

Hearing on
"A Review of the State Department Country Reports on Human Rights Practices"
Before the
Committee on International Relations
Subcommittee on International Terrorism, Non-Proliferation and Human Rights
Testimony of the Lawyers Committee for Human Rights
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Introduction

For eighteen years the Lawyers Committee for Human Rights produced an annual *Critique* of the State Department reports, beginning with the third annual State Department report in 1978. In 1996, the Lawyers Committee published its last book-length *Critique*, although still commenting yearly on specific shortcomings in the reporting on individual countries. After publishing our 1996 report, we made a decision to stop producing the critique based on our judgment that the reports “have become a progressively more thorough and reliable guide to human rights conditions throughout the world.”

One factor that led to these improvements was the revisions in the State Department’s reporting instructions in 1993, which resulted in both increased accuracy and objectivity and requirements to address a more comprehensive slate of issues including: discrimination based on race, gender, religion, disability, language and social status; patterns of gender-based violations; labor rights; and the problem of impunity for past human rights violations. With increased objectivity, accuracy, and scope of reporting, the Country Reports became an increasingly respected tool of foreign affairs.

The State Department’s country reports, which now cover 190 countries, give Congress an indispensable tool for its oversight role—and provide information needed for an informed public to consult in assessing the parameters of the foreign relations of the United States.

The 2002 Country Reports

In this testimony, the Lawyers Committee examines the 2002 *Country Reports*. We focus on the special strains placed upon human rights protection in the aftermath of the September 11 attacks on the United States and the call for international action against terrorism. Our findings are mixed. The country reports continue to reflect a strong commitment to international standards. A high level of objectivity, intellectual rigor, and integrity is apparent in much of the reporting. Yet there are serious omissions and

distortions in a number of chapters in the country reports. Many of these can be directly tied to a calculus of political expedience reminiscent of the country reports of the 1980s.

The overall product, notwithstanding its blank spots and distortions, is sound. We commend the Department of State for holding the line on most important fronts in reporting on human rights around the world. In doing so, it should be able to count on firm congressional support—and congressional action to reaffirm its demand for the annual country reports to provide it with the unvarnished truth about human rights practices that it requires for its oversight functions.

Later this spring we will publish a review of the Country Reports examining these reports in much greater detail. We will furnish a copy of the longer *Critique* to this Committee and ask that it be made a part of the record of this hearing.

Introduction to the 2002 Country Reports

In his preface to the 2002 human rights country reports, Secretary of State Colin Powell reaffirms a strong commitment to human rights as a center-piece of U.S. foreign policy. Affirming that protection of internationally-recognized human rights “serves a core U.S. national interest,” Secretary Powell discounts any suggestion that human rights can be set aside in the name of security: “The blessings of liberty and security,” he observes, must be shown to be not only compatible, “but also interdependent.”

In introducing the annual human rights reports, Secretary Powell highlights the fundamental principle behind the legislation requiring them—that good reporting on human rights practices makes for good policy:

The Country Reports on Human Rights Practices for 2002 are grounded in the conviction that we must recognize the problem and describe it with full objectivity if we are to proceed to solving it. We gain little by ignoring human rights abuses or flinching from reporting them.

This critique must be tempered by a real recognition of the extraordinary strengths of the process which has been developed over many years to produce these annual reviews, and the very high quality of the vast majority of the information compiled. We commend the State Department for the mammoth feat of information gathering and evaluation that goes into the country reports.

Over the years, and with the contributions of successive Assistant Secretaries of State for Human Rights, Democracy and Labor, the State Department has developed an impressively comprehensive, accurate and fair system for producing the reports. Dedicated and capable foreign service officers in U.S. embassies around the world compile information for the reports each year.

In general, this year’s report has maintained the high standards of accuracy and comprehensiveness in coverage of the vast majority of countries and in almost all subject

areas. It is therefore distressing that on occasion, as described below, the reports have fallen short of these high standards. In almost all such cases it would appear that the problem comes with political interference in the content of reports on particularly sensitive countries, dealing with a handful of sensitive human rights issues, especially those issues, such as respect for the right to fair trial, where the United States itself now has reason to feel vulnerable to international criticism.

In important ways, the 2003 reports fail to meet Secretary Powell's test of "full objectivity." In some of the key reports, like those on Colombia, Egypt, Kenya, the Philippines, and Uzbekistan, the State Department flinched, and failed to achieve the standard of truth-telling required by Congress.

A subtle new bias colors the reports. A common thread is the "war against terrorism" and actions taken by governments in its name. While some country reports are marred by a misrepresentation of the facts and an unwarranted political spin, the broader distortion is a consequence of omissions. In a number of the country chapters the State Department does not report on measures taken to combat violent groups.

Secretary Powell's preface makes no mention of the "war on terror" nor of the measures taken in its name—many of which undermined human rights. Nor does Assistant Secretary of State Lorne Craner do so in his "Year in Review" essay introducing the report, a critical barometer of human rights conditions around the world.

In one sense, this is welcome. The Department of State might have re-cast its human rights monitoring role disproportionately around the theme of terrorism, or framed the principal challenges to human rights observance in such terms. It did not do so, which is a positive sign. In the 2001 preface and introduction, the "war on terrorism" was a principal focus, as was U.S. determination to "commit resources to the fight against terrorism" as a means to advance human rights. But this year's report goes to the opposite extreme. Measures taken in the name of combating terrorism have been largely written out of the equation—and with them, a whole range of actions which violate the human rights of ordinary people.

The step back from last year's emphasis on fighting terrorism, moreover, has meant a concomitant failure to reflect the international context of counter-terrorism measures and the abusive practices portrayed as such. The resulting exclusion of reporting on some very significant human rights violations, in particular in countries in which United States military and security personnel are engaged, is a glaring omission.

A striking change in this year's instructions to embassies on how to prepare the reports was the inclusion of the following directive: "Actions by governments taken at the request of the United States or with the expressed support of the United States should not be included in the report."

This year's introduction omits any explicit references to the war against terrorism – or even an appropriate emphasis on various counter-terrorism measures that are used

around the world: detention without trial, military tribunals, restrictive anti-terror legislation, torture, and even extrajudicial executions. This review of the country reports looks most closely at reporting on precisely these issues—and the omissions and distortion which mar the Department of States’ otherwise excellent report.

The Bureau's Year in Review

This year’s annual report on human rights practices around the world is an index of the United States’ own wavering commitment to human rights as well as a largely objective world survey. The excellence of the greater part of the report contrasts with the introduction of new bias in reporting on those closest to the United States, in assessing actions taken as part of the “war against terrorism.”

This view is echoed in the executive summaries of key country reports, where the characterization of the overall situation as “better” or “worse” can be of major political importance, not least in smoothing the way for U.S. assistance. References in the report’s preface and introduction to close U.S. partners, in turn, appear to have been crafted with a view to casting them in the best possible light, even where detailed reporting in the respective country chapters provide a more accurate picture of harsh realities there.

The complex relations of the United States with **India** and **Pakistan**, both of which face serious challenges from violent opposition groups, are reflected in an awkward balancing act in the country reports. In each case, references highlight progress in the “Year in Review” section highlights progress.

In a reference to **India**, sectarian violence in Gujarat is acknowledged in which “as many as 2,000 people—mostly Muslims—died,” but a new state government is praised for promising reform. The responsibility of state officials for deliberate killings of Muslims in the violence was omitted. In contrast, Human Rights Watch said in its *World Report* that at least 2,000 people were killed in “state-supported anti-Muslim violence” in Gujarat in the February-March violence.

India is further praised for holding elections successfully in Jammu and Kashmir, and in Gujarat, “despite widespread terrorist violence”—a qualifier that applies correctly to Kashmir, but which can be misread to suggest that the anti-Muslim pogroms in Gujarat were a response to terrorism.

The introduction’s only reference to **Pakistan**, in turn, is as a good news story: “Pakistan’s military regime began the process of restoring elected civilian governance at the national and provincial level in October. Observers deemed the elections to be flawed, but the new government seems reasonably representative.”

The country chapters on both India and Pakistan provide a far more complex picture of both countries, including numerous examples of gross human rights violations. In both cases, however, the picture is fragmented and lacking in analysis, even where considerable factual information is set out.

China's commitment to reform is also highlighted in the introductory overview of the world: "The Chinese also continued to carry out some structural reforms in the areas of the rule of law and democracy. Direct elections at the village level took place in several provinces and pressure to move them to higher levels grew." Considerable credit is given to free market policies as driving both economic and legal reform: "Economic reform has led to legal reform, and legislatures continued experimenting with public hearings to incorporate public opinion into policy."

The introduction also appropriately acknowledges that "China continued to commit serious human rights abuses in violation of international human rights instruments," including the arrest of dissidents and death sentences against Tibetans—but the campaign against Uighur movements in the Muslim northwest is covered only in the body of the text.

Russia, too, was lauded in the overview for its reform process: "In Russia, a new Criminal Procedure Code that took effect in July permitted for the first time the application of existing Constitutional provisions that only upon a judicial decision could individuals be arrested, taken into custody or detained." These were changes that "appeared to be having an effect on police, prosecutorial behavior and the judicial system," despite some non-compliance.

The overview also addressed the ongoing conflict in Chechnya, where "Russian forces and Chechen rebels continued to commit serious human rights violations." Government forces "committed extrajudicial killings and at times used excessive force," while committing further abuses in "cleansing operations." Russian forces' responsibility for forcible "disappearances" on a large scale, although extensively documented in 2002 by human rights organizations, was not cited in the introduction.

Human rights in the **African** continent, in turn, are given scant attention in the state of the world introduction. While a line refers to the upheavals in Cote d'Ivoire and the Democratic Republic of the Congo, little attention is given to the regional dimensions of these conflicts. The situation in the Horn of Africa—Sudan, Somalia, Ethiopia—merits no reference. The human rights dimension of the HIV/AIDS crisis goes unremarked.

The most media-oriented sections of the report, Secretary Powell's preface and "The Year in Review" introduction, have this year omitted key country names cited in the past to illustrate such issues as torture, extrajudicial executions (the report uses the awkward term "extrajudicial killings"), detention without trial, and trials by special courts without due process.

This year's introductory essay has the aspect of a tapestry eaten by moths, as the naming of countries to illustrate the categories of human rights issues described in the report has been selectively trimmed.

In the introduction to last year's report, for example, the "Physical Integrity" subheading included examples of countries in which torture and the absence of due process and fair public trials were a particular concern. Those named for torture included **Burma, China, Indonesia, Kenya, Mexico, Turkey, and Uzbekistan.**

This year, examples were dropped of countries in which torture was employed—apart from references to a basket of abuses by Burma, Iraq, and North Korea. A separate section on protection of "due process and of timely and fair public trials" —which in 2001 had examples of the use of military tribunals and unfair trials—was dropped.

Country examples to illustrate the human rights violations most associated with harsh government actions in the name of counter-terrorism were largely missing. These issues were largely wiped from the world overview of human rights practices—although they were addressed in individual country reports to varying degrees.

Even where the compilers of the reports have done sterling work in reporting numerous abuses, a reluctance to provide an analysis of the significance of the information is a common omission. The depiction of the whole is often far less than the sum of its parts: the aggregate of facts to be gleaned from many country reports is simply not reflected in the summing up. In some of these cases, political expedience appears to have prevailed: with what to make of the appalling facts (or the option of silence) turning as much on political criteria as on objective standards.

In most cases of country reports that do not meet the general high standard, the errors are of omission, or in a failure to draw needed conclusions. In a small set of reports, these failings are more substantial and significant. These are most substantial in reporting on countries in which the United States is itself deeply involved in military and security operations, such as **Afghanistan** and **Colombia.**

A Blackout on the Role of the United States

This year's explicit instructions to omit reporting on "Actions by governments taken at the request of the United States or with the expressed support of the United States" explain much of what is wrong about this year's report.

Some criticism of measures that may have been encouraged directly or indirectly by the United States is not omitted, but merely muted. This was the case in some of the reporting on states of emergency, on draconian antiterrorism laws, on detention without trial, on unfair trials by special tribunals, and in characterizing the description of detainees.

Emergency Laws

In many countries emergency legislation was introduced in the wake of the September 11, 2001 attacks on the United States, or revitalized by the call for a "war on

terrorism.” Coverage in the country reports of this legislation and its human rights implications bears particular scrutiny.

Emergency laws, which set aside basic civil rights, are a common theme in the country reports on United States partners in the “war against terrorism.” But the human rights consequences of counter-terrorism laws rushed into force in 2002 is notably muted in country reports on **Colombia, India, Indonesia, and Pakistan**, while new legislation in **Tanzania** is simply not reported. (This critique does not review coverage of new anti-terrorism laws in Europe.) And reporting on preexisting emergency laws in countries such as **Malaysia** and **Singapore** reflects a less critical view of their abusive procedures and their use to imprison nonviolent members of civil society and to deter political dissent. The country reports’ coverage of permanent emergency measures that restrict fundamental human rights do not reflect international treaty law requiring that such measures be strictly temporary and limited in scope.

There has also been a shift in reporting on the employment of special courts or military tribunals to try civilians for political crimes. Reporting on **Egypt’s** use of special courts provides a clear illustration of slippage from the more direct criticism of past years.

The reporting of “arbitrary detentions” in the context of emergency measures has also been watered down in some critical country chapters. The descriptions of some political groups targeted for repression have been modified from past reports to be more consistent with the respective government’s claims that they should be considered “extremists” or “terrorists.” Members of **Uzbekistan’s** nonviolent Islamic groups, from which most of that country’s political prisoners are drawn, were in the past referred to as “pious Muslims” or “independent Muslims”: the 2002 report brands them “extremists.”

In **Kenya** and **Tanzania**, reporting on acts of terrorism and on ongoing security measures to seek out collaborators with terrorist organizations within their large Muslim and immigrant populations is largely unreported, despite these themes having preoccupied government and generated enormous public debate in both countries in 2002.

The bombings of U.S. embassies in Tanzania and Kenya in August 1998 led to major investigations by domestic and U.S. agencies—local sources report the subsequent sustained presence of U.S. investigators in both countries. The deadly November 28, 2002 bombing of the Paradise Hotel in Mombassa is unaccountably not covered in the Kenya report, nor are the series of arrests carried out in the aftermath of the attack and the resulting upheaval among Kenya’s Muslim and immigrant communities.

Counter-terrorism measures in **Tanzania** similarly drop out of the reporting—an omission which may also be related to the presence of United States counter-terrorism investigators and their reported involvement in joint operations with local forces there and in neighboring Kenya. The parliament passed a sweeping new anti-terrorism law on November 5, 2002 giving police and immigration officials the power to arrest without

warrant suspected illegal immigrants or anyone thought to have links with terrorists.¹ The law was criticized by professional and human rights groups, including the Tanganyika Law Society. The country report, however, does not cover the passage of the act. Nor does it adequately reflect the concerns expressed by domestic nongovernmental organizations over the human rights implications of counter-terrorism measures, in particular for Tanzania's large Muslim population.

Establishing Accountability

In some countries, measures now characterized as a part of the “war against terrorism” overlay longstanding counterinsurgency campaigns. The role played by armed civilian forces as a part of a government's security effort is a central part of this picture. Whether termed paramilitary or militias (both terms are employed in the country reports), government accountability for the abuses of such forces should be an important part of human rights reporting. In practice, this is an important failing of the country reports.

When governments or their armed forces operate through civilian irregular militias, the country reports' current reporting instructions shield governments from accountability: by requiring such forces to be presented not as government forces but as a distinct category of private actor. At the same time, evidence that regular army units are responsible for training, arming, transporting, protecting, and commanding such forces, or conduct joint operations with them, can be omitted or presented in a manner mitigating governmental responsibility for such actions. This misrepresentation is most apparent in the reporting on **Colombia** (see below).

The inadequacy of the country reports' treatment of armed civilian forces with security functions extends both to some of those formally attached to government forces, with a basis in law, and those delegated police powers or a military function without official acknowledgment. The reports blur even the standing as state agents of militias that are acknowledged by governments to be official structures (see the **Philippines**, below). The actions of paramilitaries and militias are by and large represented as actions for which the state bears no responsibility—even where any suggestion that they are wholly independent of the regular armed forces can not hold up to scrutiny.

The State Department guidelines obliquely recognize the gray areas between formal state agents and those operating under their authority. The instructions under “Arbitrary or Unlawful Deprivation of Life,” for example, firstly require writers to address any situations “where there is reason to believe agents of the State committed, perpetrated, instigated, or condoned killings under color of authority without due process of law.” In reporting on “Killings by Security Forces,” the guidelines further explain that this should cover killings by “police or other security forces (including undercover or vigilante elements).”

In reporting on **Colombia**, the **Philippines**, **Indonesia**, and other countries in which undercover forces and military-sanctioned civilian militias play an important role

¹ “Tanzanian Parliament Passes New Anti-Terrorism Law,” Agence France Presse, November 6, 2002.

in internal armed conflicts, accountability for gross human rights abuse rides heavily on the identification of state responsibility for the acts of such forces. The State Department guidelines, however, protect states from being held responsible for the actions of these irregular militias—and this year’s country reports, in particular the Colombia report, reflect this.

Despite the instruction that “security forces” should be interpreted to include even “vigilante” elements, special instructions for writing on killings in conflict require a distinction between the actions of regular state agents and of paramilitary forces and militia—even while requiring that this murky area of state-sponsored or condoned paramilitaries be strictly distinguished from rebels and other opposition forces. In covering arbitrary killings, writers are to observe a consistent sequence, reporting first on killings by “state agents,” followed by political killings by unknown agents, and then “politically motivated killings, and other killings, by paramilitary forces if any”; and finally, “politically motivated killings by opposition groups, political parties, and rebel/insurgent/terrorist groups.”

The instructions make clear that “paramilitary” forces are presumptively distinct from groups opposing the state and other non-state actors—while providing a clear path to insulate government’s from responsibility for their actions.

In **Colombia**, the 2002 report takes small steps backward from the emphasis of past reports on the army’s close involvement with paramilitary forces there. In the 2002 report the army’s role in the pattern of gross and persistent human rights violations there virtually disappears—while the spin of the report is to suggest that the army as an institution (if not all of its personnel) is firmly against paramilitary violence. The emphasis is on continuing violence by anti-government guerrilla organizations and an improving record of paramilitary forces opposing them which it largely presents as independent and autonomous. The focus on progress in curbing the paramilitaries is not born out by independent reporting—and the evidence to the contrary, while cited in the reports of the United Nation’s human rights office in Colombia and organizations like Human Rights Watch, is largely omitted.

The report on the **Philippines**, where paramilitary forces also play an important counterinsurgency function, contains numerous references to paramilitary abuses and even their links to the military. The introduction to the Philippines report refers to human rights abuses by “some elements of the security forces, including police, soldiers, and *local civilian militias*,” while several references are made in the body of the text to atrocities committed by “militiamen connected to the AFP [Armed Forces of the Philippines]” (see below). But beyond these brief references the report fails to explain, much less criticize, their official role in the security system or their ongoing collaborative function in military operations (see below).

Although the report on the Philippines does not explain the official role of paramilitary militias, the contrast between the reporting on the **Philippines** with the **Colombia** report—where a principal thrust is to deny paramilitaries are sanctioned by

any arm of government—is striking. In Colombia, systematic abuses by paramilitary forces long tied to the armed forces have become the primary concern of human rights monitors—and their relation to the state is central to the ongoing conflict. Assertions by United States policy-makers that Colombia’s government is committed to reining in the paramilitaries, and severing their life-lines to the armed forces, is a major pillar of United States policy to support the Colombian military. The annual country reports, which compile data which could shatter that premise, involve high stakes.

Torture and Ill-Treatment

The country reports in the past have cited a range of conditions under which safeguards against torture and “disappearance” have been swept away. They include prolonged incommunicado detention, the use of secret detention centers, and the denial of access to families, lawyers, or even the courts. Removing the treatment of detainees from the oversight of the courts has been a prime human rights concern. Yet this report covers a year in which the United States itself has acknowledged similar practices as emergency measures to fight terrorism. It is to the credit of the Bureau of Human Rights and Labor that it has not accordingly revised downward the human rights standards applied to the rest of the world. The absence of safeguards continue to be reported in the country reports, and criticism of foreign allies that torture or ill-treat prisoners follows much the same lines as it did in 2001.

In the 2001 report, chapters described systemic torture in countries that are now frontline states in the war against terrorism: including Egypt, Indonesia, Jordan, Turkey, and Uzbekistan. Detailed reporting on torture continued in the 2002 report, including descriptions of the techniques employed. There was no flinching in this regard. The reality by which methods can shade from deliberate ill-treatment into torture was well reflected—an oblique reaffirmation that ill-treatment, too, is prohibited by human rights law and the laws of war.

The report on **Jordan** states that the “alleged methods of torture” included: “sleep deprivation, beatings on the soles of the feet, prolonged suspension with ropes in contorted positions, and extended solitary confinement.” In **Egypt**, to which the United States has reportedly transferred detainees for interrogation in a process called “rendition,” the report identifies some of the “[p]rincipal methods of torture” reportedly used by the police: “Being stripped and blindfolded; suspended from a ceiling or doorframe with feet just touching the floor; beaten with fists, whips, metal rods, or other objects; subjected to electrical shocks; and doused with cold water.”

The report on **Turkey** provides an extensive list of torture methods described by human rights and medical observers, including methods used in combination; in addition to such crude methods as electric shocks and rape, they included “forced prolonged standing, isolation, loud music, witnessing or hearing incidents of torture, being driven to the countryside for a mock execution, and threats to detainees or their family members.”

A section on the **Palestinian Authority (PA)** stated flatly that its security officials “tortured and abused prisoners by threatening, hooding, beating, and tying detainees in painful positions, forcing them to stand for long periods of time, depriving them of sleep and food, and burning detainees with cigarettes and hot instruments.” It also said some detainees “alleged” that authorities “have shaken them violently while in PA custody.” The report on **Israel**, in turn, cited allegations security forces used methods prohibited in a 1999 High Court decision that banned “a variety of abusive practices, including violent shaking, painful shackling in contorted positions, sleep deprivation for extended periods of time, and prolonged exposure to extreme temperatures.”

Terminology

Although past reports had become increasingly objective, bias in certain country reports was often expressed through the inconsistent use of terminology. Human rights abuse by an ally or foreign partner was understated or unreported, or reporting in a manner implying that the context of abuse, as when combating terrorism or insurgency, diminished a state’s responsibility. There appeared to be considerable leeway in the choice of terms to characterize the political group with which detainees are associated, for example as “extremist,” or “terrorist.”

There was no apparent increase in the use of the terms terrorist or terrorism in the 2002 reports, and indeed some instances in which organizations and acts described with these terms in the past have been altered to employ less emotive terms. In coverage of **Uganda**, the violent Lord’s Resistance Army (LRA) was in the 2001 report described as “a terrorist organization supported from Sudan.” The 2002 report has dropped both the reference to Sudan and the “terrorist” appellation: it now refers strictly to “the rebel LRA,” although the tactics of this organization have not changed.

In reporting on **Russia**, Chechen armed groups are referred to as “separatists,” “fighters,” “guerrillas,” or “rebels”: the term terrorist is reserved for the hostage taking in the Moscow theater in October 2002, which was attributed to “Chechen terrorist groups.” Similarly, in reporting on Georgia, armed groups in Abkhazia which were described as “partisan/criminal groups” in 2001 are in 2002 referred to as “partisan.”

Other terminology has crept into the country reports as foreign leaders have applied United States terms to their own efforts to suppress critics and political opponents. The 2002 report on **Liberia** describes President Charles Taylor’s efforts to suppress the free press and other critics, including the designation of political prisoners to be “illegal combatants” beyond the reach of the courts. The report does not explain the origins of the term in United States practice, but uses this to illustrate the executive’s “strong influence on the judiciary”: “For example, the Government’s assertion that persons identified as ‘illegal combatants’ have no recourse to the civil courts appeared to have no basis in law; however writs of habeas corpus...were refused on such grounds.”