. Yet in doing so, the United States may be perceived as aligning itself with or enabling abusers.

Reporting and policy: Over the years, the Country Reports on Human Rights Practices have become increasingly honest and thorough, in part because the reports have no “teeth.” Would the quality of reporting decline if U.S. assistance were conditioned on the reports? How would such a linkage be operationalized?

Specialization and integration: While human rights and democracy must be mainstreamed as priorities in United States foreign policy, and integrated into all diplomatic efforts and assistance programs, they also require discrete bureaus or offices to provide specialized training, support and strategic direction.

Independence and government support: In countries lacking democratic institutions and traditions, fledgling civil society organizations—particularly those engaged in human rights and democracy activities—require external support in order to serve as viable agents of change. Yet assistance that is too closely associated with the U.S. government may subject these organizations to greater risks and reduce their effectiveness.

PROPOSED CHANGES

The proposed changes would allow flexibility while improving consistency of human rights standards; enable assistance in cases where there is the political will to improve standards while reducing perceived complicity in abuses; maintain useful reporting while increasing the policy impact of findings; build specialized capacity while integrating human rights and democracy concerns into the mainstream of diplomacy; and assist reformers without compromising their independence:

1. Monitor and evaluate foreign assistance programs—including security assistance—to determine their effects on democracy and human rights. In addition to ensuring that governments meet a minimum standard of human rights compliance before receiving aid, relevant foreign assistance programs to nondemocratic or democratic transition countries would be evaluated to determine their impact on human rights and democracy.

2. Develop human rights and democracy action plans. The ADVANCE Democracy Act of 2007 expanded the Annual Report on Advancing Freedom and Democracy to include U.S. priorities for democracy promotion and human rights protection, as well as specific actions and activities of chiefs of mission to promote democracy and human rights. Each U.S. Embassy would—in consultation with local civil society groups as well as international monitoring and advocacy organizations—be required to develop an Action Plan, detailing the specific steps that the country would be asked to take that year to improve its performance, and the specific diplomatic initiatives and assistance linkages (including the use of compacts, where appropriate) that would be used to create incentives for cooperation. Each action plan would be designed and reviewed in coordination with all relevant bureaus, offices and agencies, especially including USAID and the Department of Labor, to ensure the most efficient and effective deployment of resources, and to promote concerted efforts. The action plans, which could contain a classified annex, would be provided to Congress and the public six months following release of the consolidated human rights report (see below).

3. Strengthen the “Leahy Law” by expanding its coverage and improving its implementation. Section 620J of the Foreign Assistance Act of 1961, known as the “Leahy Law”, prohibits certain assistance to “any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights,” unless “the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.” The provision would be formally extended to include aid to any governmental unit (not just the security forces) and to cover assistance provided by the Defense Department. A systematic process, additional staff and a source of dedicated funding would be established to ensure that credible evidence is gathered and provided to the Secretary. A clearer definition of “unit” would also be added.

4. Consolidate reporting requirements. The State Department now produces 3 separate annual reports to Congress relating to democracy and human rights: the Country Reports on Human Rights Practices, the International Religious Freedom Report, and the Trafficking in Persons Report. Consolidating these into a single annual report would streamline the process and reduce the reporting burden on our missions abroad, without sacrificing the quality or content of the reports.

5. Modernize and codify human rights statutes. Section 660 of the Foreign Assistance Act would be rewritten to explicitly authorize police training and security sector reform activities, consistent with principles of human rights, good governance, transparency and accountability. The “coup clause”, currently carried in annual appropriations bills, would

be put into permanent law and clarified to include all coups against democratically-elected governments, not simply “military” coups, and expanded to include crimes against humanity and genocide.

6. Expand and upgrade the democracy and human rights functions at USAID.

USAID’s Office of Democracy and Governance (DG) is currently subsumed within the bureau that handles conflict and humanitarian assistance. DG would be reestablished within a new Bureau for Democratic and Civic Development (DCD), which would include Offices for Democracy and Governance; Human Rights, Protection and Justice; Education and Training; and Gender Equality. The new Human Rights, Protection and Justice Office would be tasked with promoting the rule of law and administration of justice, including the development of training and assistance programs for police, prosecutors, judges and citizen watch-dog groups in the areas of anti-trafficking, anti-corruption, gender-based violence and forensics.

7. Improve training, opportunities and recognition for democracy and human rights officers.

Assignments of democracy officers abroad would be made in consultation with DRL for the State Department, or with the new DCD Bureau for USAID, respectively, in conjunction with their regional bureaus. In nondemocratic and democratic transition countries, the democracy and human rights officers would be of a more senior rank. The State Department would be required to create an award for outstanding achievements in advancing democracy, an award that was recommended under the ADVANCE Democracy Act of 2007 but never created. In order to be promoted to the Senior Foreign Service, officers would be required to serve at least one rotation in a functional bureau, such as DRL. In addition, the State Department and USAID would be required to create comprehensive training and recruitment structures to ensure that human rights and democracy officers have sufficient background and experience, including through fellowships and exchanges to infuse the Department with fresh thinking in this area.

8. Establish guidelines for the use of grants and contracts for democracy programs.

Because of the special sensitivity in democracy programs over the level of U.S. Government involvement and direction, there are many instances in which an “arms-length” relationship is preferable. Moreover, the nature of these programs makes the setting of indicators and the evaluation of results particularly challenging. USAID, in consultation with relevant stakeholders, would be asked to develop a set of guidelines for the use of its acquisition and assistance mechanisms in democracy programs, and a task force including representatives of USAID, monitoring and evaluation specialists, and implementing partners would be formed to develop guidelines for measuring the performance and impact of democracy and human rights-related assistance.

9. Create a list of perpetrators of crimes against humanity. The list would be analogous to the “List of Designated Foreign Terrorist Organizations” and could encompass names of individuals and/or operating units. Inclusion on the list would trigger automatic penalties and include a commitment to multilateralize penalties in international fora, including by supporting the creation of an international database of major violators.