

SIGAR

Special Inspector General for Afghanistan Reconstruction

CLEARED AS AMENDED
For Open Publication
Date: January 18, 2018
Cleared from Department of Defense
and Department of State

(U) SIGAR 17-47-IPe

(U) Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces

Following issuance of this report, we made two revisions to reflect revised information DOD provided as part of its classification review. We revised the first paragraph on page 4 and the third paragraph on page 17 to include the following language, "In December 2017, along with its response to SIGAR's request to declassify this report, DOD told us that the information it originally provided in December 2016 was incorrect and that 'it has identified no known uses of ASFF notwithstanding authority other than in implementation of the Leahy Law.'" In both paragraphs, DOD initially told us that it "relied upon the notwithstanding authority for the Afghanistan Security Forces Fund appropriation for transportation and related expenses for Excess Defense Articles transferred to Afghanistan pursuant to section 516 of the Foreign Assistance Act of 1961, notwithstanding the prohibition in section 516(e)(1)."



JUNE
2017

CLASSIFIED BY: Multiple Classification Authorities;
Derivative Classification Compiled by SIGAR
DERIVED FROM: Multiple Sources
DECLASSIFY ON: 9 June 2042 (Not Applicable To
NATO Portions)

SIGAR

Special Inspector General for Afghanistan Reconstruction

(U) WHAT SIGAR REVIEWED

(U) Since fiscal year (FY) 2002, the United States has appropriated more than \$71.2 billion in assistance for the Afghan security forces. Since FY 2005, appropriations have been made available to the Secretary of Defense for the Afghanistan Security Forces Fund (ASFF) to provide assistance to the Afghan security forces “notwithstanding any other provision of law” (referred to as the “notwithstanding clause”). At the same time, provisions of federal laws 10 U.S.C. § 362 and 22 U.S.C. § 2378d, commonly referred to as the “Leahy laws” generally prohibit the Department of Defense (DOD) and Department of State (State), respectively, from providing assistance to a unit of a foreign security force if they have credible information that the unit has committed a gross violation of human rights until the behavior has been remediated.

(U) In September 2015, the *New York Times* reported that sexual abuse of children by Afghan military and police forces was “rampant,” naming specific Afghan commanders as having committed sexual abuse and soldiers who reported incidents of abuse. Following this report, on December 23, 2015, a bipartisan group of 93 Senators and members of the House of Representatives requested that SIGAR conduct an inquiry into the U.S. government’s experience with allegations of sexual abuse of children committed by members of the Afghan security forces, and the manner in which the DOD and State Leahy laws are implemented in Afghanistan. The request asked SIGAR to review 10 specific items, including child sexual abuse incidents, DOD and State Leahy law policies and procedures, and actions by the Afghan government.

June 2017

(U) Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces

(U) SIGAR 17-47-IPe REPORT

(U) WHAT SIGAR FOUND

~~(S//NF)~~ Prior to 2014, the DOD Leahy law applied only to funding for “any training program.” Therefore, DOD analyzed whether the assistance it provided to Afghan security forces constituted “training” when determining whether the DOD Leahy law applied. In January 2014, Congress expanded the law to cover “any training, equipment, or other assistance.” In August 2014, the Secretary of Defense issued implementation guidance recognizing that Leahy vetting was required for all activities funded through ASFF. DOD also began tracking potential gross violations of human rights incidents, including child sexual assault. As of August 12, 2016, DOD was tracking 75 reported gross violation of human rights incidents, including 7 that involved child sexual assault. Although DOD and State determined that some of these allegations were credible, the Secretary of Defense has used the “notwithstanding clause” in the ASFF provision in the DOD Appropriations Act to continue providing select training, equipment, and other assistance to some of the Afghan security forces units implicated in those incidents. The full extent of child sexual assault committed by Afghan security forces may never be known. SIGAR found that individuals and organizations with knowledge of incidents lacked details, were reluctant to share information with the U.S. government, or did not have explicit guidance on how to report the information. Additionally, DOD and State officials said that, due to the drawdown of U.S. forces, they have limited visibility into the Afghan security forces and rely on the Afghan government and intelligence reports to identify incidents. The Afghan government needs to take further action to prosecute and prevent child sexual assault by Afghan security forces. The Ministry of Defense (MOD) has taken some steps to prosecute gross violations of human rights, but the Ministry of Interior (MOI) has done little. Finally, DOD and State lack sufficient guidance on reporting alleged incidents, for determining whether there is credible information that a unit committed a gross violation of human rights, and for tracking reported incidents. Frequent rotation of DOD personnel assigned to implement the Leahy law for Afghan security forces hinders the continuity and consistency of DOD’s efforts.

~~(S//NF)~~

Following the expansion of the DOD Leahy law in 2014, DOD expanded its policy and guidance on reporting human rights violations, gross violations of human rights, and child sexual assault. On August 18, 2014, in a memo concerning the implementation of the DOD Leahy law, the

Secretary of Defense issued guidance on how to report gross violations of human rights by units of foreign security forces worldwide, including in Afghanistan. [REDACTED]

(S//NF) SIGAR found no evidence that U.S. forces were told to ignore human rights abuses or child sexual assault. [REDACTED]

[REDACTED] For example, over the course of its inquiry into reports of child sexual assault by members of the Afghan security forces, SIGAR interviewed 16 current and former service members. One said he reported an alleged incident to his commanding officer, but he did not know what came of the report. Another told SIGAR that after he and his fellow service members witnessed inappropriate behavior involving Afghan security forces and children, they thought it would be best to “leave it alone” rather than report it to a higher authority. In a separate incident, an interviewee told SIGAR that he heard the sounds of Afghan men and boys screaming in “what sounded like sex.” He said he and other service members talked and laughed about it happening, but did not take action to address it.

(U) In February 2017, the U.S. Embassy in Kabul issued a management notice on Leahy vetting at the embassy, which states that embassy personnel are responsible for reporting any known or suspected incidents of gross violations of human rights. Beyond this, State said it does not have specific guidance or training on reporting incidents involving the sexual assault of children.

(S//NF) Following the establishment of the *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces* in July 2014, and a biweekly joint DOD and State Afghanistan Gross Violation of Human Rights Forum (Leahy Forum), the Office of the Under Secretary of Defense for Policy (OUSD-P) began to track gross violation of human rights incidents—including child sexual assault—that were reported to and considered by the Leahy Forum. According to data provided by OUSD-P, as of August 12, 2016, the office was tracking 75 reported gross violation of human rights incidents. Of these reported incidents, 7 involved child sexual assault, 46 involved other gross violations of human rights, and 22 were classified at a level above Secret because of the sensitivity of the information or the sources and methods used to obtain the information. These incidents ranged in date from 2010 through 2016, and included gross violations of human rights allegedly committed by Afghan security forces within the MOD and MOI. The incidents reported to and considered by the Leahy Forum came from a variety of sources including intelligence reports, news articles, U.S. forces, and the Afghan government.

(S//NF) Although DOD and State have confirmed that some units of the Afghan security forces have committed gross violations of human rights, the Secretary of Defense has used the notwithstanding clause in the DOD Appropriations Acts to continue providing ASFF funding for select training, equipment, and other assistance to some implicated units in Afghanistan.

[REDACTED] this was necessary because “[t]he unique nature of how these specific ASFF activities and programs are executed makes vetting under the DoD Leahy law infeasible for certain ASFF activities and programs” [REDACTED]

(S//NF) On December 3, 2015, the Under Secretary of Defense for Policy approved use of the notwithstanding clause to allow DOD to continue providing ASFF-funded assistance to 12 Afghan security force units implicated in 14 reported gross violation of human rights incidents in 2013. None of these 14 incidents involved allegations of child sexual assault. In these instances,

DOD determined it would withhold assistance only for U.S.-based training, site improvements and minor construction, and transportation for trainees. When SIGAR asked DOD to identify what assistance it withheld from implicated MOD and MOI units, including dollar amounts, DOD responded that it withheld \$212,120 from MOI units because of credible information that the units committed gross violations of human rights.

(S//NF) While DOD and State have taken steps to identify and investigate child sexual assault incidents, the full extent of child sexual assault committed by members of the Afghan security forces may never be known. DOD officials said they do not believe that the 75 incidents on the OUSD-P tracker represent all child sexual assault and other gross violation of human rights incidents in Afghanistan. This may be because individuals and organizations with knowledge of child sexual assault incidents often lack specific details or are reluctant to share information with the U.S. government. In addition, while some U.S. personnel reported hearing or seeing possible instances of child sexual assault, they did not have explicit guidance on reporting the information to their commands. For example, two of the three service members who reported directly observing or hearing what they believed to be evidence of child sexual assault by Afghan security forces said they did not receive training on how to respond to the sexual abuse of children by Afghan security forces. Both DOD and State officials said that, due to the drawdown of U.S. forces, they have limited visibility and rely on self-reporting from the Afghan government and the U.S. National Intelligence Council (NIC) reports, in addition to open source information, to identify gross violations of human rights, including child sexual assault incidents.

(U) The Afghan government needs to take further action to prevent child sexual assault by Afghan security forces. Although the Afghan government has taken steps to address gross violations of human rights committed by Afghan security forces, the MOD has shown more progress than the MOI, and challenges remain for U.S. engagement with the Afghan government on the problem. An OUSD-P official reported that DOD often receives information on gross violation of human rights incidents after the MOD has taken action, and DOD can begin the process to remediate the unit involved. DOD officials attribute this progress to the structure of the MOD's military justice system, which allows the ministry to prosecute cases internally, without relying on external entities. According to USFOR-A officials, the MOI's lack of progress in addressing gross violations of human rights can be attributed to the structure of the ministry and the relationship between the MOI and the Afghan Attorney General's Office (AGO). For example, the MOI must refer gross violation of human rights cases to the AGO for prosecution in the civilian court system. In these incidents, MOI personnel may conduct an initial investigation, but they are required to turn all information over to the AGO, at which point officials often have no visibility into whether anyone is held accountable for a particular crime.

(S//NF) Although DOD and State have taken steps to engage the Afghan government on addressing gross violations of human rights prior to 2016, the departments' efforts appear to have largely taken place independently of each other. DOD and State efforts to engage the Afghan government were not formalized until the two departments completed a *Strategy for Promoting Human Rights and Compliance with International Obligations by Afghan National Defense and Security Forces* (Engagement Strategy) in April 2016. This strategy includes recommended steps for preventing gross violations of human rights by the Afghan security forces and for ensuring accountability when there is credible information that gross violations of human rights occurred. [REDACTED]

(SBU) While the creation of the Engagement Strategy is a positive step to ensure that the U.S. government is using a consistent approach and message to engage with the Afghan government on addressing gross violations of human rights, it is not clear that the U.S. government is fully using resources with the MOI and AGO to encourage action on gross violations of human rights, particularly child sexual assault. SIGAR received contradictory information from the U.S. Embassy in Kabul and USFOR-A officials when SIGAR asked about coordination and sharing information on allegations of gross violations of human rights by Afghan security forces. According to the embassy legal advisor, RS officials asked her on two or three occasions to check with the Afghan government on the progress of cases involving the MOI. She said the embassy was not able to obtain this information and reported that to RS. However, according to USFOR-A officials, when they shared information with the U.S. Embassy in Kabul on open gross violation of human rights incidents, they did not receive a response.

(S//NF) Although DOD and State have taken steps to vet Afghan security forces for gross violations of human rights in accordance with the Leahy laws, challenges remain for full implementation of the Leahy laws in Afghanistan. Beyond the *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces*, the Leahy Forum has no set guidance

for how it decides whether there is “credible information” that a gross violation of human rights has occurred. According to DOD and State officials SIGAR spoke with, the deliberative process for considering reported incidents is important because the definition of what constitutes a gross violation of human rights is so broad that the facts and circumstances of each case must be considered individually. However, the two departments apply credible information differently. For example, State considers reports identified in the *New York Times*, while DOD requires independent corroboration of the incident and additional details on the facts of the case. Similarly, DOD and State lack a standard template and guidance for tracking the status of reported incidents.

(U) Furthermore, given the security situation and the drawdown in U.S. forces, DOD and State personnel do not have the same presence outside of Kabul that they once had. Contractors are still present. However, neither DOD nor State has language in its contracts requiring that contractors report gross violation of human rights incidents or allegations of child sexual assault. When SIGAR asked whether the departments have language in their contracts requiring contractors to report gross violations of human rights and child sexual assault, DOD and State referred SIGAR to combating trafficking in persons contracting provisions. In addition, when SIGAR asked State whether it has other guidance and training for State employees and contractors in Afghanistan, the department responded, “State does not have specific training or guidance for how its personnel should address reports or observations of [gross violations of human rights].” Later, State told SIGAR that the Bureau of International Narcotics and Law Enforcement Affairs provides pre-deployment training for contractors that includes a module on human rights, including an advisor’s role and responsibility regarding human rights violations.

(U) According to an official with State’s Bureau of Democracy, Human Rights, and Labor (DRL), State does not have a backlog in vetting requests, and DRL has sufficient resources to meet vetting demands. However, the same cannot be said for DOD, which does not have a permanent position responsible for overseeing the Leahy vetting process for Afghanistan.

(SBU) When SIGAR met with USFOR-A officials responsible for tracking gross violations of human rights by Afghan security forces, SIGAR asked how USFOR-A maintains continuity despite frequent staff turnover in Afghanistan. The USFOR-A legal advisor said the continuity of the DOD Leahy vetting process is provided through the Leahy Forum meetings. However, it appears that with the departure of key personnel in OUSD-P and USFOR-A, there is a lack of historical knowledge and continuity of operations for the Afghanistan-specific vetting process. For example, in November 2016, an OUSD-P official told us that OUSD-P had not engaged with State on Leahy vetting of Afghan security forces since the policy analyst managing the Leahy portfolio left in August 2016. In December 2016, an official from State’s Office of the Special Representative for Afghanistan and Pakistan Affairs told us that, as of December 1, 2016, DOD had not held a Leahy Forum meeting since September 2016. The lack of the meetings meant that State no longer had a venue to discuss the cases with DOD. State officials said they still received new information on reported gross violation of human rights incidents from the quarterly NIC reports and through searches of public information. Subsequently, OUSD-P told us that it resumed the Leahy Forum meetings in January 2017. Given the breakdown in coordination in the absence of the Leahy Forum, it is encouraging that DOD and State have taken steps to renew the forum process to address child sexual assault and other gross violations of human rights by the Afghan security forces.

(U) MATTER FOR CONGRESSIONAL CONSIDERATION

(U//FOUO) Should Congress determine that DOD’s use of the notwithstanding clause in the ASFF appropriation to continue providing assistance to members of the Afghan security forces for which DOD has credible information of a gross violation of human rights is inconsistent with the intent of the Leahy law, Congress may want to consider prohibiting DOD from applying the notwithstanding clause to the DOD Leahy law.

(U) WHAT SIGAR RECOMMENDS

(U) To ensure that DOD and State personnel and contractors in Afghanistan understand the requirements and procedures for reporting gross violations of human rights, SIGAR recommends that the Secretaries of Defense and State:

1. (U) Reiterate guidance to all department personnel and contractors in Afghanistan that explicitly emphasizes that gross violations of human rights, including child sexual assault, are not to be tolerated.
2. (U) Reiterate guidance to all department personnel and contractors in Afghanistan that establishes clear reporting and training requirements related to gross violations of human rights and child sexual assault, including specific instructions on how to report a suspected incident.
3. (U) Incorporate requirements into existing and future contract clauses that contractor personnel must report gross violations of human rights, including child sexual assault, to the Leahy law point of contact in each department.

(U) To ensure continuity and clarity when addressing reported gross violation of human rights incidents involving members of the Afghan security forces, SIGAR recommends that the Secretaries of Defense and State:

4. (U) Coordinate their activities and identify roles and responsibilities for engaging with the Afghan Attorney General's Office on allegations of gross violations of human rights, including child sexual assault, by Afghan security forces within the MOI.
5. (U//FOUO) Require use of Leahy Forum meetings as the means for coordinating all relevant stakeholders from DOD, State, and other departments, and document forum procedures, including roles and responsibilities for investigating, deliberating on, and tracking gross violation of human rights incidents, including child sexual assault, by Afghan security forces.

(U) SIGAR also recommends that the Secretary of Defense, in coordination with State:

6. (U) Establish a single tracking system for reported gross violation of human rights incidents in Afghanistan, accessible by all DOD and State stakeholders, along with guidance on what information should be entered in the tracker.

(U) To ensure that DOD has sufficient resources to fully comply with the requirements of the DOD Leahy law, SIGAR recommends that the Secretary of Defense:

7. (U) Designate a specific position within DOD to oversee the department's implementation of the Leahy law in Afghanistan.

(U) SIGAR received comments from DOD's Office of the Assistant Secretary of Defense for Asian and Pacific Security Affairs, and State's Office of the Special Representative for Afghanistan and Pakistan Affairs. DOD concurred with the seven recommendations addressed to it and identified some steps it would take in response. DOD said that in addition to reiterating guidance for all personnel, it is reviewing the appropriateness of implementing a requirement for contractors to report offenses of non-contractor personnel through a contract clause and also exploring other avenues to ensure that DOD policy is disseminated to contractors. The department will use existing information technology hardware and software systems to establish a single tracking system for gross violation of human rights incidents. While DOD said it cannot commit to designating a new position at this time for overseeing Leahy Law implementation in Afghanistan, it will draft a policy that clarifies the roles and responsibilities of the DOD organizations involved in the implementation process. State concurred with the five recommendations addressed to it, and with the recommendation to DOD that involved coordination with State. State agreed to reiterate guidance on and reporting and training requirements within the next 30 days and update it on an annual basis. State also agreed to incorporate reporting requirements related to gross violations of human rights, including child sexual assault, into existing and future contract clauses. Moreover, State agreed to work with DOD to document Leahy Forum procedures and develop a classified tracker for reported gross violation of human rights incidents in Afghanistan.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

June 9, 2017

Congressional Requestors,

(U) I am submitting the enclosed report in response to your December 23, 2015, request that SIGAR review the Department of Defense's (DOD's) and Department of State's implementation of the Leahy laws in Afghanistan, and their handling of allegations of child sexual assault by Afghan security forces. The 10 questions you asked us to address are attached in appendix I of this report.

(U//~~FOUO~~) Based on the results of our work, and to ensure that DOD fully complies with the intentions of the DOD Leahy law, this report includes a matter for congressional consideration. Additionally, we are making five recommendations to the Secretaries of Defense and State to ensure that DOD and State personnel and contractors in Afghanistan understand the requirements and procedures for reporting gross violations of human rights, and to ensure continuity and clarity when addressing reported gross violations of human rights involving members of the Afghan security forces. Finally, we are making two additional recommendations to the Secretary of Defense to ensure that the department has sufficient resources to fully comply with the requirements of the DOD Leahy law.

(U) We received written comments on a draft of this report from DOD's Office of the Assistant Secretary of Defense for Asian and Pacific Security Affairs, and State's Office of the Special Representative for Afghanistan and Pakistan Affairs. DOD and State concurred with all of our recommendations. DOD's and State's comments are reproduced in appendices III and IV, respectively.

(U) We conducted this work in accordance with the Quality Standards for Federal Offices of Inspector General, adopted by the Council of the Inspectors General on Integrity and Efficiency, and SIGAR's quality control standards. SIGAR conducted this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

A handwritten signature in black ink, appearing to read "John F. Sopko".

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

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(U) CLASSIFICATION MARKING KEY

| | |
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| S//NF | U.S. Secret//Not Releasable to Foreign Nationals |
| NS | NATO Secret (unauthorized disclosure would cause serious damage to NATO) |
| NISAFS | NATO International Security Assistance Force Secret (unauthorized disclosure would cause serious damage to NATO) |
| NRSS | NATO Resolute Support Secret (unauthorized disclosure would cause serious damage to NATO) |
| NC | NATO Confidential (unauthorized disclosure would be damaging to the interests of NATO) |
| NRSU | NATO Resolute Support Unclassified (official information that is property of NATO; access to the information by non-NATO entities is permitted when such access would not be detrimental to NATO) |
| U//FOUO | U.S. Unclassified//For Official Use Only |
| SBU | U.S. Sensitive but Unclassified |
| U | U.S. Unclassified |

[REDACTED] NATO information is not subject to U.S. Executive Order 13526 marking requirements; therefore, no declassification date or specific originator is provided. U.S. classified information within this document follows the appropriate data-classification handling regulations in accordance with DOD Manual 5200.01-V2, dated February 24, 2012.

(U) ABBREVIATIONS

| | |
|---------|---|
| AGO | Afghan Attorney General's Office |
| AIHRC | Afghanistan Independent Human Rights Commission |
| ANA | Afghan National Army |
| ANP | Afghan National Police |
| ASFF | Afghanistan Security Forces Fund |
| CENTCOM | U.S. Central Command |
| CSTC-A | Combined Security Transition Command–Afghanistan |
| DOD | Department of Defense |
| DRL | Bureau of Democracy, Human Rights, and Labor |
| INL | Bureau of International Narcotics and Law Enforcement Affairs |
| INVEST | International Vetting and Security Tracking system |
| ISAF | International Security Assistance Force |
| MOD | Ministry of Defense |
| MOI | Ministry of Interior |
| NATO | North Atlantic Treaty Organization |
| NIC | National Intelligence Council |
| OGC | Office of General Counsel |
| OUSD-P | Office of the Under Secretary of Defense for Policy |
| RS | Resolute Support |
| SOCOM | U.S. Special Operations Command |
| SRAP | Office of the Special Representative for Afghanistan and Pakistan Affairs |
| USFOR-A | U.S. Forces–Afghanistan |

(U) Since fiscal year (FY) 2002, the United States has appropriated more than \$71.2 billion in assistance for the Afghan security forces.¹ Federal statutes 10 U.S.C. § 362 and 22 U.S.C. § 2378d, commonly referred to as the “Leahy laws,” generally prohibit the Department of Defense (DOD) and Department of State (State) from providing assistance to a unit of a foreign security force if the Secretaries of Defense and State have credible information that the unit committed a gross violation of human rights.²

(U) In September 2015, the *New York Times* reported that sexual abuse of children by Afghan military and police forces was “rampant,” and named specific Afghan commanders as having committed sexual abuse and U.S. soldiers who reported specific incidents of abuse.³ Following this report, on December 23, 2015, a bipartisan group of 93 senators and members of the House of Representatives requested that SIGAR conduct an inquiry into the U.S. government’s experience with allegations of sexual abuse of children committed by members of the Afghan security forces, and the manner in which DOD and State implement the Leahy laws in Afghanistan.⁴ The group asked SIGAR to review 10 specific issues, including child sexual abuse incidents, DOD and State Leahy policies and procedures, and actions taken by the Afghan government. After conducting our research, we grouped these issues into four categories that address each question in the request: (1) DOD and State policies and guidance; (2) incidents involving a gross violation of human rights, including child sexual assault; (3) steps the Afghan government has taken to address gross violations of human rights; and (4) DOD and State resources for Leahy law implementation. A copy of the original request and a reference to each answer are attached in appendix I.

(U) In conducting this work, we analyzed the DOD and State Leahy laws, along with DOD, State, International Security Assistance Force (ISAF), and Resolute Support (RS) guidance and policies related to the laws, human rights, training, reporting requirements, and whistleblower protection. We analyzed reported gross violation of human rights incidents tracked by U.S. Forces–Afghanistan (USFOR-A) and the Office of the Under Secretary of

¹ (U) Amount appropriated as of March 31, 2017. This includes assistance provided through the Department of Defense (DOD) for the Afghanistan Security Forces Fund’s (ASFF’s) Train & Equip, and Drug Interdiction & Counter-Drug Activities funding sources, and through State’s Foreign Military Financing and International Military Education and Training funding sources.

² (U) For purposes of this report, we refer to 10 U.S.C. § 362 and 22 U.S.C. § 2378d as the DOD and State Leahy laws, respectively.

³ (U) Joseph Goldstein, “U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies,” *New York Times*, September 20, 2015.

⁴ (U) Other terms associated with the sexual abuse of children include rape, sexual assault, sexual exploitation, and the Afghan term *bacha bazi*. According to the Afghanistan Independent Human Rights Commission (AIHRC), although there is no clear Afghan legal definition of *bacha bazi*, it generally refers to local powerful individuals keeping one or more boys, typically between 10 to 18 years of age, for use as bodyguards, servants, dancers, and for sexual exploitation and other forms of harassment. Given the lack of a clear Afghan legal definition for *bacha bazi*, we refrain from using the term except as a quote or when referred to specifically in source documents and interviews. Similarly, given the lack of a single term for incidents of sexual abuse of children by members of the Afghan security forces, we use sexual assault, as defined in DOD Directive 6495.01, “Sexual Assault Prevention and Response Program,” except when quoting source material—either documentary or testimonial. The directive defines sexual assault as “Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific [Uniform Code of Military Justice] offenses: rape, sexual assault, aggravated sexual assault, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.”

(U) Before the transition from the International Security Assistance Force (ISAF) to Resolute Support (RS) at the end of 2014, the national police and military forces in Afghanistan were cumulatively referred to as the Afghan National Security Forces. Following the transition to RS, the name changed to the Afghan National Defense and Security Forces (ANDSF). To cover components of the security forces, such as the Afghan Local Police, that receive U.S. assistance and are therefore subject to Leahy law requirements even though they are not formally part of the ANDSF, we use the term “Afghan security forces” when referring to the overall Afghan forces subject to Leahy vetting and allegations of involvement in gross violations of human rights and child sexual assault. When referring to a specific component of the security forces, we cite the component by name.

Defense for Policy (OUSD-P). We reviewed information from the DOD Office of the Inspector General (OIG) and armed service OIGs regarding whistleblower complaints about retaliation resulting from service members' attempts to report allegations of child sexual assault by Afghan security forces. We also observed meetings of the joint DOD and State Afghanistan Gross Violation of Human Rights Forum (Leahy Forum).

(U) We interviewed U.S. government officials and others in Washington, D.C., and Kabul, Afghanistan. For DOD, we interviewed officials from OUSD-P, the Office of the Joint Chiefs of Staff/Strategic Plans and Policy Directorate, the Army Review Board, USFOR-A, the Combined Security Transition Command–Afghanistan (CSTC-A), and current and former service members, and DOD contractors who served in Afghanistan. For State, we interviewed representatives from the Bureau of Democracy, Human Rights, and Labor (DRL); the Office of the Special Representative for Afghanistan and Pakistan Affairs (SRAP); the Bureau of International Narcotics and Law Enforcement Affairs (INL); the U.S. Embassy in Kabul's Political-Military Affairs, Consular, and Political Sections; and the embassy legal advisor. We also interviewed a representative from the U.S. Drug Enforcement Administration and the Justice attaché at the U.S. Embassy in Kabul. We interviewed representatives from relevant international and nongovernmental organizations (NGOs), such as the North Atlantic Treaty Organization (NATO), the Afghanistan Independent Human Rights Commission (AIHRC), Amnesty International, the United Nations Assistance Mission in Afghanistan (UNAMA), Hagar International, the Afghanistan Human Rights and Democracy Organization, Child Soldiers International, and the Roméo Dallaire Child Soldiers Initiative. Finally, we interviewed journalists with experience reporting on allegations of child sexual assault by Afghan security forces.

(U) We conducted this review from January 2016 to May 2017 in accordance with SIGAR's quality control standards. These standards require that we carry out work with integrity, objectivity, and independence, and provide information that is factually accurate and reliable, consistent with the Quality Standards for Federal Offices of Inspector General, which are overarching standards that guide the conduct of all Office of Inspector General official duties. SIGAR performed this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

(U) BACKGROUND

(U) The Leahy Laws

(U) The Leahy laws generally prohibit DOD and State from providing assistance to units of foreign security forces that have committed a gross violation of human rights.

(U) Under 10 U.S.C. § 362, DOD is prohibited from using funds for “any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.”⁵ The law requires the Secretary of Defense, in consultation with the Secretary of State, to “ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.” To this end, the law also

⁵ (U) Prior to 2014, the DOD Leahy law appeared as a provision in the annual Department of Defense appropriation. See, e.g., Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Division C, § 8057. This earlier iteration of the law prohibited DOD from using funds “to support *any training program* involving a unit of the security forces or police of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights” (emphasis added). In 2014, the law was expanded to prohibit DOD from using funds for “*any training, equipment, or other assistance* for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.” Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Division C, § 8057 (codified as amended at 10 U.S.C. § 362) (emphasis added). This change expanded the DOD Leahy law prohibition from applying to only training programs to applying to any kind of DOD assistance to foreign security forces.

instructs the Secretary of Defense to “ensure that any information in the possession of the Department of Defense about gross violations of human rights by units of foreign security forces is shared on a timely basis with the Department of State.”

(U) Under 22 U.S.C. § 2378d, State is prohibited from furnishing any assistance under the Foreign Assistance Act or the Arms Export Control Act “to any unit of the security forces of a foreign country if the Secretary of State has credible information that the unit has committed a gross violation of human rights.”⁶ Additionally, when State withholds assistance, the law requires the Secretary of State to “promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.”

(U) Exceptions and Waiver to the Leahy Laws

(U) There are two exceptions to the general prohibition in the DOD Leahy law. Under 10 U.S.C. § 362, the Secretary of Defense may continue funding for training, equipment, or other assistance to a unit implicated in a gross violation of human rights if (1) the Secretary of Defense, after consulting with the Secretary of State, determines that the government of a country has taken all necessary corrective steps; or (2) the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

(U) In addition, after DOD determines that credible information exists that a certain unit has committed a gross violation of human rights, the Secretary of Defense, after consulting with the Secretary of State, may waive the prohibition on providing training, equipment, or other assistance if the Secretary determines that such a waiver is required by extraordinary circumstances. The law requires the Secretary of Defense or his designee to notify Congress within 15 days of providing DOD-funded assistance to an Afghan security force unit based on any exception or waiver.

(U//~~FOUO~~) In addition, since establishing the Afghanistan Security Forces Fund (ASFF) in 2005,⁷ Congress has made appropriations to the fund subject to the stipulation that they “shall be available to the Secretary of Defense, notwithstanding any other provision of law.”⁸ DOD has interpreted this clause to allow the Secretary

⁶ (U) See Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 620M (codified as amended at 22 U.S.C. § 2378d); Arms Export Control Act, Pub. L. No. 90-629. The law further requires the Secretary of State to establish, and periodically update, procedures to:

- (U) ensure that, for each country, State has a current list of all security force units receiving U.S. training, equipment, or other types of assistance;
- (U) facilitate receipt by State and U.S. embassies of information from individuals and organizations outside the U.S. Government about gross violations of human rights by security force units;
- (U) routinely request and obtain such information from DOD, the Central Intelligence Agency, and other U.S. government sources;
- (U) ensure that such information is evaluated and preserved;
- (U) ensure that when an individual is designated to receive U.S. training, equipment, or other types of assistance the individual’s unit is vetted as well as the individual;
- (U) seek to identify the unit involved when credible information of a gross violation exists but the identity of the unit is lacking; and
- (U) make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished pursuant to subsection (a).

⁷ (U) According to DOD, it “uses the ASFF appropriation to provide assistance to the Afghan security forces, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funding.”

⁸ (U) See, e.g., Emergency Supplemental Appropriations Act for Defense, the Global War of Terror, and Tsunami Relief, Pub. L. No. 109-13, 119 Stat. 231, 235-36; Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2385-86 (2015).

to “forgo implementation of the Leahy Law in specific cases or more broadly if necessary.”⁹ DOD refers to this clause as the “notwithstanding authority.” According to DOD, unlike the exception and waiver clauses of the DOD Leahy law, “use of the notwithstanding authority does not require formal congressional notification.”¹⁰ We asked DOD whether it has applied the notwithstanding clause to other laws—for example, those governing military assistance, foreign military sales, fiscal accountability, or federal procurements. DOD responded, “DoD has relied upon the notwithstanding authority for the Afghanistan Security Forces Fund appropriation for transportation and related expenses for Excess Defense Articles transferred to Afghanistan pursuant to section 516 of the Foreign Assistance Act of 1961, notwithstanding the prohibition in section 516(e)(1).”¹¹ In December 2017, along with its response to SIGAR’s request to declassify this report, DOD told us that the information it originally provided in December 2016 was incorrect and that “it has identified no known uses of ASFF notwithstanding authority other than in implementation of the Leahy Law.”

(U) For State, under 22 U.S.C. § 2378d, the department may continue providing assistance “if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations that the government of such country is taking effective steps to bring the responsible members of the security forces unit to justice.”

(U) Definitions

(U) Both Leahy laws call for withholding funds if DOD or State have credible information that a unit of a foreign security force committed a gross violation of human rights. However, neither the DOD nor State Leahy law defines “gross violation of human rights” or “credible information.”

(U) According to DOD and State guidance, both departments are guided by the definition of a gross violation of human rights in section 502B(d)(1) of the Foreign Assistance Act of 1961, as amended:

(U) The term “gross violations of internationally recognized human rights” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.¹²

(~~SBU~~) While section 502B(d)(1) does not specifically use the term “sexual assault of children,” both DOD and State told us they view sexual assault of children as a gross violation of human rights. Specifically, DOD stated that sexual assault of children is a gross violation of human rights if it is “perpetrated ‘under color of law’—essentially if in the performance of [a member of the security forces’] official duties.” State includes extrajudicial killing and “rape under the color of law” as gross violations of human rights.¹³

⁹ (U) Office of the Under Secretary of Defense for Policy (OUSD-P), *The DoD Leahy Law and ASFF*, SECRET//NOFORN briefing slides, March 10, 2016.

¹⁰ (U//~~FOUO~~) Secretary of Defense, *Afghanistan Security Forces Fund Execution and Compliance with the DoD Leahy Law*, FOR OFFICIAL USE ONLY memorandum, July 22, 2014.

¹¹ (U) DOD response to SIGAR request for information, December 9, 2016.

¹² (~~SBU~~) State, *Compliance with the State and DOD Leahy Laws: A Guide to Vetting Policy and Process*, SENSITIVE BUT UNCLASSIFIED guidance, September 2012; and (U) Secretary of Defense, *Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) (“the DoD Leahy law”)*, August 18, 2014.

¹³ (~~SBU~~) State, *2017 Leahy Vetting Guide: A Guide to Implementation and Best Practices*, SENSITIVE BUT UNCLASSIFIED guidance, February 2017.

(SBU) In June 2014, the Secretary of State issued guidance in cable 14 STATE 77718. According to the guidance:

(SBU) While determining credibility is a judgment call based on the facts, the following factors are carefully considered when weighing both the credibility of a source and the veracity of an allegation:

- (a.) (SBU) Past accuracy and reliability of the reporting source as well as original source, if known;
- (b.) (SBU) Known political agenda of a source (both reporting source and/or original source, if known) which might lead to bias in reporting;
- (c.) (SBU) Corroborative information to confirm part or all of allegation;
- (d.) (SBU) Counterfactuals of part or all of allegation;
- (e.) (SBU) History of unit and known patterns of abuse/professional behavior;
- (f.) (SBU) Level of detail and substance of the gross violation of human rights allegation (Does it identify a specific gross violation of human rights? Does it include details of the abuse that can be corroborated and/or challenged?);
- (g.) (SBU) Clear perpetrator and/or link to an operational unit; and
- (h.) (SBU) Clearly identified victim(s).

(U) Standard Leahy Vetting Process

(SBU) Globally, DOD and State have a standard process for vetting candidates for assistance. DRL's Office of Security and Human Rights vets all candidates for assistance through its International Vetting and Security Tracking (INVEST) system before providing training, equipment, or other assistance to determine whether it has credible information of a gross violation of human rights. This process is guided by State's *Compliance with the State and DOD Leahy Laws: A Guide to Vetting Policy and Process*. According to a DRL official, the standard Leahy vetting process still applies to State-funded assistance in Afghanistan, such as INL-sponsored training programs. As of September 3, 2016, DRL had conducted 18,768 Leahy vetting requests for Afghan security forces since 2010.¹⁵ These include 5,753 requests from DOD, and of those, 4,818 were approved, 284 were canceled, 651 were suspended, and none was rejected.¹⁶

¹⁵ (U) According to DRL, INVEST has data going back only to 2010.

¹⁶ (SBU) A Leahy vetting request is approved if no derogatory information is found on either the unit or the individual during the search. A request is canceled for administrative reasons unrelated to derogatory information, such as the training or assistance event is canceled, the host government withdraws the nominee, there is a duplicate entry in the system, or the data were entered incorrectly and cannot be modified sufficiently. A request is suspended if the preliminary vetting search identifies possible derogatory information, and there is not enough time to confirm or rule out the information before the training event. A request is rejected if confirmed derogatory information is found.

(SBU) The vetting process begins at a U.S. embassy, where a designated Leahy point of contact (known as the “submitter”) receives information from the U.S. government official sponsoring the training or other assistance for the member or unit from the foreign security force in question, and enters it into INVEST. The information the submitter enters includes the individual’s name and unit, the type of assistance the individual will receive—for example, the title of the training course—and the source of funding for the assistance. Once the submitter performs an INVEST check at the embassy, the case is forwarded to Washington, where a DRL Leahy vetter conducts additional searches through INVEST and open source information available on the Internet.¹⁷

(SBU) As part of the vetting process, the appropriate State geographic bureau’s Leahy vetter conducts a classified search through the Bureau of Intelligence and Research’s Information Support System.¹⁸ According to a DRL official, the vetting search involves a search of the subject’s name combined with search terms such as “murder,” “torture,” or “rape.”¹⁹

(U) DOD and State Established Separate Leahy Vetting Procedures Unique to the Afghan Security Forces

(SBU) According to DOD and State, “the large scale of DoD-funded training, equipment, and on-budget assistance (e.g., salaries, uniforms, infrastructure) being provided to essentially all members of the [Afghan security forces] and the presence of U.S. forces closely partnering with [Afghan security forces] units on a mission that is imperative for achieving U.S. national security objectives have made standard Leahy vetting procedures impracticable.”²⁰ To address this, in July 2014, DOD and State established separate procedures, unique to Afghanistan, for conducting Leahy vetting of new recruits and existing members of the Afghan security forces in the *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces*.

(U//FOUO) For new recruits, DOD and State are not involved in vetting, which is done by the Afghan authorities using an eight-step vetting process for the Afghan National Army (ANA) and the Afghan National Police (ANP).²¹

¹⁷ (SBU) If the submitter at the embassy believes there is a credible allegation of a gross violation of human rights, the embassy should reject the applicant, add an INVEST note outlining the nature and context of the derogatory information, and upload any relevant documents, if applicable. If the submitter is unsure whether the derogatory information merits withholding training or other assistance, he or she may request guidance from the Leahy vetters at DRL. If either the classified or unclassified searches in headquarters result in potentially derogatory information, the DRL vetter contacts the embassy by e-mail to determine whether the applicant is the same individual associated with the identified derogatory information, and staff at the embassy provide confirmation or further comments. The individual being vetted is not cleared to receive the training or other assistance until his or her case is resolved.

(U) Open source information includes publicly available material that is not classified, including information from the Internet, traditional mass media (television, radio, newspaper, and magazines), specialized journals, think tank studies, and photographs.

¹⁸ (U) The Information Support System is a classified information message handling system used to process, disseminate, and produce intelligence information.

¹⁹ (SBU) State’s *Compliance with the State and DOD Leahy Laws: A Guide to Vetting Policy and Process*, SENSITIVE BUT UNCLASSIFIED guidance, does not provide a list of specific search terms for vetters to use in their searches. According to State, a default search string of gross violation of human rights related terms opens when the web search function in INVEST is used to conduct open source Internet searches.

²⁰ (SBU) DOD and State, *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces*, SENSITIVE BUT UNCLASSIFIED guidance, July 9, 2014.

²¹ (U//FOUO) The process includes: (1) review of the recruit’s *tashkara*, or identification card for validity; (2) collection of basic biographical information, such as the recruit’s name, father’s name, mother’s name, sibling’s name, the village the recruit came from, and two photos; (3) Ministry of Interior (MOI) or Ministry of Defense (MOD) criminal background check; (4) medical screening; (5) drug test; (6) two letters of recommendation from village elders or guarantors; (7) interviews with recruiters; and (8) enrollment in the Afghan government’s biometric database. New recruits would only be vetted through the standard Leahy process in limited circumstances such as, if they required a U.S. visa to travel to the United States for training.

In the absence of a specific request for assistance, DOD and State do not proactively vet every existing member of a unit receiving assistance. Instead, vetting occurs in two general circumstances. The first is when individual Afghans are selected for training in the United States. These individuals undergo standard Leahy vetting. The second is when a gross violation of human rights incident is reported and DOD and State attempt to identify responsible units and individuals. In both cases, State provides DOD with a list of any units and individuals for which State has credible information of a gross violation of human rights.²² DOD also forwards any information it receives on gross violations of human rights to State. According to DOD, it evaluates all the information it receives on reported gross violations of human rights in Afghanistan, and if it deems the information as credible, it will make a determination whether to discontinue assistance or continue it after using either an applicable exception or waiver under the DOD Leahy law or the notwithstanding clause in the ASFF.

(U//~~FOUO~~) In 2014, as part of the vetting process for Afghan security forces, the departments began holding biweekly Leahy Forum meetings to discuss Leahy implementation and review information on suspected gross violation of human rights incidents on a case-by-case basis. Representatives from OUSD-P, the Joint Chiefs of Staff, U.S. Central Command (CENTCOM), USFOR-A, SRAP, DRL, the U.S. Embassy in Kabul, and the Defense Intelligence Agency can attend. In addition, State reviews quarterly U.S. National Intelligence Council (NIC) memos and provides information on incidents it believes merit DOD's consideration. DOD also receives information on potential gross violation of human rights incidents from USFOR-A and the Afghan government.

(U//~~FOUO~~) Once the Leahy Forum receives reports of a suspected gross violation of human rights, the members determine whether the information is credible. If it is, the group tries to determine the smallest unit implicated in the credible incident. The Leahy Forum will also go back to the reporting officials in Afghanistan to see whether they can provide additional information on the incident or the status of the investigation at the local level. Based on the results of the discussion at the Leahy Forum and any follow-up with officials in Afghanistan, State provides formal notification to DOD on the incident in a "credibility memo."

(U) Remediation Process

(U) DOD and State can resume assistance if the foreign government receiving it has taken steps to remediate the unit implicated in a gross violation of human rights. Under the DOD Leahy law, DOD can provide training, equipment, or other assistance to a unit of a foreign security force for which the department has credible information of a gross violation of human rights if the Secretary of Defense determines that the government of that country "has taken all necessary corrective steps." Under the State version, the prohibition on assistance does not apply if the Secretary determines that "the government of that country is taking effective steps to bring the responsible members of the security forces unit to justice."

(U) In 2015, to address the different language in the DOD and State Leahy laws, the two departments developed the *Joint Department of Defense (DOD) and Department of State (State) Policy on Remediation and the Resumption of Assistance Under the Leahy Laws*. This document outlines the specific steps that the departments must go through to remediate a unit that has been implicated in a gross violation of human rights so that it can regain eligibility for DOD or State assistance. The policy uses the term "appropriate remediation measures" in place of the terms "all necessary corrective steps" from the DOD Leahy law and "effective steps to bring responsible members to justice" from the State Leahy law.

²² (U) Because many members of the Afghan security forces do not have birth certificates and some names are very common, a DRL official said they do not have baseline information on many Afghan security force members. As a result, he said, there would be no point in entering all new recruits into INVEST.

(S//NF) DOD LACKED EXPLICIT GUIDANCE ON REPORTING HUMAN RIGHTS VIOLATIONS PRIOR TO 2011

(U//FOUO) Prior to January 2014, the DOD Leahy law applied only to funding for “any training program.”²³ Joint Staff General Administrative Message, “Human Rights Verification for DoD-Funded Training of Foreign Personnel,” dated June 7, 2004, defined a training program as “instruction of foreign security force personnel that may result in the improvement of their capabilities.” According to a slide presentation OUSD-P gave us in March 2016, DOD’s Office of General Counsel (OGC) did not consider “any training program” to include the provision of mentors, embedded personnel, or equipment.²⁴ Later, OUSD-P clarified that OGC’s interpretation was not as broad as the slide presentation suggested. According to OUSD-P officials, prior to the expansion of the DOD Leahy law in 2014,²⁵ DOD analyzed whether the assistance it provided to Afghan security forces through ASFF amounted to “training” when determining whether the DOD Leahy law applied and vetted relevant recipients. According to DOD, between 2010 and 2013, State vetted 3,362 requests for ASFF-funded training, of which 2,720 were approved to receive funding for training.

(U) In January 2014, Congress expanded the law to cover “any training, equipment, or other assistance.” Following this expansion, the Secretary of Defense in August 2014 issued implementation guidance recognizing that Leahy vetting was required for all ASFF-funded activities, rather than only training. However, funding sources, such as the Afghanistan Infrastructure Fund and the Commander’s Emergency Response Program, are not subject to the vetting requirement in the DOD Leahy law because the types of assistance provided by these particular funds are not provided to foreign security forces.²⁶ The August 18, 2014, implementation guidance, along with a separate, classified memo issued on the same day establishing policy guidance on the application of the DOD Leahy law to ASFF-funded assistance, also explicitly required DOD components to report information about gross violations of human rights by units of a foreign security force, including Afghan security forces.²⁷

(S//NF) Before 2011, DOD Lacked an Explicit Policy or Process for Reporting Child Sexual Assault and Other Human Rights Violations in Afghanistan

(S//NF) To determine what guidance DOD and State have that requires training on and reporting of gross violations of human rights and child sexual assault, we asked the departments to provide documentation of their policies and guidance on these topics. We reviewed 48 distinct policy and training documents DOD provided for 2005 to 2016. DOD did not have guidance specifically requiring the reporting of human rights violations in Afghanistan until November 2011.²⁸

(U//FOUO) In response to a request for information from the DOD OIG, DOD stated, “U.S. personnel deploying to Afghanistan receive training in accordance with CENTCOM theater training requirements. The Services

²³ (U) See, e.g., Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Division C, § 8057; and Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Division A, § 8058 (a) (2011).

²⁴ (U) OUSD-P, *The DoD Leahy Law and ASFF*, SECRET//NOFORN briefing slides, March 10, 2016.

²⁵ (U) Pub. L. No. 113-76, Division C, § 8057.

²⁶ (U) Secretary of Defense, “Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) (‘the DoD Leahy law’),” August 18, 2014.

²⁷ (U) Secretary of Defense, “(U) Policy Guidance on Application of the DoD Leahy Law to Assistance Provided using Amounts Appropriated for the Afghanistan Security Forces Fund,” SECRET//NOFORN memorandum, August 18, 2014.

²⁸ (S//NF) According to DOD, its Law of War Program and its Detainee Program would have required reporting of gross violations of human rights by Afghan security forces in the Law of War or the detention context, respectively. DOD told us it considers respect for human rights and humane treatment of detainees to include a prohibition on child sexual assault.

provide additional training, which may indirectly address human rights violations.”²⁹ However, based on our review of DOD records, before 2011, the training required for U.S. personnel deploying to Afghanistan focused on the Law of Armed Conflict, combatting trafficking in persons (CTIP), and detainee abuse, but did not include any references to human rights violations, gross violations of human rights, or child sexual assault. Furthermore, the guidance DOD provided was not specific to Afghanistan.³⁰

[REDACTED]

[REDACTED] In October 2015, in a testimony to the U.S. Senate Committee on Armed Services, General John Campbell cited a 2011 policy requiring that DOD personnel report human rights violations, including sexual abuse of children.

[REDACTED]

[REDACTED]

[REDACTED] defines what constitutes a gross violation of human rights and includes recommended talking points. [REDACTED] These talking points emphasize that even though Afghan laws may differ from international and coalition norms regarding gross violations of human rights, it is important to abide by international norms because not doing so affects Afghanistan’s relationships with international partners.

[REDACTED]

²⁹ (U) DOD response to DOD OIG request for information, April 26, 2016.

³⁰ (U//FOUO) According to DOD, standard training on the Law of Armed Conflict contains training on Common Article 3 to the Geneva Conventions, which includes the requirement to treat civilians and detainees (among others) humanely. It includes prohibitions against “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and against “outrages upon personal dignity, in particular, humiliating and degrading treatment.” Therefore, DOD believes training on the Law of Armed Conflict would include some training on respect for human rights.

[REDACTED]

[REDACTED]

(S//NF) SIGAR Found No Evidence that U.S. Forces Were Told to Ignore Human Rights, but Some U.S. Forces May Not Have Been Aware of Reporting Requirements

[REDACTED]

For example, both the 2009 and 2016 versions of the Navy's *Operational Cultural Awareness Training-Islamic Republic of Afghanistan* provide service members with guidance on what they should and should not do during their deployment. The training instructs Navy personnel to avoid eating, drinking, and smoking in public during the Muslim holiday of Ramadan. It also states that personnel should not shake hands with their gloves on as it is deemed disrespectful to Afghans. This training also provides Navy personnel information on men having sex with young men and boys. The training states:

(U) Unmarried Afghan men over the age of 18 are viewed with suspicion. Under Islam, homosexuality is strictly forbidden and under tribal customs, being a homosexual is punishable by death. However, even though it is not openly acknowledged or accepted, homosexuality does exist in Afghanistan. Because even casual interaction with women is taboo, it is not uncommon for men to participate in sex acts with young men and boys. By Western standards, this is regarded as both homosexuality and pedophilia. This is not the case in Afghanistan. Individual or isolated sex acts or sexual behaviors do not necessarily define one's sexual orientation. There are even cases of men having sexual relations with young men and boys in public.³³

(U//FOUO) This reference to men having sexual relations with young men and boys is the most specific reference to the practice in the documents we received from DOD. However, this training does not judge the practice and, unlike other sections of the training, does not provide guidance to personnel on what they should or should not do if they encounter it.

(U) As a result, service members may not have clearly understood DOD's expectation that child sexual assault was to be reported. For example, over the course of our inquiry into reports of child sexual assault by members of the Afghan security forces, we interviewed 16 current and former service members who served in Afghanistan. One said he reported an alleged incident to his commanding officer, but he did not know what came of the report. Another told us that after he and his fellow service members witnessed inappropriate behavior involving Afghan security forces and children, they thought it would be best to "leave it alone" rather than report it to a higher authority. Another service member we interviewed told us he heard the sounds of Afghan men and boys screaming in "what sounded like sex." This individual said he and other service members talked and laughed about it, but did not take action to address it.

(U) In light of the *New York Times* story that service members were disciplined for disobeying a policy instructing soldiers to ignore child sexual assault by Afghan security forces, we asked DOD and State to provide departmental policies protecting personnel and contractors from reprisals if they provide information on gross violations of human rights or the sexual abuse of children by Afghan security forces. DOD provided eight different policies related to whistleblower protection from DOD directives, an instruction from the chairman of the Joint Chiefs of Staff, a CENTCOM regulation, and language from the Uniform Code of Military Justice.³⁴

³³ (U) Navy Center for Language, Regional Expertise, and Culture, *Operational Cultural Awareness Training-Islamic Republic of Afghanistan, Version 3.0* (PowerPoint presentation), June 22, 2009; and *Operational Cultural Awareness Training-Islamic Republic of Afghanistan, Version 4.0* (PowerPoint presentation), March 2016.

³⁴ (U) See DOD Directive 7050.06, "Military Whistleblower Protection," April 17, 2015; DOD Directive 7050.06, "Military Whistleblower Protection," July 23, 2007; DOD Directive 1401.03, "DoD Non-Appropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection," June 13, 2014; Chairman of the Joint Chiefs of Staff (CJCS) Instruction 5901.01C, "Joint Staff Inspector General Responsibilities, Procedures and Oversight Functions," November 6, 2015; CENTCOM

State responded that it “adheres to the Whistleblower Protection Act, federal law, and Executive Orders, which protect government personnel from reprisal for identifying illegal and untechnical acts.” In addition, State said it has a department whistleblower protection ombudsman and specific guidance on whistleblower protection.³⁵

(U) We asked the OIGs in each branch of DOD whether they had received whistleblower reprisal complaints since FY 2011 from service members who reported, or attempted to report, allegations of child sexual assault in Afghanistan. The Air Force and Marine Corps OIGs responded that they had no cases of whistleblower reprisal complaints related to reporting of child sexual assault in Afghanistan. Following multiple requests for information, Navy OIG had not responded as of June 1, 2017.³⁶ Army OIG deferred to the DOD OIG, which responded that it had received two complaints from one service member and a third complaint from a member of Congress regarding a service member. According to the DOD Deputy Inspector General for Administrative Investigations, the complaint it received from the member of Congress was provided to the DOD OIG team reviewing child sexual assault in Afghanistan.

(U) DOD Adopted Explicit Guidance on Reporting Gross Violations of Human Rights After Congress Amended the DOD Leahy Law in 2014

(S//NF) After Congress amended the DOD Leahy law in 2014, DOD adopted explicit policy and guidance on reporting gross violations of human rights in August 2014 and child sexual assault in September 2015. Beginning in September 2015, the reporting requirements for U.S. service members became more specific and explicitly required U.S. service members to report alleged child sexual assault incidents by Afghan security forces.

On August 18, 2014, in a memo on the implementation of the DOD Leahy law, the Secretary of Defense issued guidance on how to report gross violations of human rights by units of foreign security forces worldwide, including in Afghanistan.

(S//NF) Immediately following the September 2015 *New York Times* story, the RS and USFOR-A commander issued a memo refuting allegations in the media that from 2010 through 2012, a policy existed within theater that U.S. forces were told to ignore suspicions of sexual abuse of children by Afghan security forces. He also said he expected suspicions of sexual assault involving Afghans to be forwarded through operational channels.

On November

Regulation 20-1, “Activities and Procedures, Mission, Functions and Responsibilities of the United States Central Command Inspector General,” May 6, 2014; Article 92, Uniform Code of Military Justice, “Failure to Obey Order or Regulation,” 10 U.S.C. § 892; Article 93, Uniform Code of Military Justice, “Cruelty and Maltreatment,” 10 U.S.C. § 893; and Article 133, Uniform Code of Military Justice, “Conduct Unbecoming an Officer and Gentlemen,” 10 U.S.C. § 933.

³⁵ (U) Secretary of State, Whistleblower Protection Enhancement Act of 2012, 13 State 63982, April 24, 2013; and Secretary of State, *Whistleblower Protections and Prohibited Personnel Practices in the Federal Government*, 12 State 47512, May 10, 2012.

³⁶ (U) We sent three rounds of e-mails to the Navy OIG. In response to the first, an investigator with the Hotline and Investigations Division referred us to the deputy director, Investigations and the assistant director, Military Whistleblower Reprisal Branch. We e-mailed them about our request in August, September, and October, and did not receive a response.

13, 2015, RS legal advisors issued a memo certifying that, as of October 25, 2015, all RS personnel had completed the training.³⁷

[REDACTED]

In September 2016, OUSD-P told us that the RS legal advisor was drafting a new fragmentary order that requires the reporting of child sexual assault and training on reporting human rights violations and child sexual assault.

(U) All the documents DOD provided to us as evidence of its guidance on identifying and reporting human rights violations, gross violations of human rights, and child sexual assault had sections on roles and responsibilities, how information is to be disseminated, and who is responsible for carrying out the objectives or intent of the guidance.

(U) State Has Guidance on Reporting Gross Violations of Human Rights, but It Does Not Specifically Address Child Sexual Assault

(U) As of December 2016, State lacked explicit policy or guidance that addressed child sexual assault. State provided standard contract language on CTIP and a procurement information bulletin from 2015 that also focused on CTIP. State told us that INL's Office of Criminal Justice Assistance and Partnership's monthly pre-deployment training class includes references to reporting mechanisms for human rights abuses. Finally, a DRL official provided the course description for a Foreign Service Institute course called "Promoting Human Rights and Democracy," which states

(U) This course addresses current topics in human rights and democracy promotion as they relate to U.S. foreign policy objectives and reporting requirements. Offered in coordination with the Bureau of Democracy, Human Rights and Labor, the course draws from in-house and outside experts to instruct students about international human rights frameworks, institutions, and programs that amplify the voices of civil society activists, women, youth, persons with disabilities, displaced persons, [lesbian, gay, bisexual, and transgender] persons, indigenous persons, survivors of violence and human trafficking, as well as members of other traditionally marginalized populations. This course shares and develops best practices for policy implementation and reporting in the field.³⁸

(U) In February 2017, the U.S. Embassy in Kabul issued a management notice on Leahy vetting at the embassy, which states, "It is the responsibility of all Mission personnel to inform the Human Rights Officer and Leahy Coordinator of any known or suspected incidents of gross violations of human rights so that information concerning the perpetrators can be added to post's local database."³⁹

(S//NF) Beyond this, State said it does not have specific guidance and training on reporting incidents involving the sexual assault of children. This was confirmed in our review of classified and unclassified State cables from 2009 through 2016 that discuss gross violations of human rights and compliance with the Leahy laws in Afghanistan. We found no references to policy or guidance on how State personnel should address child sexual assault.

³⁷ (U) RS Legal Advisor, *Memorandum for Record: Mandatory Reporting of Suspected Human Rights Abuses Training*, November 13, 2015.

³⁸ (U) State Foreign Service Institute, Course Catalog: PP530 Promoting Human Rights and Democracy, <http://reg.fsi.state.sbu/CourseCatalog.aspx?EventId=PP530> (accessed March 24, 2017).

³⁹ (U) U.S. Embassy Kabul, *Management Notice 17-049, Leahy Vetting at Embassy Kabul*, February 13, 2017.

(U) DOD TRACKS REPORTS OF CHILD SEXUAL ASSAULT AND OTHER GROSS VIOLATIONS OF HUMAN RIGHTS

(S//NF) After *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces* was adopted and the Leahy Forum was established in 2014, the Afghanistan policy analyst who led the Afghanistan Leahy vetting efforts for OUSD-P developed a spreadsheet to track the status of reported gross violation of human rights incidents (OUSD-P tracker)—including child sexual assault—reported to and considered by the Leahy Forum. According to data provided by OUSD-P, as of August 12, 2016, the office was tracking 75 reported gross violation of human rights incidents: 7 involved child sexual assault, 46 involved other gross violations of human rights, and 22 were classified at a level above Secret due to the sensitivity of the information or the sources and methods used to obtain the information. These incidents ranged in date from 2010 through 2016, and included gross violations of human rights allegedly committed by Afghan security forces in the MOI and the MOD. The incidents reported to the Leahy Forum came from a variety of sources, such as intelligence reports, news articles, U.S. forces, and the Afghan government. We compared the OUSD-P tracker to USFOR-A's gross violation of human rights tracker (USFOR-A tracker) and matched incidents on both.

(U) Child Sexual Assault Incidents

(S//NF) Of the 75 reported incidents in the OUSD-P tracker, 7 involved allegations of child sexual assault—1 that the Leahy Forum found to be credible, 5 that remain under review, and 1 that was found not credible. Five of the seven involved MOI units, and two involved MOD units. The one credible incident was reported by the Afghan government. In this instance, the government reported that two ANA Special Operations Command (ANASOC) noncommissioned officers (NCOs) attempted to sexually assault a girl to coerce information from her mother. Following a trial, both NCOs were indicted and convicted for attempted sexual assault of a minor in violation of the penal code and sentenced to 6 years of confinement. Based on the information the Afghan government provided, DOD determined that it had credible information of a gross violation of human rights and began the process to remediate the unit. As required by 10 U.S.C. § 362, on August 25, 2016, the acting Under Secretary of Defense for Policy notified Congress of DOD's use of the "all necessary corrective steps" exception in the DOD Leahy law to continue funding the unit.

(S//NF) The five additional incidents involving child sexual assault are currently under review as the Leahy Forum is still considering the incidents but requires additional information to determine whether there is credible information of a gross violation of human rights. These include a reported incident [REDACTED] that DRL raised after the September 2015 *New York Times* article, when Afghan Local Police Commander Abdul Rahman allegedly imprisoned a 14-year-old boy, chained him to a bed, and then physically and sexually assaulted him. USFOR-A engaged with the Afghan government and is awaiting results from an Afghan [REDACTED] investigation. In another reported incident in Badghis province in 2015, originally reported by the Afghan news media, a 10-year-old girl said four policemen and other gunmen gang-raped her. The Afghan government reported that it conducted an investigation and determined that this was a false claim. USFOR-A requested supporting documentation from the Afghan investigation and, as of September 14, 2016, was considering closing the incident.

(S//NF) The Leahy Forum determined that it did not have credible evidence of a gross violation of human rights for a reported incident in Helmand province in 2012 involving a member of the Afghan Uniformed Police that was also highlighted in the September 2015 *New York Times* article and came to the Leahy Forum from DRL. The incident involved a Marine Corps major's reporting of Afghan District Chief of Police Sarwan Jan. According to State, DRL considered the report credible. However, according to OUSD-P's tracker, during a discussion of the incident in October 2015, the Leahy Forum determined there was not credible information of a gross violation of human rights [REDACTED]

(U) Other Gross Violations of Human Rights

(S//NF) In addition to the 7 child sexual assault incidents, the OUSD-P tracker also contains information on 46 reported gross violation of human rights incidents not involving child sexual assault, such as extrajudicial killings or torture of detainees. The Leahy Forum determined that there was credible information of a gross violation of human rights for 23 of the 46 incidents. In response to one [REDACTED] the USFOR-A commander recommended that DOD withhold all assistance from the implicated unit.

(S//NF) In response to 14 other gross violation of human rights incidents, the Principal Deputy Under Secretary of Defense for Policy (PDUSD-P) approved partially withholding funding from the implicated units. [REDACTED]

(S//NF) For the eight other incidents, including one in 2014 in which U.S. forces [REDACTED] saw an ANA soldier shoot a detainee in the leg and saw other ANA members repeatedly strike a second detainee in the face with their weapons, the USFOR-A commander recommended withholding U.S.-based professional training, minor site improvements and construction, and transportation services from the implicated units. The OUSD-P tracker states that the USFOR-A commander recommended withholding the identified assistance and identifies withholding assistance as the “way ahead” for the incidents, but does not identify what assistance was actually withheld. When we asked DOD to identify what assistance it withheld from implicated MOD and MOI units, including dollar amounts, DOD responded that it withheld \$212,120 from the MOI units because of credible information that the units committed gross violations of human rights. DOD did not provide the amount it withheld from the MOD units.

(S//NF) Of the 23 remaining non-child sexual assault incidents on the tracker, the Leahy Forum determined that 3 were credible and recommended remediation. The remediation process for the implicated units in two of the incidents was completed and was ongoing for the third. In one, the Afghan government reported an incident in which seven ANASOC personnel intentionally beat and killed a civilian in Logar province in 2014. Following an investigation and trial, five were found guilty of the death of a civilian due to assault and battery, and received between 16 and 18 years of confinement. The other two were found guilty of assault and battery, and violating a military order, respectively, and were each sentenced to 1 year of confinement. For this incident, PDUSD-P approved use of the “all necessary corrective steps” exception in the DOD Leahy law on October 19, 2015, and the appropriate congressional committees were notified within 15 days in accordance with the law.

(S//NF) For one non-child sexual assault incident, State made a preliminary determination that credible information exists, but the tracker did not have any information on the status of that incident because of concerns about the sources or methods used to collect the information.

(S//NF) The Leahy Forum has not made a decision about 12 incidents in the OUSD-P tracker. The forum determined that it did not have credible information of a gross violation of human rights for 7 of the 46 reported incidents not involving child sexual assault. One—described in a 2010 United Nations report—stated that Afghan Local Police members allegedly killed six civilians and stole the belongings of three of them during a Special Forces raid in Paktika province in 2010. ISAF researched the incident but found little information to substantiate the claims.

(U) DOD and State Handling of Reported Incidents

(S//NF) The incidents reported to and considered by the Leahy Forum came from a variety of sources, such as intelligence reports, news articles, U.S. forces, and the Afghan government. Forty-nine of the 75 incidents on the OUSD-P tracker were identified by State based on information in the quarterly reports State receives from the NIC. Incidents observed by U.S. forces are reported up the chain of command to OUSD-P through USFOR-A and CENTCOM.

(S//NF) In addition to the OUSD-P tracker, USFOR-A maintains two incident trackers: one for sexual assaults and one for gross violations of human rights. We found that the USFOR-A gross violation of human rights tracker also had information on five of the seven reported incidents involving child sexual assault from the OUSD-P tracker. The two additional reported incidents involving child sexual assault were added to the OUSD-P tracker after State submitted them to the Leahy Forum based on the September 2015 *New York Times* article.

(U) In August 2016, State told us that because the information discussed by the Leahy Forum is classified at the Secret level or higher, specific details cannot be entered into INVEST because the system contains only information up to the Sensitive but Unclassified level. Two months later, State officials told us that for information related to a case discussed at the Leahy Forum, State enters only unclassified information into INVEST or adds a note that classified information is also available on the incident or individual.

(U) On October 18, 2016, a DRL official said that when DOD and State remediate units and inform Congress of the remediation, DRL still adds the units to INVEST in case they are nominated for assistance in the future or if new allegations of gross violations of human rights arise. However, in its formal responses to a request for information on December 2, 2016, State said it had not entered information on the three remediated Afghan security force units into INVEST. When we asked for clarification, the DRL official said it was an oversight and that DRL would enter the information into the system. On December 6, 2016, State confirmed that it entered the three cases to INVEST.

(U) According to the DRL official, it was “remotely possible” that individuals in OUSD-P’s tracker of reported gross violation of human rights incidents considered by the Leahy Forum could slip through the cracks and receive assistance—such as U.S.-based professional training—if they were not in INVEST. Additionally, he said he has a “better than average” assurance that no member of the Afghan security force responsible for a gross violation of human rights, particularly child sexual assault, has obtained a U.S. visa and travelled to the United States. According to the DRL official, State has a better chance of catching individuals with the system in place in Afghanistan than it does in the rest of the world, but “there will always be new information that comes up later.” DRL maintains a copy of the OUSD-P tracker for reference while vetting Afghan nominees.

(U//FOUO) We asked DOD what assurance it has that no members of the Afghan security forces responsible for a gross violation of human rights, particularly child sexual assault, received funding or were allowed to travel to the United States. DOD responded that “All [Afghan National Defense and Security Forces] individuals seeking to travel to the United States would have undergone routine vetting through the Department of State through the INVEST process. Individuals identified as responsible for known [gross violation of human rights] incidents would have been subject to denial for travel to the United States.”

(U//FOUO) DOD HAS USED THE NOTWITHSTANDING CLAUSE TO EXEMPT THE AFGHANISTAN SECURITY FORCES FUND FROM THE LEAHY LAW

(S//NF) Although DOD and State have confirmed that some units of the Afghan security forces have committed gross violations of human rights, the Secretary of Defense has used the notwithstanding clause in the DOD Appropriations Act to continue providing ASFF funding for select training, equipment, and other assistance to some of the implicated units. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(S//NF) On May 1, 2015, Secretary of Defense Ash Carter issued similar policy guidance regarding the application of the DOD Leahy law to assistance provided through ASFF.⁴¹ Secretary Carter exercised the notwithstanding clause for the same categories of ASFF-funded assistance that Secretary Hagel did in 2014. Under the 2015 guidance, the Commander of USFOR-A is authorized to “petition” for expanded application of the notwithstanding clause to provide funding to Afghan security forces units for which there are credible allegations of a gross violation of human rights under the following circumstances:

1. (U//FOUO) Where withholding assistance from a specific implicated unit would present significant risks to U.S. or coalition forces.
2. (U//FOUO) Where withholding assistance from a specific implicated unit would significantly undermine or damage the U.S. mission or national security objectives.
3. (U//FOUO) Consulting with appropriate Afghan officials would reveal DOD’s sources and methods for obtaining the credible information.
4. (U//FOUO) The assistance is for human rights and/or law of war training for any Afghan security forces unit, separate from formal training events.

(U//FOUO) Once the Leahy Forum determines it has credible information that personnel from an Afghan security forces unit has committed a gross violation of human rights, OUSD-P asks USFOR-A to provide information on the incident and determine whether continued funding is necessary. If the commander feels it is necessary, he responds to OUSD-P with a formal request to exercise the notwithstanding clause, along with rationale for why the clause should be invoked, including the effect that withholding assistance would have on USFOR-A mission requirements. Leahy vetting officials in OUSD-P then make a recommendation to the Under Secretary of Defense for Policy as to whether DOD should continue providing assistance to the unit.⁴²

⁴⁰ (U) Secretary of Defense, “(U) Policy Guidance on Application of the DoD Leahy Law to Assistance Provided using Amounts Appropriated for the Afghanistan Security Forces Fund,” SECRET//NOFORN memorandum, August 18, 2014.

⁴¹ (U) Secretary of Defense, “(U) Policy Guidance on Application of the Department of Defense Leahy Law to Assistance Provided Using Amounts Appropriated for the Afghanistan Security Forces Fund,” SECRET//NOFORN memorandum, May 1, 2015. According to OUSD-P’s former Afghanistan policy analyst, the Secretary issued this guidance because the guidance issued in August 2014 applied only to that fiscal year. The guidance issued by the Secretary in May 2015 included language to extend the guidance beyond 2015.

⁴² (SBU) DOD and State, *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces*, SENSITIVE BUT UNCLASSIFIED guidance, July 9, 2014; and (U) Secretary of Defense, “(U) Policy Guidance on Application of the Department of Defense Leahy Law to Assistance Provided Using Amounts Appropriated for the Afghanistan Security Forces Fund,” SECRET//NOFORN memorandum, May 1, 2015.

(U) According to OUSD-P, it consulted frequently with the DOD OGC when developing the guidance for the DOD Leahy law in 2014 and in 2015, including the application of the notwithstanding clause. However, OUSD-P officials said they were not aware of specific legal decision memos recommending the application of the notwithstanding authority that led to either the 2014 or 2015 guidance. According to DOD OGC, no legal decision memos or opinions on applying the notwithstanding clause were required because applying the clause is a policy decision.

(U//FOUO) While use of the notwithstanding clause does not require congressional notification, according to DOD, the department has provided some information to Congress regarding its use. According to DOD's 2015 guidance, "The use of the exceptions and waiver in the DoD Leahy law requires the Secretary of Defense or his designee to notify Congress within 15 days of providing DoD-funded assistance to an ANDSF unit based on the exception or waiver. Use of the 'notwithstanding' authority does not require formal congressional notification."⁴³ OUSD-P said it provided copies of the August 2014 global guidance on DOD Leahy law implementation and the Afghanistan-specific guidance to the House and Senate Appropriations Committees, the Senate Armed Services Committee, and Senator Leahy's staff after Secretary Hagel signed it.⁴⁴ DOD provided us copies of the talking points prepared by OUSD-P staff for the Under Secretary of Defense for Policy and the Assistant Secretary of Defense prior to briefings for congressional staff to discuss DOD application of the DOD Leahy law, including the use of the notwithstanding clause. Although no documents were provided to Congress, DOD told us that the Principal Deputy Assistant Secretary of Defense for Asian and Pacific Security Affairs briefed congressional staff via telephone after the first use of the notwithstanding clause in 2015.

(U//FOUO) We asked DOD whether the Secretary of Defense had applied the notwithstanding clause in the DOD Appropriations Act to any provisions of law other than the DOD Leahy law. DOD responded, "DoD has relied upon the notwithstanding authority for the Afghanistan Security Forces Fund appropriation for transportation and related expenses for Excess Defense Articles transferred to Afghanistan pursuant to section 516 of the Foreign Assistance Act of 1961, notwithstanding the prohibition in section 516(e)(1)" (restrictions on transfer of defense equipment to foreign countries and requirement of advance notice to Congress).⁴⁵ In December 2017, along with its response to SIGAR's request to declassify this report, DOD told us that the information it originally provided in December 2016 was incorrect and that "it has identified no known uses of ASFF notwithstanding authority other than in implementation of the Leahy Law."

(S//NF) On December 3, 2015, OUSD-P approved use of the notwithstanding clause to allow DOD to continue providing assistance to 12 Afghan security force units implicated in 14 gross violation of human rights incidents in 2013. None of these incidents involved child sexual assault. In these instances, DOD determined it would withhold assistance that was "not essential to U.S. force protection, U.S. mission and national security objectives, and potential ANDSF investigations into further [gross violations of human rights]."⁴⁶ Ultimately, it withheld \$212,120 for U.S.-based training, site improvements and minor construction, and transportation for trainees.

(S//NF) For nine additional units implicated in gross violation of human rights incidents in 2014, the USFOR-A commander recommended that DOD use the notwithstanding clause to continue to provide funding, except for

⁴³ (U) Similar language appears in DOD's 2014 guidance. When we asked DOD whether it has used either the exception or waiver provisions of the DOD Leahy law to continue providing assistance to members of the Afghan security forces implicated in gross violations of human rights, in addition to the three it already reported, DOD responded that a search of its records did not find any instances.

⁴⁴ (U) Secretary of Defense, "Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) ('the DoD Leahy law')," August 18, 2014.

⁴⁵ (U) Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 516 (codified as amended at 22 U.S.C. § 2321j) grants the President the authority to transfer excess defense articles to foreign countries.

⁴⁶ (U) DOD, "(U) DoD Leahy Law Implementation for Incidents of Gross Violations of Human Rights Committed by Afghan National Defense and Security Forces in 2013," SECRET//NOFORN paper, December 3, 2015.

U.S.-based professional training, minor site improvements and construction, and transportation services. The acting Under Secretary of Defense for Policy relied on the notwithstanding clause for eight of the nine implicated units in 2014.

(S//NF) One of the 14 incidents to which DOD applied the notwithstanding clause to continue providing funding occurred [REDACTED]. In choosing to use the notwithstanding clause, DOD stated, [REDACTED] is integral to the security and force protection of U.S. and NATO forces operating [REDACTED]. To restrict DoD training, equipment, and/or other assistance [REDACTED] would place U.S. and NATO forces at significant increased risk of attack.” [REDACTED]

[REDACTED] According to DOD, USFOR-A also raised concerns about [REDACTED] including pressure from USFOR-A Commander General Allen [REDACTED] to remove [REDACTED] is also cited in two other incidents on the OUSD-P tracker; there was not credible information of a gross violation of human rights for one incident, and the other is listed as pending.

(S//NF) FULL EXTENT OF CHILD SEXUAL ASSAULT BY MEMBERS OF THE AFGHAN SECURITY FORCES MAY NEVER BE KNOWN

(S//NF) As of August 12, 2016, OUSD-P was tracking 75 reported gross violation of human rights incidents, including 7 that involved child sexual assault. DOD officials said they do not believe the incidents on the OUSD-P tracker represent all the child sexual assault and other gross violation of human rights incidents that have happened in Afghanistan. Although DOD and State have taken steps to identify and investigate child sexual assault incidents, the full extent of these incidences may never be known. Multiple challenges exist to identifying credible information on incidents and implicated units. Individuals and organizations do report instances of child sexual assault, yet they are reluctant to share information with the U.S. government. In addition, some U.S. personnel reported hearing or seeing possible instances of child sexual assault, but they did not have explicit guidance at the time on how to report the information. Finally, because of the drawdown in U.S. forces, DOD has limited visibility into the Afghan security forces, continuing to limit its ability to identify and investigate instances of gross violations of human rights and child sexual assault.

(U) Individuals and Organizations with Knowledge of Child Sexual Assault Incidents Often Lack Details, or Are Reluctant to Share Information with the U.S. Government

(U) Twenty-four of the 37 individuals and organizations we interviewed said they were aware of child sexual assault incidents or related exploitation, such as bacha bazi, by Afghan security forces based on information they received from victims or other individuals who saw the incidents.⁴⁷ One person told us that although he had not directly observed bacha bazi or child sexual assault incidents, he recalled a situation that at the time appeared to be “an odd culture thing” and could have been evidence of a boy who was exploited by an Afghan police official. Three service members and one representative from a NGO reported personally hearing or observing what they believed to be evidence of Afghan security forces sexually assaulting children.

⁴⁷(U) We interviewed current and former U.S. service members, DOD contractors, and representatives from the international community, NGOs, civil society, and journalists. We did not include our interviews with officials involved in implementing the Leahy laws in Afghanistan.

(U) The people we interviewed were reluctant to report information on incidents of child sexual assault by Afghan security forces to U.S. government officials. For example, none of the four interviewees with direct knowledge of child sexual assault reported the incident to U.S. government officials. Two of the three service members who reported directly observing or hearing what they believed to be evidence of child sexual assault by Afghan security forces said they did not receive training on how to address sexual abuse of children by Afghan security forces if they encountered it.

(U) The third service member reported that when his platoon arrived in Afghanistan, they received a brief on sexual abuse of children by Afghan security forces and were advised to report any incidents up the chain of command. However, he said he did not observe instances during that tour. During his second tour, he said he heard the sounds of Afghan men and boys screaming in “what sounded like sex.” All the service members at his base understood that sex occurred between boys and ANP personnel, he explained. While he and his fellow service members talked and laughed about it, he added, they did not take action to report it.

(U) We found no evidence that DOD condoned gross violations of human rights by Afghan security forces or provided guidance telling service members to ignore any instances. But the absence of explicit guidance and training from DOD on reporting child sexual assault prior to 2015 may have caused confusion as to what to do if a service member became aware of an incident.

(U) The representatives of NGOs or international organizations said they were reluctant to report information about Afghan security forces sexually assaulting children either out of concern for the victims or because they did not have complete information on the alleged incident. For example, one representative said even though her organization receives reports of child sexual abuse, it did not share information on the allegations with the U.S. government because of fear of reprisal toward victims, their families, or those who report incidents. Additionally, her organization has not shared this information with the U.S. government because it is not confident in the level of detail in the information it has on alleged incidents. A representative of another NGO that works with children in Afghanistan said her organization provides State with quarterly reports on the types of child trafficking observed and the ages of victims. However, these reports do not contain specific information on the identities of the victims or the perpetrators.

(U) The reluctance of individuals to report observed or suspected incidents of child sexual assault by Afghan security forces, or to provide enough detailed information on the incidents highlights the difficulty that U.S. officials have in obtaining evidence of child sexual assault by Afghan security forces. A political advisor to the NATO Senior Civilian Representative told us that although RS and NATO officials know bacha bazi and child sexual assault by Afghan security forces occurs, they do not have verified cases. One NGO representative said, “Bacha bazi is very sensitive, and those involved are in high positions within the Afghan military, which makes going after these individuals very difficult.”

[REDACTED]

(U) DOD and State Officials Reported Having No Information on the Canadian Armed Forces Board of Inquiry on Child Sexual Assault by Afghan Security Forces

(U) In 2008, the Canadian Armed Forces convened a board of inquiry to investigate allegations that members of the Afghan security forces had sexually assaulted young boys and that soldiers who were deployed to Kandahar province in late 2006 and early 2007 were told by their superiors to ignore such incidents. A redacted version of the executive summary of the board's report released in April 2016 said the board received several reports of members of the Canadian forces witnessing or suspecting incidents of child sexual assault by members of the Afghan security forces. However, "the Board found no evidence that anyone in the [Canadian Armed Forces] operational chain of command had ever ordered troops to ignore sexual assault of minors by the ANSF."

(U) When we asked DOD and State officials responsible for implementing the Leahy laws in Afghanistan about the Canadian inquiry, DOD responded:

(U) Elements of DoD may have been aware of the Canadian Armed Forces inquiry at one time, but no one currently in theater or managing Leahy Law matters in OSD(P) is familiar with the referenced inquiry. There is no knowledge of whether or not the Canadians contacted OSD, CENTCOM, or USFOR-A as part of the inquiry. No one in OSD, CENTCOM, or USFOR-A has contacted the Canadian Armed Forces to request information.

(U) State officials responded that the U.S. Embassy in Kabul, DRL, and SRAP were not contacted about the Canadian inquiry, nor did they contact the Canadian Armed Forces to request information. However, the U.S. Embassy in Ottawa reported that it was aware of the inquiry, but was neither involved nor coordinated with Canadian Armed Forces during the inquiry or the publishing of the report. We asked officials with the Canadian Embassy in Afghanistan and the Canadian Defense Forces whether DOD or State had contacted the Canadian government to obtain information on the inquiry, or whether the Canadian government had contacted any U.S. government or military officials as part of the inquiry. A political counselor and the Defense attaché at the embassy responded that they had no information about contact with the U.S. government about the inquiry.

(S//NF) DOD and State Rely on the Afghan Government, U.S. National Intelligence Council Reports, and Public Information to Identify Child Sexual Assault Incidents

(U) DOD and State officials said that due to the drawdown of U.S. forces, they have limited visibility and rely on the Afghan government and NIC reports, in addition to open source information found when vetting State-funded assistance, to identify gross violation of human rights and child sexual assault incidents. A USFOR-A legal advisor told us the majority of potential gross violation of human rights incidents are self-reported by the Afghans. He considered this to be a positive trend.

(U) The U.S. military presence in Afghanistan reached its peak in 2011, with more than 110,000 troops. By 2013, that number decreased to 64,000. In 2014, following expansion of the DOD Leahy law when DOD had established new systems to identify and track gross violations of human rights by Afghan security forces, U.S. troop numbers had dropped to 25,000. As of September 17, 2016, DOD reported 6,939 U.S. troops serving in Afghanistan. According to USFOR-A, U.S. advisors now have little or no direct visibility of Afghan National Defense and Security Forces units below the ANA corps or ANP zone headquarters level.⁴⁸ As a result, even though DOD now has explicit guidance and training for U.S. forces serving in Afghanistan to report child sexual assault incidents, with the reduced troop presence, DOD may have missed the window of opportunity to use the large U.S. troop presence in Afghanistan to collect information on gross violation of human rights and child sexual assault incidents by Afghan security forces.

⁴⁸ (U) The ANA is organized into six regional corps and one capitol division. The ANP is organized into eight zones.

(U) According to a USFOR-A legal advisor, there are three main ways that gross violation of human rights incidents come to the attention of USFOR-A: (1) self-reporting from the Afghan ministries, (2) open-source information, and (3) U.S. intelligence sources. An Afghan government official involved with these issues expressed surprise at the low number of reported cases, noting that “maybe most of the cases are not reported or investigated” because the police do not self-report cases, and people often do not report these cases because they feel they will get in more trouble. The same official also told us that, according to available information, low-level officers and soldiers have been prosecuted for child abuse. When asked why, the official responded that senior-level officers have money and power and can easily threaten someone to keep quiet about a crime.

(S//NF) Forty-nine of the 75 incidents on the OUSD-P tracker came from [REDACTED] reports that State and DOD receive; none involved child sexual assault. [REDACTED]

[REDACTED] According to OUSD-P’s former Afghanistan policy analyst and USFOR-A officials, DOD is working to identify ways to share information on reported incidents or identify alternative sources of information so that it does not have to tell the Afghan government it is withholding funding under the Leahy laws without providing the reasons why.

(U) A USFOR-A legal advisor told us that because of the drawdown, there are currently fewer reports of potential gross violation of human rights incidents because USFOR-A has less of an intelligence-gathering apparatus. Additionally, according to a Joint Staff official, OUSD-P is going back through historical CENTCOM and U.S. Special Operations Command (SOCOM) reports to identify child sexual assault incidents committed by Afghan security forces, but it is difficult to confirm reports because the United States has fewer people throughout Afghanistan to follow up and track down additional information. An official from OUSD-P said going back to the Afghans for additional information is difficult because it takes time, and, if Afghan officials respond that they did not find anything when they looked into a reported incident, then DOD has to follow up with State to see whether it has more information on a particular incident or individual. According to OUSD-P’s former Afghanistan policy analyst and USFOR-A officials, there is also a lag time waiting for information from the Afghans to be translated. An additional difficulty related to the unique circumstances for Leahy vetting in Afghanistan is that OUSD-P does not have personnel to follow up on all reported incidents.

(U) THE AFGHAN GOVERNMENT NEEDS TO TAKE FURTHER ACTION TO PREVENT CHILD SEXUAL ASSAULT BY AFGHAN SECURITY FORCES

(U) Although the Afghan government has taken steps to address gross violations of human rights committed by Afghan security forces, the MOD has shown more progress than the MOI, and challenges remain for U.S. engagement with the Afghan government on the problem. For example, after the *New York Times* story ran in September 2015, President Ghani publicly condemned the sexual abuse of children and directed the Afghan defense and security forces to prevent the recurrence of any such acts. He also directed the AIHRC, MOI, and Afghan Attorney General’s Office (AGO) to form a committee to investigate and prosecute child sexual assault incidents.

(U) In addition, Afghanistan is in the process of revising and consolidating its criminal laws into a new penal code. The AIHRC, UNAMA, and the United Nations Children’s Fund have advocated for this legislation. According to State, the draft penal code, currently under review by President Ghani, criminalizes bacha bazi. Parliament has not seen the draft yet, but parliamentarians will likely have diverse views on whether to criminalize bacha bazi, and many are likely to oppose it. According to INL, on December 12, 2016, President Ghani signed Afghanistan’s new Law to Combat Trafficking in Persons and Smuggling of Migrants. This law,

which was published in the official Gazette on February 22, 2017, criminalizes “Exploitation: Taking advantage of the victim of trafficking in persons through buying, selling, sexual exploitation, dancing (bacha bazi), for the production of pornographic images or films, slavery, forced labor, begging, armed conflict, removal of organs, medical experiments or forcing the person to commit other illegal activities.”⁴⁹

(U) On May 28, 2016, the AIHRC signed a memorandum of understanding (MOU) with the MOD, MOI, and the National Directorate of Security (NDS) to create an ombudsman position within the AIHRC to provide oversight of and to monitor the Afghan security forces. The MOU covers overall human rights abuses, including abuse against women and children. Under the MOU, the AIHRC is obligated to monitor the practices of the Afghan security forces to prevent violations of human rights, as well as of international humanitarian law. The AIHRC will ensure that complaints referred by the Afghan security forces are taken seriously and addressed, including sending information to senior MOD, MOI, and NDS authorities for further actions.

(U) DOD and State have taken steps to engage the Afghan government to address gross violations of human rights, but gaps in coordination have hindered those efforts. For DOD, USFOR-A has rule-of-law advisors at RS who work with the MOD and MOI, and encourage the ministries to investigate and take action on allegations of gross violations of human rights by Afghan security forces. However, USFOR-A officials told us they have had difficulty obtaining information from the ministries in response to queries on reported incidents reported to USFOR-A. A USFOR-A legal advisor explained that one of the major weaknesses in the Afghan system for addressing gross violations of human rights is that the ministries lack the capability to conduct sophisticated investigations and to investigate cases that occurred in the past.

(U) In May 2016, State provided us with a copy of the *Strategy for Promoting Human Rights and Compliance with International Obligations by Afghan National Defense and Security Forces*, which the Assistance Team Lead for the Political-Military Affairs Section at the U.S. Embassy in Kabul told us had been recently finalized. When we asked what outreach or interaction embassy officials have with the Afghan government about Leahy vetting or gross violations of human rights, State responded, “Embassy Kabul officials engage regularly with Afghan government officials, including military officials, on a broad range of issues to advance U.S. national interests, including our human rights and rule of law agenda.” However, the response did not mention child sexual assault by Afghan security forces.

(U) MOD Has Shown More Progress than MOI in Addressing Allegations of Gross Violations of Human Rights

(U) DOD officials told us they observed more progress within the MOD than MOI in addressing gross violations of human rights. For example, an OUSD-P official reported that DOD often receives information on gross violation of human rights incidents involving the ANA after the MOD has taken action, and DOD can begin the process to remediate the unit involved in the incident. DOD officials attribute the progress to the structure of the MOD’s military justice system, which allows the ministry to prosecute cases internally without relying on external entities. Additionally, USFOR-A told us that the recently retired Minister of Defense made prosecuting cases of gross violations of human rights a priority, and the MOD now has its own prosecutors who handle sexual assault cases.

(U) Through OUSD-P, we sent the Afghan government formal questions for the MOD and MOI on their processes for reporting and investigating allegations of gross violations of human rights, statistics on the prosecution of cases, and interactions with representatives from the U.S. government, NATO, and NGOs. However, the Afghan government’s response addressed only the MOI. The Afghan government described the MOI’s process for investigating and reporting human rights violations. According to the response, the MOI “receive[s] reports of human rights violation from 34 Provincial Police Commandments through eight Police Zones. The reports are

⁴⁹ (U) Translation of Afghanistan Law to Combat Trafficking in Persons and Smuggling of Migrants, February 2017.

investigated by a joint delegation or each zone's chain of command (unit) or by human rights personnel. Once the investigation is completed, the results are forwarded to Human Rights Department for further processing."

(U) According to DOD officials, in December 2015, the MOI instituted a new gross violation of human rights policy, which established a committee with clear responsibility for reporting and tracking gross violation of human rights investigations. However, an RS advisor said the committee did not convene until the CSTC-A commander sent a letter to the MOI outlining sanctions that CSTC-A would impose if the ministry did not take steps to convene the committee. As of May 2016, the MOI gross violation of human rights committee had met four times. According to the RS advisor—who attends the meetings as the RS representative—even though Afghans are not strong on coordination and collaboration among units, he believes the committee is trying and is not just "window dressing."

(U) USFOR-A officials attributed the MOI's lack of progress in addressing gross violations of human rights to the structure of the ministry and the relationship between the MOI and the AGO. First, the MOI must refer gross violation of human rights cases to the AGO for prosecution in the civilian court system. In these incidents, MOI personnel may conduct an initial investigation, but then they are required to turn the case over to the AGO, at which point MOI officials often have no visibility into whether anyone is held accountable for a particular crime. DOD's June 2016 *Enhancing Security and Stability in Afghanistan* states:

(U) Due to the Mol's reliance on the AGO for prosecution, [gross violations of human rights] cases that arise from the ANP often become stalled due to bureaucratic processes within the Mol or the AGO. The Mol has not demonstrated the resolve independently to push the AGO to prosecute cases, and there is little evidence that allegations of [gross violations of human rights] committed by the ANP are appropriately reported or that Mol senior leaders are emphasizing incident detection.⁵⁰

(SBU) According to DOD and State's *Strategy for Promoting Human Rights and Compliance with International Obligations by Afghan National Defense and Security Forces*, it is unclear whether the MOI or the Afghan courts have actually held any individuals accountable for committing a gross violation of human rights. We contacted the AGO to obtain clarification on its efforts to investigate and prosecute gross violations of human rights and its interactions with the MOI. An Afghan government official involved with these issues gave us a list of cases involving MOI officers prosecuted for pederasty by the AGO. Therefore, it appears the Afghan government does have information on potential gross violation of human rights cases, which would be beneficial for DOD and State in their implementation of the Leahy laws in Afghanistan. DOD told us that USFOR-A obtains court documents from the AGO regarding the prosecution and sentencing of individuals who have committed gross violations of human rights. Afghan government actions, when available, are marked on the OUSD-P tracker.

(U) According to an RS advisor to the MOI, gross violation of human rights cases often come from remote areas, which are also insecure areas with weak government institutions. This makes investigating and prosecuting cases difficult. It is particularly difficult when the MOI and U.S. advisors ask local police and prosecutors to investigate and prosecute other police officers in a jurisdiction where everyone is related or somehow connected. Two RS advisors expressed concerns over the long-term sustainability of their efforts and whether the current system would last without pressure from U.S. forces.

(U) Both the MOD and MOI signed commitment letters with CSTC-A outlining conditions for the Afghan government to receive financial support, including associated incentives and penalties. These letters include requirements for the MOD and MOI to take action on reports of gross violations of human rights.⁵¹ In July

⁵⁰ (U) DOD, *Enhancing Security and Stability in Afghanistan*, June 2016.

⁵¹ (U) According to the commitment letters, the ministries agreed to provide CSTC-A with information on all reported allegations of gross violation of human rights incidents, the type and amount of funding support that an implicated unit receives, and the corrective actions taken to address the allegations. The MOI letter also states, "After completion of the [gross violation of human rights] assessment process and a determination by the US Secretary of Defense that a [gross

2016, the CSTC-A commander sent a letter to the Minister of Interior notifying him that because the MOI provided only cursory reports on 2 of 24 cases of gross violations of human rights for which RS requested information, CSTC-A determined that the ministry had made insufficient progress toward the conditions in the commitment letter. As a result, the letter stated, CSTC-A will withhold the MOI travel budget until it provides a satisfactory report of action taken on the 24 cases. In addition, CSTC-A will recommend that the Law and Order Trust Fund deny any proposed pay to general officers or senior ministerial civilians as part of the MOI Pay and Compensation Board.⁵²

(U) DOD and State Are Taking Steps to Engage the Afghan Government on Addressing Gross Violations of Human Rights, Including Child Sexual Assault, but Gaps in Coordination Hinder Efforts

(U) Although DOD and State have taken steps to engage the Afghan government on addressing gross violations of human rights before 2016, the departments' efforts appear to have largely taken place independently of each other. USFOR-A has rule-of-law advisors who engage with the MOD and MOI at the Train, Advise, Assist Commands (TAACs) in the East and South, which are run by USFOR-A, and at RS headquarters in Kabul. When possible, USFOR-A advisors share information about gross violation of human rights incidents that involve Afghan security forces with the Afghan ministries to ensure that allegations are investigated and acted upon. According to a USFOR-A legal advisor, ministries are responsible for any investigations of suspected gross violation of human rights by Afghan security forces; UFOR-A advisors will discuss potential avenues of investigation with the Afghans but will not do the investigative work for them. The advisors also engage with the MOD and MOI to remind them of their responsibilities under the commitment letters.⁵³

[REDACTED]

(SBU) When we asked State about the outreach or interaction between U.S. Embassy in Kabul officials and the Afghan government about gross violations of human rights, State responded, "Embassy Kabul officials engage regularly with Afghan government officials, including military officials, on a broad range of issues to advance U.S. national interests, including our human rights and rule of law agenda." According to a political officer at

violation of human rights] allegation is credible, CSTC-A will notify MoI what, and how much, if any, funding support must be denied to the unit involved."

⁵² (U) Created in 2002, the Law and Order Trust Fund for Afghanistan provides a mechanism for coordinating contributions from international partners to support the Afghan police force. It is managed by the Afghan government, through the MOI and Ministry of Finance. The largest contributors are the United States, the European Union, and Japan. Other contributors are Australia, Belgium, Canada, Czech Republic, Denmark, Finland, Hungary, Germany, Iceland, Ireland, Italy, Latvia, the Netherlands, Norway, Switzerland, and the United Kingdom.

⁵³ (U) USFOR-A does not have advisors in the AGO.

[REDACTED]

the embassy, Afghan government officials are sensitive when talking about child sexual assault issues, but he still tries to raise concerns about the problem. He added that Afghan government officials previously did not want to talk about child sexual assault, but now acknowledge it is a problem. In addition to the embassy officials' engagement with Afghan officials, State also funds programming to address child sexual assault in Afghanistan. For example, INL supports shelters that work with children who have been victims of sexual violence, and in the summer of 2016, DRL awarded two grants for approximately \$1 million each to two organizations addressing bacha bazi in Afghanistan.⁵⁶

(S//NF) DOD and State efforts to engage the Afghan government were not jointly formalized until the two departments completed the *Strategy for Promoting Human Rights and Compliance with International Obligations by Afghan National Defense and Security Forces* in April 2016. The strategy states, "The drawdown of U.S. forces has limited the frequency of military-to-military engagements at the tactical level, but ongoing advisory efforts with the MoD and Mol at the institutional level will afford continued opportunities to address [gross violations of human rights]." It includes recommended steps for preventing gross violations of human rights by the Afghan security forces and ensuring accountability when there is credible information that gross violations of human rights occurred. However, in December 2016, State told us that DOD and State finalized the strategy and sent it to the National Security Council (NSC) but, "While the document was approved by [State] and DoD, no official word was ever given from NSC that the strategy is approved. [State] and DoD began to move forward assuming it had been approved, and then stopped our efforts recently when we realized we may not be acting on an approved national policy."

(SBU) In April 2016, State began attending a new bacha bazi working group initiated by the political advisor to the NATO senior civilian representative to discuss the status of legislation that the Afghan government is considering regarding the criminalization of bacha bazi. The group also focuses on establishing a joint message about the issue among coalition members, NGOs, and international organizations. State reported that it is developing talking points for engaging with the Afghan government on addressing gross violations of human rights, but did not provide them to us because they were still in draft. The engagement strategy is a positive step toward ensuring that the U.S. government is using a consistent approach and message to engage with the Afghan government on gross violations of human rights. Yet it is not clear that the U.S. government is using all available resources with the MOI and AGO to encourage action on gross violations of human rights, particularly child sexual assault.

(U) We received contradictory information from the U.S. Embassy in Kabul and USFOR-A officials when we asked about their coordination and sharing of information regarding reports of gross violations of human rights by Afghan security forces. According to the legal advisor at the embassy, she interacted with RS officials two or three times when they had trouble tracking the progress of cases involving the MOI and wanted to see whether embassy officials could engage with the Afghans to determine the status of the cases. In turn, the advisor asked the Department of Justice attaché at the embassy to contact the AGO, but the attaché was unsuccessful in obtaining the requested information. The advisor said she reported this information back to RS. However, according to USFOR-A officials, when they shared information with the U.S. Embassy in Kabul on open gross violation of human rights incidents, they did not receive a response.

(U) The Department of Justice attaché said the implementation of the Leahy law represents "a very narrow slice" of the department's relationship with the AGO, which primarily focuses on counternarcotics and counterterrorism. The attaché said he does not address topics involving the military or the MOD. However, he

⁵⁶ (SBU) The first grant, "Supporting Protection and Empowerment of Afghan Children," intends to (1) enhance the knowledge and skills of justice sector actors to effectively advocate for increased enforcement of existing national child protection laws, as well as enforcement of the Convention on the Rights of the Child; and (2) promote active prosecution of perpetrators of bacha bazi by national and local Afghan authorities. The second grant, "Community Support for Victims of Bacha Baazi," intends to support children's rights in Afghanistan through provision of psychosocial support to victims of bacha bazi and their families.

said he was willing to raise specific sexual assault cases with the Afghan Attorney General if SIGAR identified them.

(SBU) Additionally, according to INL, its relationship with the AGO includes not only counternarcotics, anticorruption, and counterterrorism, but also (1) improving continuing professional development for prosecutors; (2) supporting Elimination of Violence Against Women prosecution units; (3) supporting wide-scale organizational reforms, including in the areas of human resources and budgeting; and (4) supporting use of the case management system to track and record cases through Afghanistan's justice system. Because INL funds human rights programming related to sexual assault of children and provides assistance to the Afghan government through its Justice Sector Support Program, Justice Training Transition Program, and Supporting Access to Justice in Afghanistan programs, INL advisors may provide another avenue for access to the MOI and AGO to encourage action and obtain information on gross violation of human rights and sexual assault incidents by Afghan security forces when DOD cannot obtain information directly.

(U) DOD AND STATE NEED TO TAKE ADDITIONAL ACTIONS FOR LEAHY LAW IMPLEMENTATION

(U//FOUO) DOD and State have taken steps to vet Afghan security forces for gross violations of human rights in accordance with the Leahy laws, but challenges remain for full implementation of the laws in Afghanistan. Although DOD and State have procedures for reporting alleged gross violation of human rights incidents through their respective channels to the Leahy Forum, there is no guidance for how the forum makes determinations on individual incidents when it receives information.⁵⁷ A lack of guidance for the forum's deliberative process or tracking of incidents, regular staffing changes, and the lack of DOD staff assigned specifically to implement the Leahy law for Afghan security forces present additional challenges.

(U) Leahy Forum Lacks Guidance for Its Decision-Making Process

(S//NF) Beyond the *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces*, the Leahy Forum has no set guidance for how it determines whether information regarding a reported gross violation of human rights constitutes credible information that would trigger Leahy law compliance. According to OUSD-P officials, the Leahy vetting process for Afghan security forces was not well defined before 2014 when DOD and State issued the vetting procedures. As part of the process for vetting Afghan security forces, the departments began holding biweekly meetings to discuss Leahy law implementation and review information on suspected gross violation of human rights incidents on a case-by-case basis.

(U//FOUO) According to DOD and State officials we spoke with, the deliberative process for considering reported incidents is important because the definition of what constitutes a gross violation of human rights is so broad, and the facts and circumstances of each case must be considered individually. According to State officials, when DRL officials present an opinion on the credibility of information regarding Afghanistan, they use

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For State, (SBU) *State and Defense Leahy Vetting Procedures for the Afghan National Security Forces*, SENSITIVE BUT UNCLASSIFIED guidance, documents its process for reviewing and submitting NIC reports. (SBU) *Compliance with the State and DOD Leahy Laws: A Guide to Vetting Policy & Process*, SENSITIVE BUT UNCLASSIFIED guidance, provides guidance for documenting and reporting individuals or units for whom State identifies credible evidence of a gross violation of human rights.

the same criteria to determine the credibility of information that they use when vetting the security forces of every other country, as outlined in the 2012 Leahy Vetting Guide and 14 STATE 77718.⁵⁸ However, the two departments apply credible information differently. For example, State considers reports identified in the *New York Times* as credible, but DOD requires independent corroboration of the incident and additional details on the facts of the case. According to OUSD-P's former Afghanistan policy analyst who coordinated Leahy vetting of the Afghan security forces, she deferred to the Leahy Forum's decision as a group to add the cases to the OUSD-P tracker. She said no one individual decides what incidents make it into the OUSD-P tracker, but the group decides to add incidents that it believes may be gross violations of human rights and warrant additional investigation.

(S//NF) The lack of guidance may have led the Leahy Forum to prematurely remove an incident from the OUSD-P tracker because the forum determined that it lacked credible information. The incident occurred in 2012 and involved Sarwan Jan, the District Chief of Police in Garmsir district, Helmand province. The Leahy Forum added it to the tracker because State considered the September 2015 *New York Times* story to be a credible source of information. However, the forum determined there was not credible information of a gross violation of human rights because [REDACTED]

We reviewed the case files

[REDACTED] We found that neither investigation specifically looked at allegations of child sexual assault by Jan. Additionally, when we interviewed individuals who had knowledge of the insider attack, although they referred to the perpetrator as Jan's "tea boy," none had personally witnessed the police chief sexually abuse the boy.

(U//FOUO) Additionally, the vetting procedures that DOD and State issued in 2014 did not include guidance on how incidents that the Leahy Forum considered should be tracked and documented. As a result, the incidents considered and decisions on the disposition of cases were not documented in a consolidated manner until OUSD-P's former Afghanistan policy analyst took the initiative to create the OUSD-P tracker to maintain a consolidated record for any incidents the Leahy Forum reviewed. The analyst said there is no formal database of Leahy cases, nor was there a requirement to create one. She began tracking cases on the spreadsheet because State's INVEST system contains only unclassified information. She said she maintained a spreadsheet of all the cases since 2010, including those that were determined to have credible evidence and those that were not. A lawyer with OUSD-P added that the process of tracking and vetting incidents is more burdensome because DOD does not have control of the basic information on reported incidents. For example, according to an OUSD-P official, for one incident on the OUSD-P tracker, the Afghan security forces provided three different dates for the same incident. DOD is still working to develop a best practice for how to start a new case on the tracker. However, there is no formal process in place.

(U) Similarly, because there is no formal process in place for deliberating and making a determination on reported incidents, DOD and State lack a standard template and guidance for tracking the status of each incident. According to an SRAP official, SRAP does not maintain its own tracker of incidents reported to and considered by the Leahy Forum. Instead, it uses the OUSD-P tracker. In addition to the OUSD-P tracker and the two USFOR-A trackers—one for gross violations of human rights and one for sexual assault—CENTCOM also maintained a tracker. In November 2016, OUSD-P told us RS also maintains an unclassified tracker that it cross-references with the Afghan government. While the various OUSD-P, USFOR-A, and CENTCOM trackers contained similar fields and formats, they were not all the same.

⁵⁸ (SBU) State, *Compliance with the State and DOD Leahy Laws: A Guide to Vetting Policy and Process*, SENSITIVE BUT UNCLASSIFIED guidance, September 2012; and (U) State, *14 STATE 77718, Notifying Host Governments When Assistance Is Withheld Under Leahy Provisions*, June 24, 2014.

(U) At a meeting in November 2016 with officials from OUSD-P, CENTCOM, and USFOR-A involved in DOD's Leahy implementation process, OUSD-P's Afghanistan Country Director for Gross Violations of Human Rights said she assumed that if someone updated the incident tracker—whether the OUSD-P, CENTCOM, or USFOR-A tracker—they would send it out to all stakeholders so they would be aware of the updates. However, she also acknowledged that having multiple trackers with different levels of detail was a source of confusion and that DOD was trying to set up a SharePoint site so all stakeholders could access one single incident tracker. However, because of information technology issues, DOD has not set up the site yet. In March 2017, DOD told us that to minimize the confusion created by different trackers, in December 2016, OUSD-P moved to one consolidated tracker for use by OUSD-P, CENTCOM, and USFOR-A, and that it provides copies to SRAP and DRL for their use.

(U) A TAAC legal advisor we interviewed said she also maintained her own informal tracker of information she reported up to USFOR-A. According to the advisor, a uniform case tracker from RS would give advisors at the TAACs a better understanding of what specific information RS officials want from them. Additionally, she said if RS instituted a monthly reporting requirement for gross violation of human rights incidents, it would ensure that the TAACs maintained updated trackers. A standard tracker with guidance on how to document and track incidents could improve the consistency of reporting and improve continuity.

(SBU) DOD and State Do Not Have Guidance for Contractors to Report Gross Violations of Human Rights

(U) Given the security situation and the drawdown in U.S. forces, DOD and State personnel do not have the same presence outside of Kabul that they once did, but contractors are still present. For example, as of the third quarter of FY 2016, DOD had almost three times as many contractors as U.S. troops in Afghanistan. However, neither DOD nor State has language in its contracts requiring that contractors report gross violation of human rights incidents or allegations of child sexual assault. When we asked whether DOD contracts had such language, it responded, "DoD contracts include language requiring contractors to report violations of human rights and incidents of sexual assault." However, as evidence of this, DOD's response cited Federal Acquisition Regulation provisions that addressed CTIP, rather than broader human rights or child sexual assault.

(SBU) Similarly, when we asked for guidance or mechanisms that State had for its contractors to report suspected gross violation of human rights incidents, the department provided CTIP language from DynCorp's Afghanistan Life Support Services contract that is included in all State solicitations and contracts. State also said a Federal Acquisition Regulation provision requires contractors to certify that they have a trafficking in persons' compliance plan in all contracts with more than \$500,000 in overseas service. Additionally, State provided us with a procurement bulletin on CTIP, which gives additional guidance and resources to contracting officers and contracting officer's representatives. We asked State whether it has other guidance and training for State employees and contractors in Afghanistan related to human rights violations and sexual assault. In response, State said, "State does not have specific training or guidance for how its personnel should address reports or observations of [gross violations of human rights]." However, INL later provided three training modules that its Office of Criminal Justice Assistance and Partnership uses in its monthly pre-deployment training class. The modules discuss reporting human rights abuses. According to an INL official, the office began training INL contractors deploying to Afghanistan in August 2016. Prior to that date, INL's Office of Afghanistan and Pakistan Programs ran pre-deployment training for Afghanistan contractors in conjunction with its contractor, PAE.

(U) DOD Staffing for Leahy Vetting of Afghan Security Forces May Not Meet Level of Effort Necessary

(U) According to a DRL official, State does not have a backlog in vetting requests, and DRL has sufficient resources to meet vetting demands. Additionally, another DRL official said he spends more time on vetting requests from other countries than he does on Afghanistan. The same cannot be said for DOD. According to the Office Director for the Office of the Assistant Secretary of Defense for Special Operations/Low-Intensity Conflict, Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs, which oversees overall Leahy law implementation and policy for DOD globally,⁵⁹ the director and two full-time employees in that office are responsible for 12 portfolios covering various topics, including the Law of Armed Conflict and human rights law; so he can dedicate only one person part-time to the Leahy portfolio. Currently, according to the director, the office's main priority is to release strategic-level guidance on implementing the Leahy law through a DOD Instruction, because the level of understanding about the current DOD Leahy law guidance throughout DOD is uneven and in many cases inadequate.

(U) At OUSD-P, the former Afghanistan policy analyst who developed the spreadsheet that DOD and State rely on to track the status of gross violation of human rights incidents left in August 2016 when her 2-year detail to that office ended. She was replaced by someone with no past experience in the Leahy vetting process for Afghan security forces. Current OUSD-P officials still contact the former policy analyst and rely on her for historical information related to Leahy vetting. The Office of the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia, which is responsible for handling the Leahy vetting process for Afghanistan, also had a 6-month detailee serving as the Afghanistan Country Director for Gross Violations of Human Rights until March 31, 2017. That office does not have a permanent position for a Leahy vetting portfolio manager. Additionally, OUSD-P does not have a dedicated researcher devoted to confirming possible gross violations of human rights by the Afghan security forces, so it relies on USFOR-A and the Afghan government to research incidents and provide documentation.

(U) When we met with USFOR-A officials responsible for tracking gross violations of human rights by Afghan security forces, we asked how they maintained continuity despite the turnover in staff. The legal advisor said enough personnel stay on the Leahy Forum to explain to new personnel how their specific office fits into the process of reporting and tracking gross violations of human rights by Afghan security forces. Additionally, according to the legal advisor, the OUSD-P tracker and background binders, and the USFOR-A tracker and case files help new members understand how the forum functioned in the past. However, it appears that the departure of key players in OUSD-P and USFOR-A has left a gap in historical knowledge and continuity of operations, and the Afghanistan-specific vetting process, which depends on identifying gross violation of human rights incidents, has suffered as a result.

(U) The Human Rights and Rule of Law Chief of the Political Section at the embassy used the biweekly Leahy Forum meetings as an example of the very good working relationship the section has with USFOR-A. When asked about State participation in the forum, State responded that DOD organizes and leads the forums, and that SRAP and DRL offices typically send at least one representative. However, in September 2016, the Leahy law point person for OUSD-P said he was contemplating canceling the biweekly forum meetings or only holding them once a month because they were not particularly productive. He explained that before he became responsible for overseeing the vetting for Afghan security forces, the Leahy Forum discussions mainly took place between the Afghanistan policy analyst in OUSD-P and the USFOR-A legal advisor. In addition, he said,

⁵⁹ (U) While the Office of the Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs in the Office of the Assistant Secretary of Defense for Special Operations/Low-Intensity Conflict oversees DOD's overall Leahy law implementation and policy, the Office of the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia in the Office of Assistant Secretary of Defense for Asian and Pacific Security oversees DOD's Afghanistan-specific policy and implementation.

OUSD-P and USFOR-A can share information on incidents without conducting the secure video conference, so he did not see a strong argument to continue the biweekly meetings with the other participants.

(~~S~~U) In November 2016, OUSD-P's Afghanistan Country Director for Gross Violations of Human Rights said OUSD-P had not engaged with State on Leahy vetting of Afghan security forces since the prior Afghanistan policy analyst left in August 2016. In December 2016, an SRAP official told us that, as of December 1, 2016, DOD had not held a Leahy Forum since September. The lack of the forum meant State no longer had a venue to discuss the cases with DOD. State officials said they still received new information on reported gross violation of human rights incidents from the quarterly NIC reports and through open-source vetting. Subsequently, OUSD-P told us that it renewed the Leahy Forum in January 2017 to meet monthly. Given the lack of coordination without the forum, it is encouraging that DOD and State have taken steps to renew the Leahy Forum process to address child sexual assault and other gross violations of human rights by the Afghan security forces.

(U) These discussions about the lack of continuity and historical knowledge following the departure of key individuals from OUSD-P are similar to what we heard from DOD advisors stationed in Afghanistan. For example, one TAAC advisor told us the constant rotations in both the Afghan and U.S. forces cause frequent losses in historical memory. The advisor receives requests for information from RS on cases that her predecessor reported up the chain of command, but she is not familiar with them because they happened before she came on board, and the local police department does not have information on them. Three TAAC advisors cited security and a limited ability to get out into the field as present challenges. Another advisor told us that due to the limited number of U.S. personnel in Afghanistan, there are not enough points of engagement with the Afghans; so U.S. advisors are limited in their ability to encourage changes within the Afghan security forces. For example, in response to a request for information about an alleged incident reported by a TAAC advisor, DOD stated that the USFOR-A Office of the Legal Advisor did not know "if this alleged incident was communicated previously to USFOR-A [Office of the Legal Advisor] due to the frequent rotation out of and into Afghanistan by personnel. To the knowledge of individuals currently at USFOR-A, this incident was not documented in turn-over materials regarding [gross violation of human rights] incidents."

(U//~~FOUO~~) DOD Asked CENTCOM and SOCOM for Historical Records to Identify Sexual Assault Incidents that Were Not Tracked Before 2014, but May Not Take Action on This Information

(~~S~~//NF) Following the September 2015 *New York Times* article on child sexual abuse, the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia sent requests to CENTCOM in October 2015 and to SOCOM in early 2016 to review their significant action reports stored in the Combined Information Data Network Exchange (CIDNE) and commander's critical information requirement reports, situation reports, and other reports from U.S. forces for all U.S. and coalition forces since 2001 related to sexual abuse by Afghan security forces. These specific requests were necessary, in part, due to the lack of a central database that DOD could have used to locate all reported gross violation of human rights or child sexual assault incidents. In the absence of such a central database, CENTCOM conducted word searches of its records and sent back a list of numerous potential incidents. Most were unclassified, although some of the information was at the Secret level.⁶⁰ The original CENTCOM response consisted of a spreadsheet with 9,704 rows of potential incidents identified in a search of CIDNE. According to the former Afghanistan policy analyst who analyzed the responses, she and an intern reviewed each of the reports to determine whether they had relevant information

⁶⁰ (U//~~FOUO~~) The Deputy Assistant Secretary's requests to SOCOM and CENTCOM stated, "Search terms should include 'rape,' 'sex,' 'sodomize,' 'bacha bazi,' 'bacha baazi,' 'bacha bereesh,' 'halekon,' 'ashna,' and other appropriate terms."

on sexual assaults by Afghan security forces.⁶¹ She said the search took “a long time because of the way CENTCOM queried the data.”

(S//NF) According to OUSD-P’s former Afghanistan policy analyst, after discussions between OUSD-P and the commands to refine their searches, CENTCOM and SOCOM submitted historical reports with more than 600 rows of potentially relevant reports—approximately 200 from SOCOM and approximately 400 from CENTCOM—with varying levels of detail. Based on OUSD-P’s initial review of the data, the list did not appear to have reports of specific cases but had more general references to possible child sexual assault by the Afghan security forces. When we asked DOD for its plan for reviewing the responses from CENTCOM and SOCOM to identify relevant incidents and determine whether the incidents merit the Leahy Forum’s consideration, DOD responded that it “has not made a decision on how to handle these incidents. If and when DoD reviews these incidents, the Department will make a credibility determination based on the information available.” OUSD-P told us that it tasked CENTCOM, through the Joint Staff, to collate the information in a format that will allow for future follow-up with USFOR-A and the Afghan government if a decision is made to pursue investigation of these incidents.

(U) CONCLUSION

(S//NF) The DOD and State Leahy laws—10 U.S.C. § 362 and 22 U.S.C. § 2378d—establish clear requirements for DOD and State, respectively, to take action to ensure that members of foreign security forces for which there is credible information of a gross violation of human rights do not receive U.S. assistance. However, prior to 2014, the DOD Leahy law prohibition was limited to funding for “any training program.” DOD excluded from its definition of “any training program” the provision of mentors, embedded personnel, or equipment. On this basis, DOD requested that State conduct Leahy vetting only for members of the Afghan security forces that DOD determined to be part of a training program. After Congress amended the DOD Leahy law in 2014 to clarify that equipment and other assistance to foreign security forces were also subject to the vetting and withholding requirements in the law, DOD invoked the notwithstanding clause in the ASFF appropriation to exempt ASFF-funded assistance given to the Afghan security forces from the requirements of the DOD Leahy law.

(S//NF) It was not until the *New York Times* reported in September 2015 on allegations that sexual abuse of children by members of Afghan military and police forces was “rampant,” that USFOR-A issued clear guidance and required related training that personnel should report suspected child sexual assault and other gross violations of human rights by Afghan security forces through their chains of command. The lack of guidance and training prior to 2015 explicitly emphasizing the importance of reporting child sexual assault may have discouraged U.S. service members from reporting such violations.

(S//NF) Although concern for the security of U.S. forces and the potential loss of support from Afghan security forces for the U.S. mission are understandable, DOD’s continuing to provide assistance to units for which the department has credible information of a gross violation of human rights undermines efforts by U.S. government officials to engage with the Afghan government on the importance of respect for human rights and rule of law. Although the Afghan government has signed commitment letters with CSTC-A that include conditions related to the Leahy law and the requirement to take action on reports of gross violations of human rights, and although CSTC-A has withheld some support to units implicated in the commission of gross violations of human rights, it is questionable whether this is sufficient incentive for the Afghan government and its security forces to comply fully with Afghan and international law on human rights.

⁶¹ (U//FOUO) For example, the query results included situation reports that contained references to “grapes” because the word contains another word, “rape,” which was one of CENTCOM’s search terms.

(U) It is positive that DOD and State have taken steps to implement the Leahy laws in Afghanistan, developed procedures for vetting the Afghan security forces, and completed a strategy for engaging with the Afghan government on human rights issues. However, given the contrast between the extent of the problem with child sexual assault and other gross violations of human rights reported by NGOs and the number of incidents formally reported to and considered by the joint DOD and State Leahy Forum, both DOD and State missed the window of opportunity to identify the full extent of child sexual assault and other gross violation of human rights incidents by Afghan security forces when the United States had more troops in the country than it does now.

(U) State officials said they have sufficient resources to conduct Leahy vetting for Afghanistan. However, over the course of our review, challenges in engagement with the Afghan government—particularly in addressing allegations involving the MOI and its relationship with the AGO in reporting, investigating, and prosecuting cases involving various Afghan police units—indicate that not all relevant U.S. government entities operating in Afghanistan are fully integrated into the engagement and vetting process. This includes representatives from the various sections at the U.S. Embassy in Kabul and the Department of Justice, as well as DRL, SRAP, USFOR-A, and OUSD-P.

(U) Furthermore, because the joint DOD and State Leahy Forum does not have SOPs for its decision-making process or its system for tracking incidents reported by advisors in the field or the intelligence community up through DOD and State to the Leahy Forum, the departure of key individuals led to a loss of historical knowledge of the vetting process and case histories. DOD and State's re-establishment of the Leahy Forum is a positive step, but is not sufficient on its own to ensure that DOD and State have the mechanisms in place to effectively consider and address reported child sexual assault and other gross violation of human rights incidents, and that DOD and State are fully ensuring that perpetrators in the Afghan security forces are not receiving U.S. assistance.

(U) MATTER FOR CONGRESSIONAL CONSIDERATION

(U//~~FOUO~~) Should Congress determine that DOD's use of the notwithstanding clause in the ASFF appropriation to continue providing assistance to members of the Afghan security forces for which DOD has credible information of a gross violation of human rights is inconsistent with the intent of the Leahy law, Congress may want to consider prohibiting DOD from applying the notwithstanding clause to the DOD Leahy law.

(U) RECOMMENDATIONS

(U) To ensure that DOD and State personnel and contractors in Afghanistan understand the requirements and procedures for reporting gross violations of human rights, SIGAR recommends that the Secretaries of Defense and State:

1. (U) **Reiterate guidance to all department personnel and contractors in Afghanistan that explicitly emphasizes that gross violations of human rights, including child sexual assault, are not to be tolerated.**
2. (U) **Reiterate guidance to all department personnel and contractors in Afghanistan that establishes clear reporting and training requirements related to gross violations of human rights and child sexual assault, including specific instructions on how to report a suspected incident.**
3. (U) **Incorporate requirements into existing and future contract clauses that contractor personnel must report gross violations of human rights, including child sexual assault, to the Leahy law point of contact in each department.**

(U) To ensure continuity and clarity when addressing reported gross violation of human rights incidents involving members of the Afghan security forces, SIGAR recommends that the Secretaries of Defense and State:

4. (U) Coordinate their activities and identify roles and responsibilities for engaging with the Afghan Attorney General's Office on allegations of gross violations of human rights, including child sexual assault, by Afghan security forces within the MOI.
5. (U//FOUO) Require use of Leahy Forum meetings as the means for coordinating all relevant stakeholders from DOD, State, and other departments, and document forum procedures, including roles and responsibilities for investigating, deliberating on, and tracking gross violation of human rights incidents, including child sexual assault, by Afghan security forces.

(U) SIGAR also recommends that the Secretary of Defense, in coordination with State:

6. (U) Establish a single tracking system for reported gross violation of human rights incidents in Afghanistan, accessible by all DOD and State stakeholders, along with guidance on what information should be entered in the tracker.

(U) To ensure that DOD has sufficient resources to fully comply with the requirements of the DOD Leahy law, SIGAR recommends that the Secretary of Defense:

7. (U) Designate a specific position within DOD to oversee the department's implementation of the Leahy law in Afghanistan.

(U) AGENCY COMMENTS

(U) We provided a draft of this report to DOD and State, and the Department of Justice for review and comment. DOD, through the Office of the Assistant Secretary of Defense for Asian and Pacific Security Affairs, provided written comments, which are reproduced in appendix III. DOD questioned some of our findings and conclusions, which we responded to in appendix III. State's Office of the Special Representative for Afghanistan and Pakistan Affairs also provided written comments, which are reproduced in appendix IV. The Department of Justice did not provide formal comments on the report. DOD, State, and the Department of Justice provided technical comments, which we incorporated into this report, as appropriate.

(U) Department of Defense

(U) DOD concurred with all seven recommendations addressed to it. In response to our first and second recommendations, DOD said it will reiterate guidance to all department personnel and contractors in Afghanistan to reinforce the importance of training on human rights abuse reporting, including suspected child sexual assault that USFOR-A has conducted since October 1, 2015. According to DOD, the USFOR-A Legal Office provides this training to all newly arriving USFOR-A military personnel, government civilian employees, and contractors every week. In response to our third recommendation, DOD stated that it "is currently reviewing the appropriateness of implementing a requirement for contractors to report offenses of non-contractor personnel through a contract clause." The department is also exploring other avenues for ensuring that DOD policy is disseminated to contractors, such as during contractor pre-deployment processing.

(U) In response to our fourth recommendation, DOD said it supports U.S. engagement with the AGO on reports of gross violations of human rights, including child sexual assault, by members of the Afghan security forces. Although DOD supports Afghan investigations into such reports and said it would coordinate with State to promote accountability, the department also noted that State is the department responsible for working with the Ministry of Justice and AGO. We acknowledge that DOD, State, and other U.S. agencies such as the Department of Justice, have different roles and relationships in terms of their work with the MOI and AGO. For this reason, and given the challenges in coordination we identified in this report, we conclude that it is important for the various U.S. agencies to coordinate their respective engagements with the MOI and AGO to encourage the sharing of information on and investigations into reports of child sexual assault by the Afghan security forces.

(U) In response to our fifth recommendation, DOD stated that it understands the importance of the Leahy Forum as a coordinating mechanism for relevant stakeholders and said the Office of the Under Secretary of Defense for Policy chairs the monthly interagency meetings to discuss, document, and collaborate in addressing reported gross violation of human rights incidents. Given the breakdown in interagency communication that occurred without the regularly scheduled Leahy Forum meetings, we support the department's decision to resume the practice of holding interagency meetings. However, as indicated in our recommendation, in addition to continuing the meetings, we believe it is important for the department to document the forum's procedures, including specific roles and responsibilities.

(U) In response to our sixth recommendation, DOD said it will use existing information technology hardware and software systems to establish a single tracking system for gross violation of human rights incidents. Given the confusion among the various DOD components involved in implementing the DOD Leahy law in Afghanistan that was caused by the lack of a single tracking system with guidance on what information should be entered into the tracker, we are encouraged by DOD's move to identify a single incident tracker for USFOR-A, CENTCOM, and OUSD-P. However, we continue to stress the importance of providing guidance on what information should be entered into the tracker, to ensure continuity and consistency, and mitigate the

problems associated with the frequent turnover of individuals responsible for implementing the DOD Leahy law in Afghanistan.

(U) Although DOD concurred with our seventh recommendation, it said it cannot commit to a new position specifically to oversee the department's implementation of the DOD Leahy law in Afghanistan at this time. Instead, DOD will draft a policy that clarifies the roles and responsibilities of the DOD organizations involved in implementing the DOD Leahy law in Afghanistan. The department's response increases the need for it to provide additional guidance for the Leahy Forum and for a single incident tracker. This is because the continuity problems discussed above in relation to the frequent turnover of staff will be greater if DOD cannot commit to dedicating a position to oversee Leahy law compliance in Afghanistan.

(U) Department of State

(U) State concurred with all five recommendations addressed to it and to an additional recommendation addressed to DOD that involved coordination with State. In response to our first and second recommendations, State said the U.S. Embassy in Kabul will update its existing guidance related to reporting gross violations of human rights to explicitly emphasize that gross violations of human rights are not to be tolerated and establish clear reporting and training requirements. State said it would issue the guidance within the next 30 days and update it on an annual basis. However, we stress that when the department reissues this guidance, it should specifically discuss child sexual assault in addition to other gross violations of human rights. We are encouraged that, along with committing to reissue such guidance, State identified specific timeframes for doing so.

(U) In response to our third recommendation, State concurred and identified expected timeframes for incorporating requirements into existing and future contract clauses that contractor personnel must report gross violations of human rights, including child sexual assault, to the Leahy law point of contact in the department.

(U) In response to our fourth recommendation, State noted that the Department of Justice has the closest working relationship with the AGO, but that State will coordinate with all relevant agencies and departments to support U.S. engagement. As we mentioned in our comments on DOD's response to this recommendation, the different roles and relationships that the various U.S. agencies have with the MOI and AGO make it particularly important that they coordinate their respective engagement to encourage the sharing of information on and investigations into reports of child sexual assault by the Afghan security forces.

(U) In response to our fifth and sixth recommendations, State said it will coordinate with stakeholders through the Leahy Forum, work with DOD to document forum procedures, and coordinate with DOD to develop a single classified tracker. Given the importance of sharing information and collaboration between DOD and State to implement the Leahy laws in Afghanistan, particularly in light of the limitations we identified in this report, we appreciate the department's commitment to implementing improvements in these areas. We will continue to monitor progress through our recommendation follow-up process.

APPENDIX I - (U) CONGRESSIONAL REQUEST

Congress of the United States
Washington, DC 20510

December 23, 2015

Mr. John F. Sopko
Special Inspector General for Afghanistan Reconstruction
2530 Crystal Drive
Arlington, VA 22202-3904

Dear Mr. Sopko:

Articles on September 20 and September 21, 2015, in *The New York Times* reported that sexual abuse of children by members of Afghan military and police forces has been “rampant” and that U.S. soldiers and Marines have been instructed not to intervene. The *Times* named specific Afghan commanders who allegedly were involved in such abuse, and reported that U.S. service members who reported these incidents or attempted to intervene have been disciplined or forced out of the military. These reports are deeply disturbing and, if accurate, raise serious concerns about the conduct of the Afghan security forces and the Department of Defense’s (DoD) policies and procedures for handling such reports.

The *Times* quoted a U.S. military spokesman as stating that, “Generally, allegations of child sexual abuse by Afghan military or police personnel would be a matter of domestic Afghan criminal law” and “there would be no express requirement that U.S. military personnel in Afghanistan report it.” However, provisions of Federal law commonly referred to as the “Leahy Law” specifically prohibit the Department of Defense and the State Department from providing assistance to units of foreign security forces that have committed acts such as those described in the *Times* articles.

Under 10 U.S.C. § 2249e, DOD is prohibited from using funds for “any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.” Similarly, under 22 U.S.C. § 2378d, the State Department is prohibited from furnishing any assistance “to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”

We are also concerned with the potential impact such behavior could have on U.S. reconstruction efforts and national security interests. To date, the U.S. has provided over \$60 billion in assistance to the Afghan National Defense and Security Forces (ANDSF), including nearly \$500 million to the Afghan Local Police. Predatory sexual behavior by Afghan soldiers and police could undermine U.S. and Afghan public support for the ANDSF, and put our enormous investment at risk.

To provide the Congress and American people with a better understanding of the nature and extent of this problem and how it is being addressed by the U.S. and Afghan Governments, we request that you conduct an inquiry into the U.S. Government’s experience with allegations of sexual abuse of children committed

by members of Afghan security forces, and the manner in which 22 U.S.C. § 2378d and 10 U.S.C. § 2249e are implemented in Afghanistan. Your inquiry should include, to the extent practicable and consistent with SIGAR's mandate, the following:

- A review of the nature and extent of known incidents of sexual abuse of children by members of Afghan security forces, including the number of such incidents reported to, observed by, and/or recorded by U.S. military and State Department personnel, ANDSF personnel, and officials of relevant Afghan ministries;
See pages 12-14, and 18-21.
- A review of policies and procedures, including those referenced by General Campbell before the House and Senate Armed Services Committees in October 2015, that require reporting up the DOD chain of command of human rights violations by members of Afghan security forces, and whether such policies and procedures specifically cover sexual abuse by members of Afghan security forces;
See pages 7-12, and 28.
- A review of current State Department policies and procedures governing the manner in which their personnel should address reports or observations of human rights violations, including sexual abuse, by Afghan security forces, as well as any recommended changes to such policies and procedures;
See pages 12 and 32.
- A review of the manner in which such policies and procedures, including procedures for identifying and preventing human rights violations, are disseminated to U.S. military and State Department personnel, as well as any recommended changes to such policies and procedures;
See pages 11-12, and 32.
- A review of State Department and DOD handling of reports and observations of such abuses, policies and procedures governing the coordination and sharing of such information, and compliance with laws and regulations protecting whistleblowers;
See pages 9-11, 14-15, 20-21, and 26-30.
- Whether the State Department, DoD, or the International Security Assistance Force (ISAF) were aware of the Canadian inquiry into this issue, reportedly initiated seven years ago and described in the following article, and if so, whether it triggered any similar inquiries by DOD, ISAF, or the State Department: <http://www.thestar.com/news/canada/2015/10/14/canadian-military-probe-of-alleged-afghan-sex-assaults-drags-on.html>
See pages 19-20.
- A review of State Department and DOD implementation of 22 U.S.C. § 2378d and 10 U.S.C. § 2249e, as applicable, and whether members of Afghan security forces who have been alleged to have sexually abused children were included in, or subsequently added to, the International Vetting and Security Tracking system or other relevant databases;
See pages 2-7, and 15-18.
- An assessment of the extent to which the Afghan government has taken, or is likely to take, effective steps to bring to justice those alleged to have committed such abuses and to prevent such abuses in the future;
See pages 21-23.
- An assessment of actions the U.S. Government has taken, or can take in the future, to support such steps by the Afghan government, consistent with 22 U.S.C. § 2378d(c); and
See pages 24-25.
- A review of State Department and DOD resources and personnel designated for the purpose of implementing the Leahy Law in Afghanistan, and an assessment of whether such personnel are effectively trained and have the authority and resources necessary to properly vet recipients of assistance.
See pages 26-30.

We are aware that the DOD IG, as Lead IG for Operation Freedom's Sentinel, initiated in October of this year a review of the issue of child sexual abuse by members of the ANDSF, and that the DOD IG has expanded the scope of that review as a result of discussions with the staff of the Senate Armed Services Committee.

We note that SIGAR has more oversight staff in Afghanistan than any other Federal agency and has a strong working relationship with the Afghan Government. We request that SIGAR, which has unique oversight authorities and capabilities, conduct its inquiry in a manner that is complementary to the DOD IG's review. It is also our desire that the results of SIGAR's inquiry of the issue of child sexual abuse by the ANDSF be made available to Congress and the public, consistent with applicable Federal law and SIGAR's regular practice.

Finally, we note that the DoD IG and SIGAR are to cooperate and closely coordinate their oversight missions through established mechanisms to avoid demands on U.S. military and civilian personnel in the field that are not necessary to carry out the IGs' respective missions.

Thank you for your assistance. We look forward to your report.

Sincerely,



Patrick Leahy
United States Senator



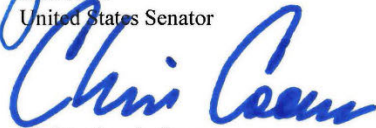
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United States Representative



Jack Reed
United States Senator



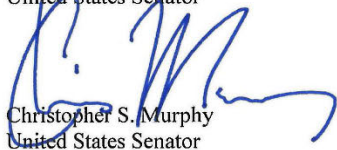
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United States Senator



Christopher A. Coons
United States Senator



Barbara A. Mikulski
United States Senate



Christopher S. Murphy
United States Senator



Patty Murray
United States Senator



Kirsten E. Gillibrand
United States Senator



Jeffrey A. Merkley
United States Senator



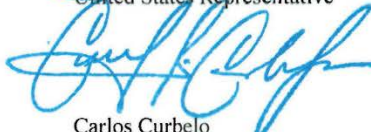
Barbara Boxer
United States Senator



Richard J. Durbin
United States Senator



Jeff Duncan
United States Representative



Carlos Curbelo
United States Representative



Doug LaMalfa
United States Representative



Don Beyer
United States Representative



Richard Hudson
United States Representative



Walter B. Jones
United States Representative



Bobby L. Rush
United States Representative




Jackie Speier
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Robert Aderholt
United States Representative



Lynn Jenkins
United States Representative




Ralph Abraham, M.D.
United States Representative



James P. McGovern
United States Representative



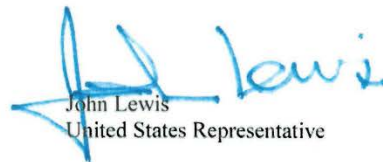
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United States Representative



Henry C. "Hank" Johnson
United States Representative



Tom Cole
United States Representative



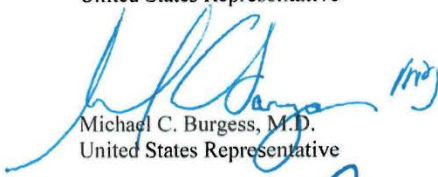
John Lewis
United States Representative



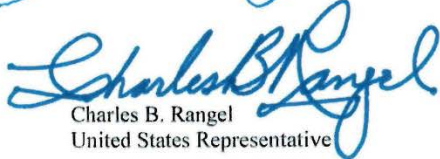
Corrine Brown
United States Representative



Alan Grayson
United States Representative



Michael C. Burgess, M.D.
United States Representative



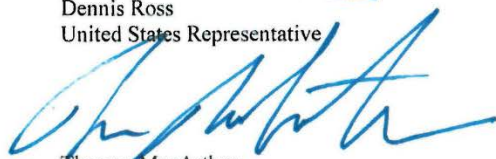
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United States Representative



Ander Crenshaw
United States Representative



Dennis Ross
United States Representative



Thomas MacArthur
United States Representative



Niki Tsongas
United States Representative



Gwen Moore
United States Representative



David Young
United States Representative



Diane Black
United States Representative



Sam Farr
United States Representative



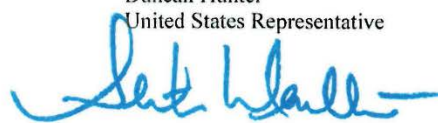
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United States Representative



David Jolly
United States Representative



Duncan Hunter
United States Representative



Seth Moulton
United States Representative



Jim Bridenstine
United States Representative



Debbie Dingell
United States Representative



Ryan Zinke
United States Representative



Bill Johnson
United States Representative



Vicki Hartzler
United States Representative



Jeff Miller
United States Representative



Charles Boustany, Jr., M.D.
United States Representative



Daniel Webster
United States Representative



Keith Rothfus
United States Representative



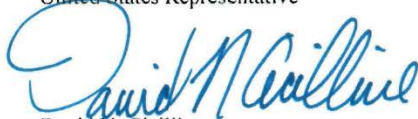
John Yarmuth
United States Representative



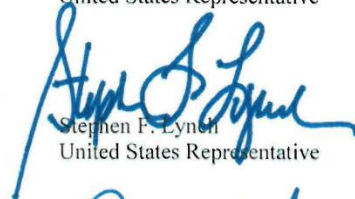
Louise M. Slaughter
United States Representative



Erik Paulsen
United States Representative



David N. Cicilline
United States Representative



Stephen F. Lynch
United States Representative



David Rouzer
United States Representative




Jose E. Serrano
United States Representative



Joseph Crowley
United States Representative



Ted Poe
United States Representative



Mario Diaz Balart
United States Representative



Peter T. King
United States Representative



William R. Keating
United States Representative



Brett Guthrie
United States Representative



Chris Smith
United States Representative



Michael M. Honda
United States Representative




Kathleen M. Rice
United States Representative



Eleanor Holmes Norton
United States Delegate



Virginia Foxx
United States Representative



Bill Posey
United States Representative



John K. Delaney
United States Representative



Alan Lowenthal
United States Representative



Patrick Murphy
United States Representative



Chris Stewart
United States Representative



Peter Welch
United States Representative



Rick Larsen
United States Representative



C.A. Dutch Ruppberger
United States Representative



Keith Ellison
United States Representative



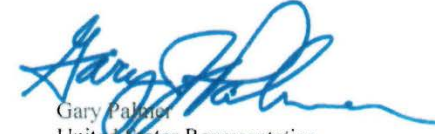
Joseph R. Pitts
United States Representative



Mark Meadows
United States Representative



Daniel M. Donovan, Jr.
United States Representative



Gary Palmer
United States Representative




Steven Palazzo
United States Representative



Julia Brownley
United States Representative



Ted Yoho
United States Representative



Jan Schakowsky
United States Representative



Lou Barletta
United States Representative



Steve King
United States Representative



Dan Newhouse
United States Representative



Sam Johnson
United States Representative



Ron DeSantis
Member of Congress

APPENDIX II - (U) SCOPE AND METHODOLOGY

(U) To accomplish our review, we analyzed the Leahy laws—22 U.S.C. § 2378d and 10 U.S.C. § 362—along with Department of Defense (DOD), Department of State (State), International Security Assistance Force (ISAF), and Resolute Support (RS) guidance and policies related to the Leahy laws, human rights, training, reporting requirements, and whistleblower protection. We also analyzed reported gross violation of human rights incidents tracked by U.S. Forces–Afghanistan (USFOR-A) and the Office of the Under Secretary of Defense for Policy (OUSD-P). We reviewed the Afghan government’s responses to written requests for information we sent to the Afghan Ministries of Interior and Defense, and the Attorney General’s Office. We reviewed State’s Afghanistan Country Reports on Human Rights Practices for 2011 through 2015, along with reports from relevant international and nongovernmental organizations (NGO), such as the United Nations Assistance Mission in Afghanistan (UNAMA), Child Soldiers International, and the Afghanistan Independent Human Rights Organization (AIHRC). We reviewed the redacted executive summary of the report from the Canadian Armed Services’ Board of Inquiry into allegations of child sexual assault by Afghan security forces and responses to written requests for information from the Canadian Embassy in Afghanistan. We also reviewed information from the DOD Office of the Inspector General (OIG) and armed service OIGs regarding whistleblower complaints about retaliation resulting from service members’ attempts to report allegations of child sexual assault by Afghan security forces. We observed two meetings of the joint DOD and State Afghanistan Gross Violation of Human Rights Forum. We reviewed hotline complaints and responses to an appeal for information about child sexual assault incidents that we posted on our social media sites.

(U) We interviewed DOD, State, and Department of Justice officials in Washington, D.C., and Kabul, Afghanistan. Specifically, from DOD, we interviewed officials from OUSD-P, the Office of the Joint Chiefs of Staff/Strategic Plans and Policy Directorate, the Army Review Board, USFOR-A, the Combined Security Transition Command–Afghanistan, and current and former service members and DOD contractors who served in Afghanistan. From State, we interviewed representatives from the Bureau of Democracy, Human Rights, and Labor; the Office of the Special Representative for Afghanistan and Pakistan Affairs; the Bureau of International Narcotics and Law Enforcement Affairs; and the U.S. Embassy in Kabul’s Political-Military Affairs, Consular, and Political Sections, and the embassy legal advisor. From the Department of Justice, we interviewed a representative from the U.S. Drug Enforcement Administration and the Justice attaché at the U.S. Embassy in Kabul. Further, we interviewed representatives from relevant NGOs and international organizations, such as the North Atlantic Treaty Organization, UNAMA, AIHRC, Hagar International, Amnesty International, the Afghanistan Human Rights and Democracy Organization, and the Roméo Dallaire Child Soldiers Initiative. Finally, we interviewed journalists with experience researching and reporting on allegations of child sexual assault by Afghan security forces.

(U) For our period of review, we selected fiscal year (FY) 2011 as the starting point following conversations with staff from the congressional requestors and FY 2016 as the end date. Beginning in FY 2011 allowed us to observe trends in policies, guidance, training, and reporting prior to and after the expansion of the Leahy laws in FY 2014. We selected FY 2016 because the Leahy laws do not have an end date, the U.S. government’s efforts to address allegations of child sexual assault are ongoing, and we wanted to provide our congressional requestors with the most up-to-date information possible. In some instances, we considered information related to gross violations of human rights and child sexual assault by Afghan security forces when it was available and contributed to the overall understanding of the topic. For example, if DOD had information on a reported incident of child sexual assault that occurred prior to FY 2011, we would include it in our analysis because this directly relates to the requestors’ question on the extent of known child sexual assault incidents.

(U) The official request from Congress asked us to look into allegations and incidents of sexual abuse of children. In an October 6, 2015, hearing of the U.S. Senate Committee on Armed Services, General John Campbell and the Senators present used the terms “sexual assault” and “sexual abuse” interchangeably. Other terms associated with this topic include rape and the Afghan term *bacha bazi*. There is no clear Afghan

legal definition of bacha bazi. Given the lack of a clear Afghan legal definition for bacha bazi, we refrain from using the term except as a quote or when referred to specifically in source documents and interviews. Similarly, given the lack of a single term for the reported incidents involving children and members of the Afghan security forces, as a general term, we use “sexual assault,” as defined in DOD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program. However, when quoting source material—either documentary or testimonial—or citing formal titles that use other terms, we will use those other terms.

(U) Prior to the transition from ISAF to RS at the end of 2014, the national police and military forces in Afghanistan were cumulatively referred to as the Afghan National Security Forces. Following the transition to RS, the name changed to the Afghan National Defense and Security Forces (ANDSF). To cover components of the security forces, such as the Afghan Local Police, which receive U.S. assistance and are therefore subject to Leahy law requirements, even though they are not formally part of the ANDSF, we use the term “Afghan security forces” when referring to the overall Afghan forces subject to Leahy vetting and allegations of involvement in gross violations of human rights and child sexual assault. When referring to a specific component of the security forces, we cite the component by name.

~~(S//NF)~~ We used some computer-processed data from DOD to identify how the department tracks information on gross violation of human rights and child sexual assault incidents by members of the Afghan security forces. We concluded that while the data from DOD had some limitations, as discussed in the body of our report, the data were sufficiently reliable for our purposes. We assessed internal controls to determine the extent to which DOD and State had documented processes and guidance for the implementation of the Leahy laws in Afghanistan. The results of our assessment are included in the body of the report.

(U) We do not have original classification or declassification authority. During this report, we used derivative classification portion markings according to the originators’ classification markings and comments. Source documents identified the classification level, including NATO classifications. As part of their review of a draft of this report, we asked DOD and State to confirm the information was marked appropriately. This document contains NATO classified information, using NATO classification authority. NATO information is not subject to U.S. Executive Order 13526 marking requirements; therefore, no declassification date or specific originator is provided for the NATO information. U.S. classified information within this document follows the appropriate data-classification handling regulations in accordance with DOD Manual 5200.01-V2, dated February 24, 2012.

(U) We conducted our review in Arlington, VA, and Kabul, Afghanistan, from January 2016 to June 2017 in accordance with the Quality Standards for Federal Offices of Inspector General, adopted by the Council of the Inspectors General on Integrity and Efficiency, and SIGAR’s quality control standards. These standards require that we carry out the work with integrity, objectivity, and independence, and provide information that is factually accurate and reliable. SIGAR conducted this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

APPENDIX III - (U) COMMENTS FROM THE DEPARTMENT OF DEFENSE



ASIAN AND PACIFIC
SECURITY AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
2700 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2700

MAY 11 2017

The Honorable John Sopko
Special Inspector General for Afghanistan Reconstruction
1550 Crystal Drive, 9th Floor
Arlington, VA 22202

Dear Mr. Sopko:

This letter and its enclosure comprise the Department of Defense (DoD) response to the Special Inspector General for Afghanistan Reconstruction (SIGAR) draft report on "Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Allegations of Assault by Afghan Security Forces."

I appreciate the work SIGAR undertook to respond to the tasking from Members of Congress to address this subject and the collegial effort between my team and yours, which required much effort and the provision to your team of hundreds of pages of documentation in response to requests for information.

The genesis of this review was the December 23, 2015 letter signed by Members of Congress that requested SIGAR "conduct an inquiry into the U.S. Government's experience with allegations of sexual abuse of children committed by members of Afghan security forces." The basis for this request was two articles in the *New York Times* on such incidents that claimed "U.S. soldiers and Marines have been instructed not to intervene." Given the seriousness of such an allegation, SIGAR's review makes an important contribution to determining the veracity of such claims. Indeed, the report acknowledges that there is no evidence DoD condones gross violations of human rights by Afghan Security Forces or provided guidance telling service members to ignore any instances.

The December 23, 2015 letter also requested that SIGAR review the manner in which DoD implements the "Leahy Law" in Afghanistan. DoD recognizes the seriousness of the issues addressed in SIGAR's review and has informed key congressional committees of how DoD applies the Leahy law in Afghanistan, especially since the law was amended in 2014 to broaden its potential applicability to provision of security assistance to Afghanistan.

DoD agrees with all but one of the recommendations in the draft report and we remain committed to continuing to improve our implementation of the DoD Leahy law. In addressing the "notwithstanding authority" provided to the Secretary of Defense by Congress in the Afghanistan Security Forces Fund (ASFF) appropriation, the draft report does not fully convey

Comment 1



the unique and difficult challenges of implementing the Leahy law in Afghanistan consistent with both the U.S. commitment to human rights and U.S. national security objectives in Afghanistan. In particular, the draft report does not reflect an understanding of the challenges faced by U.S. forces in Afghanistan in developing and sustaining the Afghan National Defense and Security Forces (ANDSF). Therefore, DoD objects to the SIGAR draft report's suggestion that Congress should consider removing the notwithstanding language from the ASFF appropriation. Removing the notwithstanding clause from ASFF would remove the Secretary of Defense's flexibility to balance the implementation of the DoD Leahy law in Afghanistan with national security objectives and the protection of U.S. forces. DoD also agrees with many of the conclusions in the draft report.

DoD disagrees with some of the findings and conclusions in the report, which, in DoD's view, are speculative and not well-substantiated. SIGAR only interviewed 16 service members during this review, and the report does little to explain when these individuals served in Afghanistan and what policies were in place at the time, the type of units they served in, what type of training they received, or what they observed and experienced. Further, the report does not explain the methodology of the interviews. The broad conclusions drawn from the interviews with this small and ill-defined sample size are not well-developed or supported.

Comment 2

Moreover, the draft report states inaccurately that DoD lacked explicit guidance for U.S. service members on reporting credible allegations of gross violation of human rights (GVHR) prior to 2014. Commander, U.S. Forces - Afghanistan (USFOR-A), issued a tactical directive on November 5, 2011, that contained explicit guidance for U.S. personnel to report suspected cases of the ANDSF violating the human rights of a citizen or detainee, and that policy guidance has been in place ever since. The DoD Law of War Program and the DoD Detention Program also require U.S. forces to report credible allegations of GVHR committed by members of the ANDSF if they occurred within those contexts.

Comment 3

Despite our objections to the draft report, DoD recognizes the SIGAR review team's intent, and looks forward to working closely with you and your staff on future matters.

Sincerely,



Jedidiah Royal
Deputy Assistant Secretary of Defense (Acting)
for Afghanistan, Pakistan, and Central Asia

Enclosures:
DoD Response to SIGAR Draft Review Report

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Department of Defense (DoD) Response to the Special Inspector General for Afghanistan Reconstruction (SIGAR) Draft Review Report

Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Allegations of Assault by Afghan Security Forces

DoD submits the following response to the “Matter for Consideration” contained in the report:

Consideration:

(U//~~FOUO~~) Should Congress determine that DOD’s use of the notwithstanding clause to continue providing assistance to members of the Afghan security forces for which DOD has credible information of a gross violation of human rights is inconsistent with the intent of the Leahy law, Congress may want to consider removing the notwithstanding language from the ASFF appropriation.

DoD Response:

(U) Non-Concur. DoD opposes the removal of the Secretary of Defense’s authority to balance the implementation of the DoD Leahy law under the unique circumstances in Afghanistan with national security objectives and the protection of U.S. forces.

Comment 1

DoD submits the following responses to the seven recommendations in this report:

(U) To ensure that DoD and State personnel and contractors in Afghanistan understand the requirements and procedures for reporting gross violations of human rights, SIGAR recommends that the Secretaries of Defense and State:

1. Recommendation 1:

(U) Reiterate guidance to all department personnel and contractors in Afghanistan that explicitly emphasizes that gross violations of human rights, including child sexual assault, are not to be tolerated.

DoD Response:

(U) Concur. DoD will reiterate this guidance to all department personnel and contractors in Afghanistan to reinforce the importance of the training that USFOR-A has conducted since an October 1, 2015, fragmentary order directed specific training on human rights abuse reporting, including suspected child sexual assault. The USFOR-A Legal Office provides this training to all newly arriving USFOR-A military personnel, government civilian employees, and contractors every week.

UNCLASSIFIED//~~FOUO~~**2. Recommendation 2:**

(U) Reiterate guidance to all department personnel and contractors in Afghanistan that establishes clear reporting and training requirements related to gross violations of human rights and child sexual assault, including specific instructions on how to report a suspected incident.

DoD Response:

(U) Concur. DoD will reiterate this guidance to all department personnel and contractors in Afghanistan to reinforce the importance of the training that USFOR-A has conducted since an October 1, 2015, fragmentary order directed specific training on human rights abuse reporting, including suspected child sexual assault. The USFOR-A Legal Office provides this training to all newly arriving USFOR-A military personnel, government civilian employees, and contractors every week.

3. Recommendation 3:

(U) Incorporate requirements into existing and future contract clauses that contractor personnel must report gross violations of human rights, including child sexual assault, to the Leahy law point of contact in each department

DoD Response:

(U) Concur. DoD understands the importance of including clauses in its contracts that require government contractors to report suspected GVHR, including suspected child sexual assault. DoD is currently reviewing the appropriateness of implementing a requirement for contractors to report offenses of non-contractor personnel through a contract clause. Further, rules that amend the Defense Federal Acquisition Regulation Supplement (DFARS) are subject to Executive Order (EO) 13771, and reporting requirements that impose burden on contractors are also subject to the Paperwork Reduction Act and will require additional scrutiny and approval from the Office of Management and Budget prior to implementation in the DFARS. DoD is also exploring other avenues to ensure that DoD policy is disseminated to contractors, such as during contractor pre-deployment processing.

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(U) To ensure continuity and clarity when addressing reported gross violations of human rights incidents involving members of the Afghan security forces, SIGAR recommends that the Secretaries of Defense and State:

4. Recommendation 4:

(U) Coordinate their activities and identify roles and responsibilities for engaging with the Afghan Attorney General's Office on allegations of gross violations of human rights, including child sexual assault, by Afghan security forces within the MOI.

DoD Response:

(U) Concur. DoD understands and supports U.S. engagement with the Afghan Attorney General's Office on allegations of GVHR, including allegations of child sexual assault, by members of the ANDSF. DoD supports Afghan investigations into allegations of GVHR and will coordinate with the Department of State (DOS) to promote accountability. However, DOS is the responsible agency for working with the Ministry of Justice/Afghan Attorney General's Office.

5. Recommendation 5:

(U//~~FOUO~~) Require use of Vetting Forum meetings as the means for coordinating all relevant stakeholders from DoD, State, and other departments, and document Vetting Forum procedures, including roles and responsibilities for investigating, deliberating on, and tracking gross violation of human rights incidents, including child sexual assault, by Afghan security forces.

DoD Response:

Comment 4

(U) Concur. DoD understands the importance of the Leahy Policy Forum as a coordination mechanism for the relevant Leahy law stakeholders from DoD, DOS, and other U.S. Government departments and agencies as required. The Office of the Under Secretary of Defense for Policy chairs monthly interagency meetings to discuss, document, and collaborate in addressing reported GVHR incidents, including child sexual assault, by members of the ANDSF. However, with regard to investigations, DoD and its components assess available information related to alleged GVHR incidents of the ANDSF, including information provided by the Afghan Government, but DoD does not conduct independent investigations into alleged ANDSF transgressions.

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(U) SIGAR also recommends that the Secretary of Defense, in coordination with the Department of State:

6. Recommendation 6:

(U) Establish a single tracking system for reported gross violation of human rights incidents in Afghanistan, accessible by all DoD and State stakeholders, along with guidance on what information should be entered in the tracker.

DoD Response:

(U) Concur with the caveat that DoD understands that the term “tracking system” does not imply establishment of a new IT system and will seek to fulfill this recommendation using existing IT hardware and software. DoD understands the importance of and supports the transparent review of reported GVHR incidents in Afghanistan, accessible by DoD, DOS and Intelligence Community stakeholders. DoD and DOS have been tracking GVHR incidents, including child sexual assault, by members of ANDSF since 2014. U.S. department and agency representatives exchange and update information during monthly Leahy Policy Forum meetings.

Comment 5

(U) To ensure that DoD has sufficient resources to fully comply with the requirements of the DoD Leahy law, SIGAR recommends that the Secretary of Defense:

7. Recommendation 7:

(U) Designate a specific position within DoD to oversee the department’s implementation of the Leahy law in Afghanistan.

DoD Response:

(U) Concur with the caveat that DoD cannot commit at this time to establishing a new position specifically for this purpose, but DoD will draft a policy that clarifies the roles and responsibilities of the DoD organizations involved in overseeing, supporting, and coordinating the implementation of the DoD Leahy law in Afghanistan.

Comment 6

(U) SIGAR's Response to Comments from the Department of Defense

1. (U) Recognizing that DOD applies the notwithstanding clause to items in the DOD appropriations act that are outside the scope of this review, we revised our matter for congressional consideration to specifically focus on the notwithstanding clause as it related to the DOD Leahy law. We disagree with DOD's assertion that by removing the notwithstanding clause, Congress would remove the Secretary's flexibility to balance the implementation of the DOD Leahy law in Afghanistan with national security objectives and the protection of U.S. forces. Congress provided flexibility to the department through the exceptions and waiver it included in the DOD Leahy law. Ultimately, whether DOD agrees with the matter for consideration or not, it is up to Congress to decide whether to prohibit DOD from applying the notwithstanding clause to the DOD Leahy law.
2. (U) The 16 service members we interviewed were not a sample. We clearly identified the number of individuals we interviewed and never claimed that they were a representative sample of all U.S. service members who served in Afghanistan. We did not disclose additional information on the individuals we interviewed to protect their identities.
3. (~~S//NF~~) In response to DOD comments, we acknowledge the tactical directive issued by the USFOR-A commander in November 5, 2011, which contained explicit guidance for U.S. personnel to report suspected human rights violations by members of the Afghan security forces. However, as we note, that guidance did not specifically mention child sexual assault. Additionally, the guidance before 2014 may not have been clear enough for service members to know that gross violations of human rights fell under the Law of War Program or in the detention context. In technical comments on a draft of this report, DOD acknowledged that the policy may not have been widely understood.

(U) While DOD contends that, prior to the 2011 guidance, its Law of War Program and its Detainee Program would have required reporting of gross violation of human rights by Afghan security forces in the Law of War or the detainee context, respectively, we disagree. DOD told us that it considers respect for human rights and humane treatment of detainees to include a prohibition on child sexual assault. However, the Law of War applies to the treatment of enemy combatants and the civilian population. It is not directly germane to the issue of funding provided by the United States to Afghan security forces. In addition, in the Law of War guidance there is no mention of "respect for human rights." Furthermore, DOD did not take issue with our finding that DOD did not have any written procedures specifically for reporting gross violations of human rights in Afghanistan until 2014, or for reporting child sexual assault until 2015. The issuance of this new, explicit guidance suggests that the previous guidance contained in DOD's Law of War Program and Detainee Program was not sufficient to ensure that U.S. service members serving in Afghanistan understood their obligation to report gross violations of human rights, including child sexual assault. Nonetheless, we acknowledge DOD's position in our report.

4. (U) We are encouraged that DOD recognizes the importance and need to document Leahy vetting procedures and that the Leahy Forum provides a mechanism to ensure continuity. However, to be clear, in our recommendation, we are not suggesting that DOD conduct independent investigations into alleged transgressions by members of the Afghan security forces. We also note that, in addition to recommending that DOD require the use of the Leahy Forum meetings as a means of coordinating, our recommendation included DOD documenting forum procedures, and roles and responsibilities. We believe that having these things documented is essential to DOD's and State's ability to effectively implement the Leahy laws in Afghanistan.

5. (U) It was not our intention for DOD to create a new information technology system to track reported gross violations of human rights in Afghanistan. DOD could implement this recommendation using existing technologies and systems. For example, DOD currently uses a classified spreadsheet to track reported incidents. However, in addition to identifying a single mechanism for tracking reported incidents, it is essential that DOD establish corresponding guidelines for what information the tracker should contain and procedures for documenting and disseminating updates to the tracker.

6. (U) We are encouraged that DOD will draft a policy that clarifies the roles and responsibilities of the DOD organizations involved in overseeing, supporting, and coordinating the implementation of the DOD Leahy law in Afghanistan. This is a good start, but we maintain that, given the unique challenges DOD said it faces in implementing the DOD Leahy law in Afghanistan, including the frequent rotation of personnel responsible for doing so, designating a specific position within DOD to oversee the department's efforts would provide greater continuity and help ensure that DOD can fully comply with the requirements of the law.

APPENDIX IV - (U) COMMENTS FROM THE DEPARTMENT OF STATE



United States Department of State

Washington, D.C. 20520

May 10, 2017

SENSITIVE BUT UNCLASSIFIED

Mr. John F. Sopko
Special Inspector General for Afghanistan Reconstruction
1550 Crystal Drive, 9th Floor
Arlington, VA 22202

Dear Mr. Sopko:

(U) Thank you for the opportunity to comment on your draft report reviewing implementation of the Leahy laws in Afghanistan. The Department takes allegations of gross violations of human rights (GVHRs) by Afghan security forces, including child sexual assault, very seriously. We welcome your recommendations to ensure that all of our personnel and contractors in Afghanistan understand the reporting requirements and procedures regarding GVHRs, and to ensure continuity and clarity in our procedures for addressing reports of GVHRs involving members of the Afghan security forces. State concurs with your draft recommendations and has already begun work to implement them, as outlined below. We are providing technical comments in a separate enclosure.

(U) **Recommendation 1:** *Reiterate guidance to all department personnel and contractors in Afghanistan that explicitly emphasizes that gross violations of human rights, including child sexual assault, are not to be tolerated.*

(U) **Recommendation 2:** *Reiterate guidance to all department personnel and contractors in Afghanistan that establishes clear reporting and training requirements related to gross violations of human rights and child sexual assault, including specific instructions on how to report a suspected incident.*

(U) **Response:** State concurs with the above two recommendations, and we suggest you consider consolidating them into a single recommendation. The same personnel guidance can explicitly emphasize that GVHRs are not to be tolerated and establish clear reporting and training requirements related to reported GVHRs. Embassy Kabul management will reiterate such guidance within the next 30 days and update it on an annual basis.

Comment 1

(U) **Recommendation 3:** *Incorporate requirements into existing and future contract clauses that contractor personnel must report gross violations of human rights, including child sexual assault, to the Leahy law point of contact in each department.*

(U) **Response:** State concurs with this recommendation. The Office of the Procurement Executive (OPE) in coordination with the Office of Acquisitions Management (AQM) will develop a clause to incorporate requirements into existing and future contract clauses

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that contractor personnel must report gross violations of human rights, including child sexual assault, to the Leahy Law point of contact in the Department. The timeline to complete the incorporation of these clauses into existing contracts is expected to be one year.

(U) Recommendation 4: *Coordinate [DoD and State] activities and identify roles and responsibilities for engaging with the Afghan Attorney General's Office on allegations of gross violations of human rights, including child sexual assault, by Afghan security forces within the MOI.*

(U) Response: State concurs with this recommendation. The Department of Justice has the closest working relationship with the Afghan Attorney General's Office, but State will coordinate with all relevant agencies and departments to support U.S. engagement.

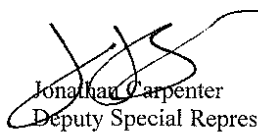
(U//FOUO) Recommendation 5: *Require use of Vetting Forum meetings as the means for coordinating all relevant stakeholders from DOD, State, and other departments, and document Vetting Forum procedures, including roles and responsibilities for investigating, deliberating on, and tracking gross violation of human rights incidents, including child sexual assault, by Afghan security forces.*

(U) Response: State concurs with this recommendation. The Department will coordinate with stakeholders through the Vetting Forum and work with DoD to document Vetting Forum procedures.

(U) Recommendation 6: *Establish a single tracking system for reported gross violation of human rights incidents in Afghanistan, accessible by all DOD and State stakeholders, along with guidance on what information should be entered in the tracker.*

(U) Response: State concurs with the recommendation to coordinate with DoD to develop a classified DoD tracker for reported GVHR incidents in Afghanistan. All non-DoD assistance will continue to be vetted through the INVEST database. The Department will continue to make credibility recommendations to DoD and provide any information about GVHRs in the Department's possession.

Sincerely,


Jonathan Carpenter
Deputy Special Representative for
Afghanistan and Pakistan

Enclosure:
As stated.

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(U) SIGAR's Response to Comments from the Department of State

1. (U) Although we made two separate recommendations, we leave it to State to determine the best way to implement them. We are not opposed to State using the same personnel guidance to explicitly emphasize that gross violations of human rights are not to be tolerated, and establish clear reporting and training requirements related to reporting gross violations of human rights. However, we are concerned that while State indicated that the U.S. Embassy Kabul management will reiterate such guidance within the next 30 days and update it on an annual basis, State's response did not specifically mention child sexual assault. Because State does not have specific guidance and training on reporting incidents involving the sexual assault of children by members of the Afghan security forces, we believe that it is important that the guidance that State or the U.S. Embassy in Kabul issue explicitly include child sexual assault.

(U) This review was conducted
under project code SIGAR-113.

SIGAR's Mission

The mission of the Special Inspector General for Afghanistan Reconstruction (SIGAR) is to enhance oversight of programs for the reconstruction of Afghanistan by conducting independent and objective audits, inspections, and investigations on the use of taxpayer dollars and related funds. SIGAR works to provide accurate and balanced information, evaluations, analysis, and recommendations to help the U.S. Congress, U.S. agencies, and other decision-makers to make informed oversight, policy, and funding decisions to:

- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
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