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# jipia

*Journal of Public &  
International Affairs*

*2016*

*J*OURNAL OF *P*UBLIC AND  
*I*NTERNATIONAL *A*FFAIRS  
2016

Association of Professional Schools of  
International Affairs

and

The Woodrow Wilson School of  
Public and International Affairs  
Princeton University

ROBERTSON HALL  
PRINCETON UNIVERSITY  
PRINCETON, NJ 08544-1013  
[HTTP://WWW.PRINCETON.EDU/~JPIA](http://www.princeton.edu/~jpia)

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1. World Politics—Periodicals. 2. International Relations—Periodicals. 3. Policy sciences—Periodicals. I. Association of Professional Schools in International Affairs. II. Woodrow Wilson School of Public and International Affairs. III. Title: *JPIA*.

ISSN: 1070-521x

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## Letter from the Editors

It is rare to find a journal that examines women's participation in South Sudan in one chapter and the exploitation of outer space resources in the next; that dissects the effects of Chinese investment in Sub-Saharan Africa and demystifies the Ferguson effect. But the *Journal of Public and International Affairs* is not your average journal. It represents the very best of what graduate-level public policy students have to contribute to the pressing policy debates of today. It is wide-ranging in subject matter and trenchant in its recommendations.

Founded in 1990, but with an ancestor publication dating back to 1963, the JPIA is based on the notion that students of public policy have important things to say about public affairs and that careful analysis and targeted critique can pave the way for meaningful change and progress. The graduate students published in this year's JPIA combine practical experience from around the world with intensive academic study. They have spent the last year diving deep into the issues they are passionate about and have all been challenged by the need to move past descriptive analysis and towards concrete solutions. These papers represent the best of their scholarship.

This 27th edition of the JPIA is made possible through the contributions of countless authors, and editors, designers and administrators from 24 policy schools across North America and Europe. The seven papers in this journal were selected from 114 submissions. We would particularly like to thank Leona Rosso-Dzugan for the graphic design and the Woodrow Wilson School of Public and International Affairs Program Office, which continues to support the important mission of the journal. To the reader, we hope you enjoy.

Megan Campbell & Geoff Cooper

*Editors-in-Chief*

# 1

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## IS INDIA'S NATIONAL SANITATION PROGRAM BAD FOR WOMEN? WHAT HOUSEHOLD SURVEY DATA REVEALS ABOUT THE SOCIAL DRIVERS OF RURAL LATRINE USE

*Kathryn Alexander*

This paper examines the low rates of latrine uptake in India, where an estimated 50 percent of all Indians still practice open defecation. Beyond the public health problems this poses, it is also especially notable in the midst of rapidly falling open defecation rates worldwide and given India's relative wealth. The Government of India has responded in recent years with an expensive and highly publicized sanitation campaign aimed at constructing a latrine per household. However, evidence suggests that approximately one in five rural household latrines go unused. Using recent survey data from 3,235 households across 13 districts in five north Indian states, this paper helps explain the social drivers behind high open defecation rates in rural India. Building on previous analysis of this dataset that shows that low rates of latrine use by Hindus can be attributed

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in part to their strong beliefs on ritual impurity, this analysis focuses on understanding how individual preferences for using a latrine vary further by gender, age, marital status, and social group. While gender and age are also found to be strong predictors of latrine use – in households with a latrine, women are less likely than men to open defecate across all ages except the very young – individual revealed preferences for latrines are inconsistent with popular discourse describing the particular convenience, privacy, and security benefits latrines provide for women. Instead there seem to be complex (and sometimes competing) social and religious factors influencing household sanitation decisions, including the status of women in their homes and their ability to move freely about their communities. The paper warns that latrine building programs that do not consider this heterogeneity in rural preferences will continue to fail to achieve universal latrine use, and instead calls for further quantitative and qualitative studies focused on understanding rural attitudes towards latrines; more nuanced information and education campaigns that target men, women, and notions of caste hierarchy and ritual impurity; and concurrent policies that improve the status of women in their homes and communities.

## INTRODUCTION

One billion people in the world still defecate outside, and nine out of ten of these people live in a rural area (WHO/UNICEF JMP 2014). Though worldwide open defecation (OD) rates have steadily fallen since 1990, India alone accounts for nearly 60% of the global total, with approximately half of all Indians practicing OD (UNICEF India 2016). A source of fecal contamination for local water sources, OD poses great public health concerns. Water-borne diseases result in an estimated 4 million early childhood deaths every year in India (Rajgire 2013). Those who survive likely face chronic diarrhea that leads to malnutrition and stunting, so that the poor health of rural Indians can hurt their education and labor outcomes far into the future (UNICEF India 2016).

The practice of OD is deeply ingrained in Indian tradition and religious practice and – despite national campaigns targeting healthier sanitation practices since 1986 – Indian headway on sanitation goals has been slow (Coffey et al. 2104). India's progress is particularly distressing considering the reductions in OD its poorer neighbors, Bangladesh and Nepal, have been able to achieve in a relatively short period of time. Promisingly,



OD has been made the current public health priority by Prime Minister Narendra Modi with the campaign *Swachh Bharat Abhiyan* (Clean India Mission, or SBA), seeking to eliminate OD by 2019.

SBA is a \$22 billion initiative aimed at building a latrine for every rural household, but it's unlikely that a massive latrine construction campaign will be sufficient to address the cultural barriers to latrine use responsible for India's particularly high OD rates. The practice of OD does not appear to be a simple manifestation of poverty that construction subsidies will overcome, as evidenced by built latrines going largely unused (Hueso and Bell 2013). An open defecation-free (ODF) India seems unlikely in the near future without a better understanding of the drivers behind rural Indians' low demand for latrines. Targeting latrine use – rather than latrine access – requires acknowledging rural preferences as well as understanding how these preferences vary across religion, social group, age, and gender.

## A LOOK AT THE DATA

From December 2013 to April 2014, the Research Institute for Compassionate Economics (r.i.c.e.) conducted the Sanitation, Quality, Use, Access and Trends (SQUAT) Survey<sup>1</sup> in five north Indian states: Bihar, Haryana, Madhya Pradesh, Uttar Pradesh, and Rajasthan. Around 40% of India's population – and 45% of households without a latrine – are found in these five states alone (r.i.c.e. 2014). Within them, 13 districts were selected using census data to match state-level trends in open defecation.<sup>2</sup> There were 86 randomly selected villages from which 3,235 households were randomly surveyed. The dataset includes 1,108 variables and 24,070 observations. Unless otherwise cited, all statistics presented in this paper reflect the author's own analysis<sup>3</sup> of SQUAT survey data that was generously shared by r.i.c.e.

Across all five states surveyed, SQUAT data reveals that 75.4% of households have electricity and 78.9% have a water source in or attached to the house, and yet only 43.4% of households have a toilet or latrine. Table 1 below presents summary statistics of the dataset for other characteristics of interest.

**Table 1. Descriptive statistics of the SQUAT Survey**

Variable	No. observations	Mean	Median	Range	Standard Deviation
Age	24,070	26.45	22	0-99	19.12

Household assets (asset count <sup>4</sup> )	24,070	10.52	10	0-21	4.39
Education (years completed)	21,450	5.59	5	0-19	4.95
Sex	24,070	52.5% male, 47.5% female			
Religion	23,196	91.0% Hindu, 7.1% Muslim, 1.0% Adivasi			
Caste/Group	23,489	7.6% Brahmin, 17.1% other high class, 48.4% other backward class, 20.0% scheduled caste, 3.7% scheduled tribe			

## DRIVERS OF LATRINE USE

SQUAT data on OD rates is consistent with well-established literature that describes income and education as strong predictors for health outcomes; unsurprisingly, OD is negatively correlated with household wealth and education levels.<sup>5</sup> But given India's huge population, lesser-understood individual preferences towards latrines may affect the defecation decisions of millions of Indians in aggregate. SQUAT data allows further study of the differences in OD practice and latrine use, particularly by household member age, gender, and marital status; and their religion, social group, or caste. The following sections provide an overview of the social drivers of latrine use, and present corroborating evidence from the SQUAT survey.

### Religion and Social Group

Religion, caste, and social group norms have shaped OD habits in India. We know that Hindus are more likely to OD than Muslims, despite being on average richer and more educated (Coffey et al. 2014). Two hypotheses help explain low latrine use among Hindus:

1. Principles of the Hindu religion promote OD benefits: notions of pollution discourage defecation in or near the house, and notions of purity prescribe rituals for cleaning one's body and clothing that may make latrines less appropriate.
2. Similarly, principles of purity are related to the caste system since it is the lowest castes that are traditionally assigned to cleaning latrines. If emptying latrines is problematic for higher caste households, they may be less likely to use them.

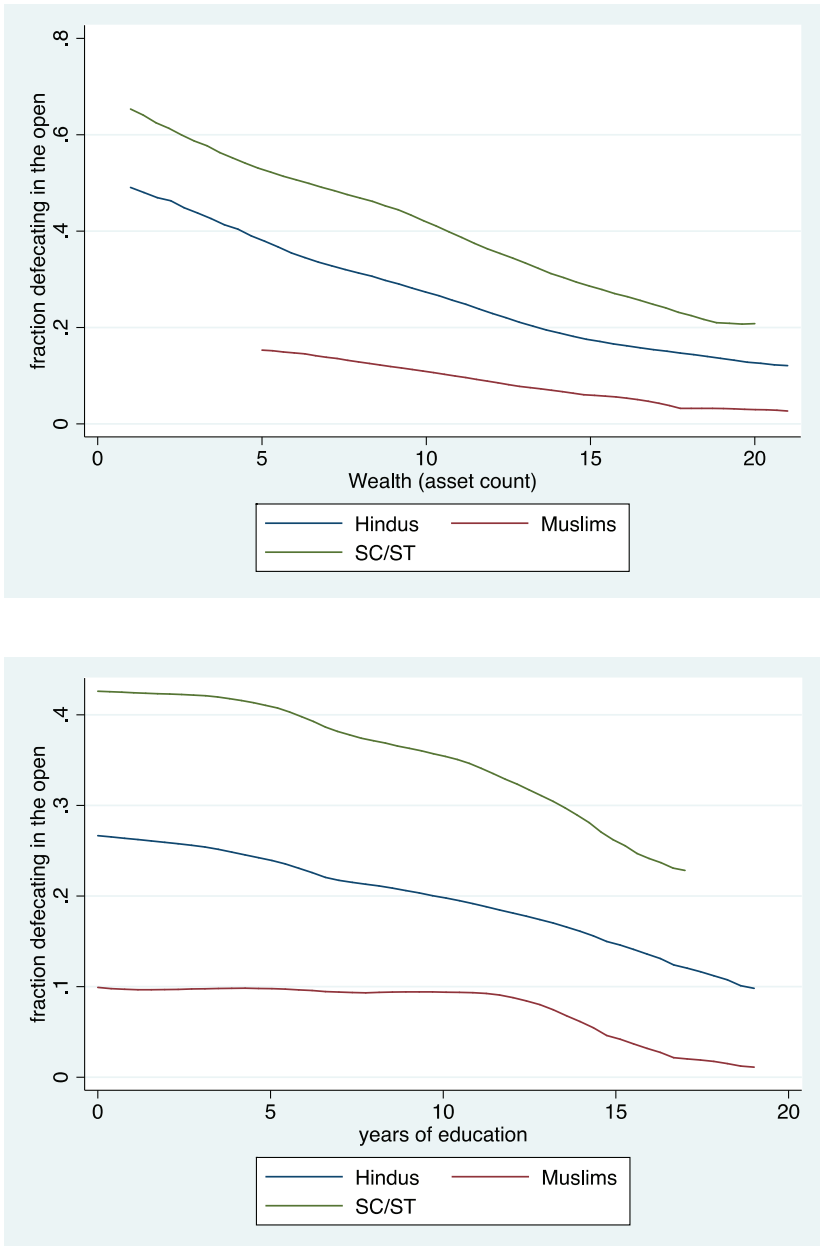
Evidence from the SQUAT survey in support of both hypotheses is discussed below. Latrine use is also examined for members of scheduled castes (SC) and scheduled tribes (ST), India's two most historically disadvantaged groups that comprise 16.6% and 8.6% of the population, respectively, according to the 2011 census.

### *Overall Trends.*

Regular latrine users in rural India tend to be richer, more educated, better traveled, and better informed of the benefits of latrines (Routray et al. 2015). These are generally higher caste people, as low caste and tribal populations are more geographically and economically isolated (ibid.). SQUAT data confirms the relationship between household wealth and education for each subgroup: being Hindu, Brahmin, other high class (OHC), or other backward class (OBC)<sup>6</sup> is positively correlated with both household assets and years of education, while being Muslim, SC, or ST is negatively correlated with assets and education.

But in spite of their higher wealth and education, Hindus living in households with latrines are more likely to openly defecate than Muslims living in households with latrines, at every age and across all five states surveyed by SQUAT. As you might expect, SCs and STs – India's most marginalized groups – practice the highest rates of OD. What is especially interesting is that these trends persist at every wealth and education level, as shown below in Figure 1. With both increasing assets and years of education, OD rates for all groups decrease and begin to converge.

Figure 1. Fraction of OD by religion/group among households that own a latrine by wealth (top) and education (bottom) levels



Overall, 21.1% of individuals over the age of two still OD despite having a latrine at home, as summarized below in Table 2. Conditional on household latrine ownership, overall OD rates are different and statistically significant (at least to the 10% level) across each subgroup: higher for Hindus than non-Hindus; lower for Muslims than non-Muslims; lower for Brahmin, OHC, and OBC than non-Brahmin, non-OHC, or non-OBC; and higher for SC and ST than non-SC or non-ST.

Table 2. OD rates (%) by religion and group, for individuals age 2+ in households with a latrine

Group	All states	Haryana	Bihar	Uttar Pradesh	Madhya Pradesh	Rajasthan
All persons	21.1	15.	22.5	19.7	25.7	30.5
Muslims	9.9	6.7	7.1	11.9	8.4	14.9
All Hindus	22.1	15.9	25.4	21.5	26.7	31.8
Brahmins	14.4	17.3	23.7	4.4	11.3	3.6
OHC	15.4	14.5	8.8	13.1	21.8	21.3
OBC	20.1	13.3	27.8	21.3	19.9	33.9
SC	36.3	26.4	35.2	33.3	50.4	76.1
ST	56.8	30	-	-	67.7	37

It should be noted that the dataset includes very few members from scheduled tribes (just 3.56% of the sample) and none were surveyed from Bihar or Uttar Pradesh. Most importantly, trends are not consistent across these five states, suggesting that latrine preferences do not follow a simple and negative relationship with education and wealth, but rather other complex religious and social factors may be important – and competing – drivers of latrine use.

### *Views on Purity and Pollution.*

Strongly held Hindu beliefs on purity affect post-defecation rituals and may affect decisions to use a latrine at all. Ritual purity and the sanctity of sacred spaces are important concepts for the Hindu home; feces are ritually impure and containing them in a pit within or near the home jeopardizes the purity of the entire house (Mazumdar and Mazumdar 1994). This extends to both people and objects, so that a person, their clothes, and the cup of water for washing all become polluted after entering a latrine and

cannot enter sacred areas of the home<sup>7</sup>, before ritual acts of purification have been performed (ibid., Routray et al. 2015).

Evidence from the SQUAT survey is consistent with the notion that strongly held views on household purity encourage the practice of OD. Approximately 66.1% of respondents in households with a latrine viewed latrines in or near the house as impure. This varied somewhat by state, ranging from 57.1% in Bihar to 73.4% in Madhya Pradesh. Not surprisingly, among households that own a latrine, individuals who believe that having the latrine in or near the home is impure are more likely to OD than individuals who think the latrine is pure, statistically significant at the 1% level.

The relationship between views on purity and social group are also important. Viewing a latrine as impure is positively correlated with being Hindu and negatively correlated with being Muslim. Testing for differences in views of purity across subgroups that own a latrine also reveals that Hindus, Brahmins, OBCs, and STs are more likely to view latrines in or near the home as impure. On the other hand, Muslims and OHCs are less likely to view latrines as impure compared to non-Muslims or non-OHCs. These differences are all statistically significant at the 1% level. There is no statistically significant difference between impurity views by SCs and non-SCs in households with a latrine.

Though the direction of causality is unclear, together these results provide evidence in support of the first hypothesis: views on latrine impurity are widespread and tied to religion and social group, and individuals who believe that latrines located in or near the house are impure are more likely to OD.

### *The Presence of “Casteism.”*

Indian villages are commonly comprised of different castes, and 85.8% of SQUAT respondents identified their village as home to people of different castes. The extent of hierarchal spread matters as well: 71.9% of sampled villages contain Brahmin households and 92.7% contain SC households. Though many believe that the rigidity of the caste system is declining and there is greater mobility today by social class and occupation, disparities exist between groups and discrimination against lower castes still occurs (Routray et al. 2015). Houses are typically clustered by caste, with low caste households located some distance away from the higher caste hamlets such that defecation sites also differ (ibid.).

A binary variable was constructed as a proxy for “casteism”, equal to one if a respondent answered that their village sees conflict between people

of different castes living together, and equal to zero if they report living together peacefully or in a village with only people of the same caste. For households with latrines, 18.3% of respondents from all five states indicated conflict between castes, though this varied significantly by state, from 12.9% in Haryana up to 26.3% in Madhya Pradesh. For households with latrines, individuals who report conflict between castes in their village have higher rates of OD on average, statistically significant at the 1% level.

Testing for differences in views of caste conflict across subgroups that own latrines further reveals that members from SCs and STs are more likely to report caste conflict than non-SCs or non-STs, statistically significant at the 5% and 1% levels, respectively.<sup>8</sup> Additionally, members of OHCs are less likely to report caste conflict than non-OHCs, statistically significant at the 1% level.

It is more difficult to discern why reported caste conflict is associated with OD behavior. We know that latrines are the most impure space of a Hindu home, and must traditionally be cleaned by the lowest caste members of society – those labeled ritually unclean (Mazumdar and Mazumdar 1994). In this sense, the services performed by members of SCs are needed by higher caste villagers to maintain social order. If the indicator for conflict between castes represents a disruption to this traditional social hierarchy – and particularly if it captures the desire of SCs to no longer perform the degrading task of cleaning out human feces – then it can help explain why Hindus in particular might avoid using latrines. Use must be minimized without a culturally appropriate means for emptying a pit latrine, and this is consistent with qualitative work in Odisha by Routray et al. (2015) that finds men prefer to let women use the latrine so as to keep it from filling up as quickly.

There is some evidence that reported casteism is correlated with reported problems of having to empty a pit latrine. Though only 2.1% of respondents from households with a latrine report this as a problem, OHC respondents who report casteism are more likely to cite the pit-emptying problem than respondents who do not report casteism (statistically significant at the 1% level). By contrast, OBC respondents who report casteism are less likely to cite the pit-emptying problem than respondents who do not report casteism (statistically significant at the 10% level).

Together these results provide some evidence in support of the second hypothesis, though reported caste conflict is low relative to the percentage of villages comprised of different groups and few respondents cite having to empty the pit as a problem. Nevertheless, casteism is tied to pit-emptying

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issues for higher caste Hindus, and individuals who report casteism or problems with pit emptying are more likely to OD.

### **Gender and Age**

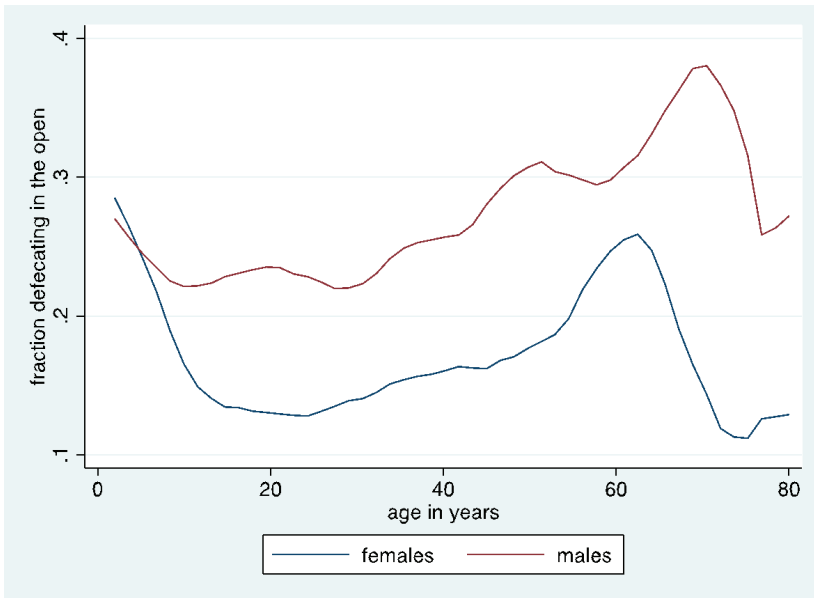
Other qualitative studies suggest a strong consensus among rural Indians that latrines are for women (ibid.). The SQUAT data confirms this with 62.2% of respondents citing “women” as a reason for constructing a latrine. While O’Reilly and Louis (2014) do not find perceived health benefits to be a strong motivator for latrine construction in Rajasthan, simply pointing instead to behavioral drivers like convenience, privacy, and security overlooks the differences these may signify for men and women across age groups.

### *Overall Trends with Age.*

Gender and age are strong predictors of latrine use. Evidence from the SQUAT survey confirms that among households that own a latrine, women are less likely than men to openly defecate across all five states, as illustrated in Figure 2. This trend also holds across all ages except for the very young,<sup>9</sup> consistent with literature that describes infants and young children defecating on the ground in the compound or inside the house on paper or cloth, after which mothers dispose of the feces outside. Similarly, disabled, sick, or very old members of the household may defecate on paper or cloth that is later disposed of outside (Routray et al. 2015). Not surprisingly, 17.2% of respondents also cited “old/disabled people” as a reason for constructing a latrine.



Figure 2. OD by gender and age, in households owning a latrine



### *Convenience.*

SBA allocates funding for local information, education, and communication (IEC) campaigns aimed at raising demand for latrines, which often focus on the comfort and convenience they can provide for women in particular. Because rural Indian women are traditionally engaged in household work, having a latrine at home should benefit women disproportionately to men. Having to go out to defecate in the fields costs women important time, especially during monsoon and rice growing season when space appropriate for OD is harder to come by (ibid.). Qualitative research points to the fact that men, by contrast, seem to prefer OD because it is a convenient morning practice on their way to work in the fields (ibid.).

Averaged over all five states surveyed by SQUAT, 88.4% of individuals in households with latrines did cite comfort and convenience as a benefit of latrine construction. But 40.8% of these respondents also cited pleasure, comfort, or convenience as a benefit of OD. Surprisingly, SQUAT data shows there is no statistically significant difference between reported benefits by men and women for either latrine convenience or OD convenience. Moreover, the mean time reported to reach an OD site is 16 minutes and there is no statistically significant difference between the time it takes males and females.

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### *Privacy.*

A common argument by promoters of latrine construction is women's need for privacy. Though both men and women face public exposure during OD, social norms on modesty require women to cover themselves in front of men (O'Reilly 2010). Across all states, 28.2% of respondents reported being seen defecating the previous day, ranging from 18.4% in Rajasthan to 36.3% in Bihar. Upon being seen openly defecating, 83.3% of respondents across all states reported feeling ashamed, ranging from 70.6% in Haryana to 90.9% in Uttar Pradesh. But there is no statistically significant difference between male and female reporting of being seen openly defecating or of feelings of shame. This suggests that men and women are equally vulnerable to being seen publicly defecating and – despite the cultural significance placed on female modesty – women do not feel more ashamed at being seen.

The privacy argument further points to the particular vulnerability of women during seasons which make it more difficult to find a place to OD (Routray et al. 2015). SQUAT data also contradicts this; among households that own a latrine, there are no statistically significant differences in reported OD by men and women in the monsoon season, summer, or winter. The data does however point to this seasonal variation in privacy affecting both men and women. Though the SQUAT survey conducted very few interviews during monsoon season, a higher fraction of individuals surveyed during rice growing season reported being seen than those surveyed in other months, while a lower fraction of individuals surveyed during post-harvest months reported being seen than those surveyed during other months, both statistically significant at the 1% level. This fits with the notion that it is considered taboo to OD in fields growing rice so, like in monsoon season, it is more difficult to find an open place to OD (ibid.). The opposite is true during post-harvest months, as people are free to OD in the empty fields and so presumably it is easier to find a secluded spot.

### *Security.*

Security is another oft-cited driver of latrine construction that references the vulnerability of women when they must venture out to find an appropriate place to OD, sometimes far away or in the dark. Media attention surrounding the 2014 rape and murder of two teenage girls in Uttar Pradesh who went out at night to OD suggested toilets were a women's rights issue (O'Reilly and Louis 2014). However, the SQUAT survey does not support this claim that women are especially scared to defecate outside.

Only 3.9% of respondents across all five states reported feeling scared upon realizing that someone had seen them defecating. Furthermore, there is no statistically significant difference in reporting between men and women. Though Routray et al. (2015) points to a female preference for going to open defecate in groups of four to five women due to concerns over safety and privacy, the SQUAT data also contradicts this. On average, individuals went with 1.6 other people to OD, and there is no statistically significant difference between this group size by men and women. Moreover, the percentage of women reporting attempted molestation when going to OD is less than that reported when traveling to the market on average (5.3% and 8.3% respectively). While increasing latrine use impacts public health broadly, including women's safety, Indian policymakers should seek policy solutions outside of SBA to address other – and arguably more critical – threats to women's safety.

### *Household Status and the Role of Women.*

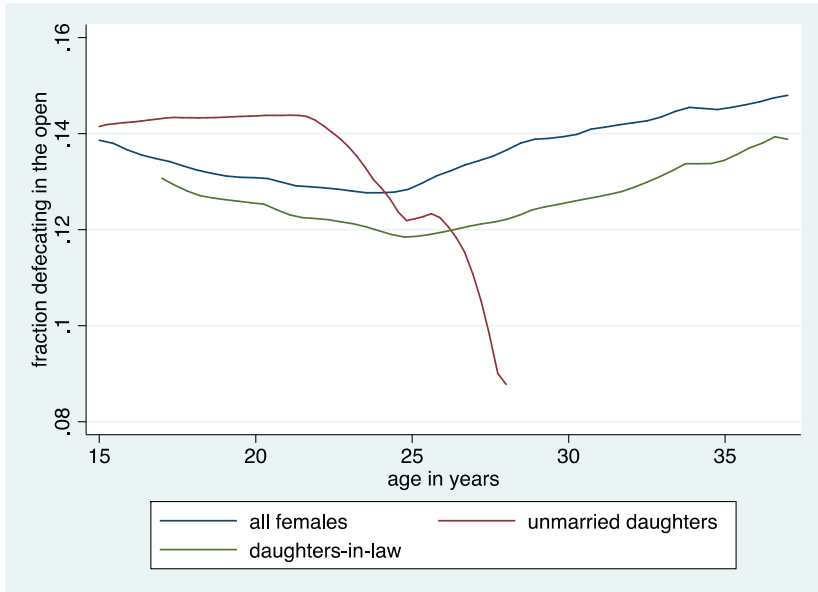
The household status of women in rural north India varies by age and role: male heads of households have decision-making power, though rank for both men and women increase with age (Coffey et al. 2014). Men typically make economic decisions, and we would expect latrine construction to be no different, especially given their responsibility to protect female family members. Routray et al. (2015) points to the particular interest male heads of households have shown for constructing latrines for newlywed daughters-in-law, as it would be especially shameful for them to be seen defecating in the open.

Rituals of *purdah* and *ghuungha*<sup>10</sup> involve remaining out of the public eye, covering one's face, and not speaking to men or strangers, and are required of daughters-in-law living with their husband's family, regardless of their age (O'Reilly 2010). The same restrictions are not placed on unmarried adolescent daughters in the family (ibid., Routray et al. 2015). New daughters-in-law prohibited from leaving the house alone or being seen by other men in the village must therefore go out to defecate very early in the morning, accompanied by their mother-in-law or sister-in-law (ibid.). For these reasons, a latrine can be especially convenient for a daughter-in-law, eliminating her need to complete her bathroom routine before sunrise (ibid.).

We would therefore expect to see lower rates of OD for daughters-in-law than both unmarried adolescent daughters and women in general. SQUAT data partially confirms this trend for households that own a latrine. Figure 3 illustrates that unmarried daughters between the ages of

17 and 25 have higher OD rates than daughters-in-law. The drastic drop in OD rates for unmarried daughters beginning around age 22 should not be interpreted too seriously; 19.3 and 18 are the mean and median ages, respectively, for unmarried daughters in the sample. More than 90% of unmarried daughters are under age 25, and more 95% are under age 28 (shown as the cutoff here to avoid bias from small sample size).

**Figure 3. Female OD by status, in households owning a latrine**



Nevertheless, during childbearing years, daughters-in-law have lower OD rates than females of the same age. Daughters-in-law also exhibit a visible downward trend in OD rates until age 25 or so, after which OD begins to increase, fitting the cultural norm of keeping women home during their childbearing years.

### *Freedom of Movement.*

There is qualitative evidence suggesting that women who are otherwise restricted to their home may actually have a preference for OD, at least in the evening when their household work is finished (ibid.). If this is the only time of the day when they have the opportunity to leave the house and socialize with other women, being restricted to using a household latrine would further reduce their mobility and perhaps their emotional

well-being (ibid.). Household roles shift as women get older and become mothers-in-law themselves, gaining more control of their daily routines and presumably more autonomy to decide when and where to defecate.

Freedom of movement is also tied with rigid class hierarchies. Qualitative data from O'Reilly (2010) in Rajasthan, for example, describes how caste helps define women's public role; while higher caste women stay in the home, lower caste women are also often responsible for working in the fields and are thus more visible in the community. This fits with SQUAT data that asked women whether they leave the house other than to defecate. Averaged across all states, 51.7% responded 'yes', ranging from 40.3% in Bihar to 66.6% in Madhya Pradesh. While there was no statistically significant difference between answers for Hindus and non-Hindus, a lower fraction of Muslims said they leave the house compared to non-Muslims, statistically significant at the 1% level. Among social groups, a lower fraction of Brahmins and OHCs reported leaving the house than non-Brahmins or non-OHCs, while a higher fraction of SCs and STs reported leaving the house than non-SCs or non-STs, all statistically significant at the 1% level. SQUAT data clearly shows that Muslims and upper-caste women are more likely to stay home than non-Muslims and low-caste women. If these women – like daughters-in-law – feel confined to their home, then having a latrine could further limit their mobility. On the other hand, for low-caste women who strive to achieve higher social status, using a latrine at home might be preferable to OD if it allows them to reduce their public visibility.

While households are commonly encouraged to build latrines for women – particularly daughters-in-law – these kinds of incentives do not in and of themselves create universal demand among women. In the very least, female preferences for latrine use are complex, varying with age, status in the home, and status in the community. At the very worst, building household latrines and encouraging women to use them could further seclude women in their homes, rather than promoting their empowerment (Routray et al. 2015).

## CONCLUSIONS AND RECOMMENDATIONS

On average and across all five states surveyed by SQUAT, 21.1% of people over the age of two continue to open defecate despite having a latrine at home. Latrine use in India does not follow a simple negative relationship with education and wealth. Rather, disparities in OD rates across states are almost certainly indicative of differences in spending and their capacity to implement SBA, but unobserved cultural characteristics are also clearly

at play. Complex – and at times competing – social and religious factors influence household sanitation decisions, and this heterogeneity is important for understanding India’s astonishingly high rates of OD compared to poorer countries in South Asia and sub-Saharan Africa.

Unfortunately the SQUAT survey is really the first of its kind to quantify actual latrine use among rural Indians and try to understand the reasons underlying low demand for latrines. Conclusions from the SQUAT survey should be interpreted with caution, and may not be applicable to more urban areas or other Indian states. **There is a major gap in quantitative and qualitative evidence of latrine use; though reliable household survey data is expensive and difficult to obtain, future studies aimed at better understanding latrine preferences should be prioritized.**

SQUAT data does reveal something about the cultural characteristics of OD. Hindus, in spite of being richer and more educated, are more likely to practice OD than Muslims. Furthermore, Hindu beliefs on purity and pollution as well as casteism are associated with the practice of OD. With higher OD rates than Hindus, members of scheduled castes and tribes remain the most vulnerable, and areas with more caste conflict also have higher rates of OD. One hypothesis, weakly supported by the data, stipulates that the eventual emptying of a pit latrine has implications for both high and low caste households that may discourage latrine use. Rather than simply expanding access to latrines, SBA must take into account these cultural barriers to latrine use. **Ending OD among all rural households will require increased funding for IEC campaigns aimed at changing attitudes towards caste hierarchies and notions of ritual impurity.**

Analysis of the SQUAT survey also suggests that many of the purported benefits of latrines are inconsistent with the revealed preferences of rural Indians. While the discourse in India very much surrounds constructing latrines to promote women’s dignity, latrines do not appear to provide convenience or privacy benefits particular to women. There are more urgent threats to women’s safety than open defecation, and simply building latrines will not address the root causes of gender-based violence. Young Indian women hold the least decision-making power and will remain vulnerable as long as marital rape is an acceptable practice and rituals like *purdah* and *ghuunghat* keep them secluded in their homes. **Concurrent to sanitation policy, the Government of India should prioritize policies that improve the status of women in their homes and communities.**

The fact that women are more likely to use latrines does not necessarily

mean they prefer latrines to open defecation. The origins of their demand for latrines could instead reflect their limited power to decide open defecation habits for themselves, as women with low household status have little freedom of movement. This is particularly important for newly married daughters-in-law, who are the least likely to practice OD but also hold very little decision-making power. More generally, if latrine use by young women does not reflect their actual preferences, we should expect OD to continue to increase with women's age. In a society where age and gender dictate household status and economic power, slogans like "No toilet, no bride" are unlikely to encourage men to use the latrines they construct for their daughters-in-law. The result may be a reduction in overall open defecation rates in the short-term, but it's difficult to imagine gendered IEC campaigns creating universal demand for latrines over the long run. **Rather than targeting women, IEC campaigns should educate both men and women on the health benefits of latrines and the importance of universal use.**

## NOTES

- <sup>1</sup> The SQUAT Survey is available in both English and Hindi at [riceinstitute.org](http://riceinstitute.org)
- <sup>2</sup> Rewari, Hisar, Darbhanga, and Fatehpur in Haryana (15.8%); Darbhanga, Saran, and Saharsa in Bihar (25.5%); Pilibhit, Fatehpur, and Faizabad in Uttar Pradesh (23.9%); Balaghat, Sehore, and Sagar in Madhya Pradesh (22.8%); and Jodhpur and Tonk in Rajasthan (12.1%)
- <sup>3</sup> The author's STATA do-file is available upon request at [kathrynbaalexander@gmail.com](mailto:kathrynbaalexander@gmail.com)
- <sup>4</sup> Asset count includes bed, watch, cooker, bicycle, cattle or goat, mosquito net, black-and-white television, chair, mobile phone, table, electric fan, color television, toilet/latrine, sewing machine, two-wheeler, LPG connection, cooler, landline phone, refrigerator, mixer-grinder
- <sup>5</sup> From SQUAT data, where household wealth was measured by an asset count and education measured in years. The correlations with the indicator for whether an individual usually open defecates are -0.50, and -0.24, respectively, statistically significant at the 1 percent level.
- <sup>6</sup> Other Backward Class (OBC) describes the largest group of socially disadvantaged castes in India, comprising more than 40% of Indians according to the 2006 National Sample Survey Organization (NSSO). The SQUAT survey defines Other High Class as those groups between OBC and Brahmins, the highest caste. For example, this includes members who identify with the Kshatriya and Vaishya classes.
- <sup>7</sup> The pooja (worship) area is the most sacred space of the Hindu home, followed by the food storage/kitchen area.

- <sup>8</sup> From two-sample t-tests with unequal variances testing the difference in mean values of casteism (binary variable for reported caste conflict) by subgroup (binary variables for being SC, being ST), among households that own a latrine.
- <sup>9</sup> Note that trends for the elderly are less reliable due to small sample sizes: 95% are under age 65 and 63 for men and women, respectively.
- <sup>10</sup> *Purdah*, which literally means curtain, and *ghunghat*, meaning veil, dictate both the physical separation and the covering of the face required for married women to be shielded from the sight of men and strangers.

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## NAVIGATING UNCERTAINTY: A HARD LOOK AT “SOFT COUNTERTERRORISM” IN WEST AFRICA AND THE SAHEL.

*Aneliese Bernard*

The Trans-Sahara region has become a new theater for the Global War on Terror (GWOT), particularly in the aftermath of the 2011 Arab Spring. Amid growing extremism in the Sahel, many international development programs long active in the region have taken on a political element by incorporating security components, such as counterterrorism programs and security sector reforms. These programs seek to securitize development and humanitarian aid in an effort to undermine the power that local terrorist and criminal syndicates have over rural and marginalized communities suffering from underdevelopment and chronic humanitarian shocks. An emerging “soft counterterrorism” approach by the U.S. and its allies is profoundly shaping the future of foreign policy (Miles, 2012). The GWOT’s expanding mission now includes sub-state violent extremist groups and national insurgencies, in addition to the major transnational actors with which it is typically associated. This marks a clear shift in U.S. strategy, which prior to 2011 was largely limited to supporting European partners in containing local insurgencies. The potential for these movements to evolve into global terrorist threats was hardly considered

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openly until recently. This paper aims to demonstrate that the GWOT has not effectively mitigated protracted insecurity in regions that are politically unstable, such as West Africa and the Sahel. It begins by assessing the current state of the Trans-Sahara Counterterrorism Partnership (TSCTP) in the Trans-Sahel region, a multi-agency initiative that has emerged from the need to involve all U.S. government agencies in the ongoing battle against violent extremist ideology that leads to terrorism. It then offers recommendations for policy changes that the U.S. government, in conjunction with its African and European partners, could incorporate into its multiyear programming in the region.

## INTRODUCTION

For the better part of the post-Cold War era, U.S. policy toward the Sahel avoided direct military engagement. In recent years, however, the Pentagon has begun to focus more on the continent as a whole. The potential for ungoverned spaces to serve as hotbeds of regional insecurity are driving the GWOT, and security experts generally believe that it is in vacuums of power in the Sahel that Al-Qaeda affiliates train and breed extremists (Yamamoto, 2013). Since the attacks of September 11, 2001, the U.S. military has made inroads into Africa, despite public assurances from U.S. Africa Command (AFRICOM) that the American footprint in the region is minimal and largely humanitarian in nature. With AFRICOM's official installation in Djibouti, along with U.S. military efforts in 49 of Africa's 54 nations since 2003 and the establishment of three unmanned aerial system (UAS) bases on the continent, the U.S. military presence in Africa can no longer be viewed as minimal (Turse, 2014). Concurrently, many development experts operating on the continent have come to view security-related programming as essential. Strategies classified as soft counterterrorism are largely seen as a strategic developmental defense activity, or a way to ensure terrorism does not undermine development (Miles, 2012). Soft counterterrorism has traction in the Sahel with insurgencies and terrorist organizations, which tend to be in the nascent stages of leveraging networks like Islamic State (IS) or Al-Qaeda and therefore somewhat amenable to nuanced development programming that aims to mitigate some of the socio-dynamic factors that contribute to terrorism. Successful programming can, for example, incorporate armed violence reduction and countering violent extremism (CVE) strategies.

Despite these developments, the relevance of such programming to U.S. national security interests is hotly debated in policy circles today, as soft counterterrorism requires a long-term commitment with little possibility of a clear “exit strategy.” Public concern in the U.S. about the Sahel is limited, given few economic incentives and the seemingly improbable chance that terrorist threats from the region will impact U.S. national security directly (Reeve and Pelter, 2014). Furthermore, in order to be successful, this model of intervention requires multilateral and multi-agency initiatives that increase the U.S. footprint in states that arguably do not pose an imminent threat to U.S. interests. In 2015, AFRICOM began to increase its institutional presence in the region and develop partnerships with governments in Niger, Senegal, Tunisia, Algeria and Mali, as part of an apparently long-term agenda for the region, according to a former AFRICOM Commander, General Carter Ham (Ham, 2016). Against this backdrop, this paper offers a critical analysis of the current state of counterterrorism operations in the Trans-Sahel region, as well as the impacts of these programs on the limited infrastructure in the region and the communities that are immediately affected by them.

## METHODOLOGY

This paper is based on an extensive desk review of published and unpublished materials related to counterterrorism programming in the Sahel and West Africa, along with interviews conducted during a field mission to Senegal from June to August 2015. The author conducted interviews with a range of key individuals, including community leaders; non-governmental organization (NGO) staff working on humanitarian issues; International Committee of the Red Cross (ICRC) staff; United Nations (UN) and other international organizations (IOs) members; individuals working for the governments of the U.S., France, Spain and the European Union (EU); and academic and political experts. In sum, research included 55 semi-structured interviews in London; Washington, D.C.; Boston; Bamako; Mali; and Dakar, Thiès, Kédougou, and Tambacounda, Senegal. Key informants were identified through the desk review and the process of chain-referral sampling from identified contacts.<sup>1</sup>

## INCREASING SECURITY INTERESTS IN THE SAHEL

In 2002, the U.S. Defense Department’s Combined Joint Task Force-Horn of Africa (CJTF-HOA) deployed a crisis response force consisting of U.S. military and intelligence personnel into Africa at the height of Operation

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Enduring Freedom- Afghanistan (OEF-A), based on a concern that failed states like Somalia would function as safe havens for Al-Qaeda fighters. Although the purpose of this operation was to target terrorists, the mission changed its objective, due to a lack of actual targets in the Horn of Africa at the time. It assumed “train and equip” activities, humanitarian assistance, and other non-kinetic tasks (Michaels, 2013, 80). The U.S. Department of Defense (DoD) has since increased its focus on the Sahel through Operation Enduring Freedom- Trans Sahara (OEF-TS). In 2007, DoD underwent an organizational makeover: a distinct AFRICOM headquarters was established in Germany, and operations on the African continent ceased to fall under the purview of European Command (EUCOM) (AFRICOM, 2015). AFRICOM has been increasing its use of the CJTF-HOA’s facilities on Camp Lemonnier in Djibouti, the emerging center of a future constellation of smaller facilities across the continent (Sanok Kostro 2014), and the Pentagon is building an unarmed surveillance (drone) base in Agadez, Niger to support OEF-TS. It is the third such base to be built in Africa, and the second in the region; the U.S. military officially closed its base in Ethiopia in December 2015 (Whitlock, 2014).

Until recently, this region was somewhat of a backwater in American foreign policy. National interests typically revolved around humanitarian responses, with minimal sustainable development programming. Recently, however, development through security has become a priority effort on the U.S. national security agenda, and is firmly rooted in AFRICOM’s founding mission<sup>2</sup> (AFRICOM, 2015). These agendas are complex: the TSCTP, for example, is exceptional in its ability to marshal interagency resources in support of a regional security approach that spans the so-called “three Ds”: diplomacy, defense, and development (Miles, 2012). This is in direct response to the counterterrorism threat emerging from the Niger Delta and the Lake Chad Basin (CRS analyst interview, 2015).

The challenge for stakeholders, however, is implementing security sector reforms (SSRs) in regions with serious infrastructure challenges. Since decolonization, most Sahelian states, aside from Algeria and Nigeria, have failed to assert sufficient control of the use of force, borders, and political sectarian divides in their states, leading to weak state infrastructure throughout the region. This has been manifest in weak border controls and security forces’ inability to sufficiently police the large expanses of desert in the Sahel. Additional challenges include the need to ensure that U.S. national security interests in this region, if any, are promoted as a priority. This is based on the perception that Americans grew tired after concurrent wars in Iraq and Afghanistan, and that any significant military action

elsewhere must therefore align with clear U.S. interests. Although most experts believe that Sahelian extremist groups do not pose an imminent threat to U.S. security (Carson, 2009), the immediate goal of programming is to diminish local extremism through SSRs and development before it becomes transnational in scope. That said, U.S.-led counterterrorism programming can only be successful to the extent that the target state itself incorporates these programs into its own security strategies and continues to prioritize them after U.S. departure. Therefore, core incentives of training programs like Operation Flintlock, an annual training series that the U.S. and partners conduct in African countries, have been to build capacity within the security sectors of Sahelian countries. But if these states are unable to maintain their own security, these programs will likely fall short without significant foreign assistance to guide them (Hamilton, 2015). This implies that counterterrorism programming in a region like the Sahel has no clear exit strategy for the U.S. in the short term, which presents U.S. foreign policymakers with a significant challenge.

### *U.S. Counterterrorism Operations in the Sahel*

Rather than establishing direct counterterrorism missions in the Sahara, EUCOM developed the Pan-Sahel Initiative (PSI) in 2002. The PSI was designed to counter the potential threats of weak states and their ungoverned spaces that are believed to be safe havens and training camps for terrorists. The PSI was given a budget of \$7.75 million to train and equip rapid-reaction counterterrorism forces in Mali, Chad, Niger, and Mauritania (Pope, 2005). The program aimed to assist those states in detecting and responding to the suspicious movement of people and goods across and within those borders, while supporting the U.S.'s overall mission of the GWOT and enhancing security and stability in the region.

The PSI drew significant criticism for its lack of understanding of the root economic and political causes of instability in these states. Moreover, the program was operationally limited because defense contractors served as the primary implementers. The operators reportedly failed to understand and incorporate within the programming of the PSI the fundamental reasons and root causes of extremism. Instead, they relied largely on military support, which is not necessarily an appropriate solution for this region. The Government Accountability Office (GAO) reports on both the PSI and TSCTP have highlighted the lack of regional focus and direction of the overall missions of these interagency initiatives, implying that while the idea of these partnerships was to dovetail initiatives to mitigate the underlying causes of terrorist activity in the Sahel, there are no actual

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projects that fell within the scope of either program that specifically targeted the underlying problems that lead to extremist activity (GAO, 2008 and 2014). The program also lacked sufficient funding to deal with the broad scope of issues. Finally, the U.S. and its partners had ambiguous authority to operate kinetically in the Sahel region, since the region was not involved in an armed conflict and the U.S. had received no authority to conduct missions inside Sahelian countries against Al-Qaeda in the Islamic Maghreb (AQIM).

In 2005, the PSI was superseded by the larger scope of the Trans-Sahara Counterterrorism Initiative (TSCTI), and in 2008 it was incorporated partially into AFRICOM as the TSCTP (Choate, 2007). The program has since taken on a more holistic approach of utilizing its \$500 million budget to incorporate development assistance and diplomacy into its counterterrorism strategy, on a state-by-state level, through the aforementioned “three Ds,” the golden trinity of U.S. foreign policymaking. The program’s activities include military capacity building, law enforcement anti-terrorism programming, strengthening of intelligence sectors and securing of critical infrastructure, justice sector counterterrorism capacity building to prosecute criminals and terrorists, public diplomacy and information operations, CVE through promotion of moderation and tolerance in the media and education sectors, community engagement, delivery of assistance to marginalized communities and engagement of local leadership, and vocational training (Warner, 2014).

### *Operational Challenges of TSCTP*

The TSCTP is operationalized to mobilize resources from interagency coordination to support initiatives that counter violent extremism in the Sahel and coordinate the activities of the various implementing agencies (Carson 2009). The critical issue here is *interagency* coordination. Previously, the bulk of programming in the region was split between security and humanitarian programming with very little crossover. The scope of the partnership was designed to be robust, with the bulk of funding channeled through the U.S. Department of State, while operations were intended to be divided among several different agencies, including State, USAID, and DoD. Although it is touted as an interagency program, the bulk of activities are still shelved under AFRICOM, and are implemented through military contractors who are not authorized to respond directly to the interagency (Warner, 2014). Because of this organizational setup, non-U.S. government officials are conducting the bulk of operations through TSCTP with limited oversight from State and USAID.

The core incentive of the TSCTP was to dovetail these interagency responses, with a strong emphasis on counter-narrative programming that reduces religious radicalization in marginalized populations. By design, however, the TSCTP actually has a narrow focus on CVE, as well as relatively limited operational programming in democratic institution building and livelihood development programming (DoS Border Management, Interview, 2015). Furthermore, the program cannot be effective if each U.S. agency has alternative priorities in different countries in the region that do not fall under the program's mandate. For example, the TSCTP is not operational in Nigeria, where U.S. anti-terrorism assistance funds to combat Boko Haram are appropriated from a separate pool of overseas contingency operations (OCO) funds, despite the fact that Chad and Cameroon were recently added to the scope of the project in response to an increased threat from Boko Haram in these countries (DoS Border Management, Interview, 2015).

In theory, the TSCTP's goals are to "enhance the indigenous capacities of governments in the pan-Sahel, [...] to confront the challenges posed by terrorist organizations in the trans-Sahara, [...] and to facilitate cooperation between those countries and the United States" (Department of State, 2015). In practice, however, the partnership has promoted principles that encourage sectarian behavior in these states, allowing officials to crack down on ethnic minorities, Muslim groups, and political opposition. More recently, in light of Islamic State (IS) and Boko Haram threats in the region, law enforcement in Senegal and Cote d'Ivoire have been arresting young Muslim radicals with impunity. Further, they have been given encouragement and funding from the U.S. and European partners (Bloomberg). In these cases, the TSCTP and its related programs have created enemies in the Sahel for the U.S. and its partners where they did not exist in significant numbers before. Furthermore, this foreign policy agenda has allegedly begun to inspire radicalism by discrediting moderate African Muslim leaders in local communities and fomenting political instability in key states like Mali, Niger, and Chad. Several African governments have even used the objectives of the GWOT coercively against legitimate opposition groups. Mauritania's President Maouiya Ould Taya, for example, used this Western-based terrorist threat to persecute his political opponents. It backfired, fueling instability in the country that led to a military coup in 2003 (IRIN News, 2005).

More challenges surfaced in 2008, when the GAO issued a scathing audit of the TSCTP, highlighting both the partnership's inability to build a comprehensive integrated strategy to guide operations on the ground and

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its lack of leadership. Additionally, a cohesive list of goals for the program was never produced, since each agency had drafted its own objectives for the program. A 2011 follow-up audit report found that the TSCTP still lacked transparency in how it operationalized over half of its \$288 million budget without facilitating any lasting systemic changes in the region (GAO, 2014).

Furthermore, the program lacks contributions from personnel with comprehensive knowledge of the region. Increased subject-matter expertise on terrorist groups in the region must be a top priority to make this program work. Groups like Boko Haram, AQIM and al-Murabitoun have uncertain futures, as they are splitting and reorganizing along sectarian and religious lines. The U.S. should be working to leverage these uncertainties. Instead, because experts lack sufficient understanding of these extremist groups, counterterrorism programming is consistently operationally limited.

In addition to operational challenges, the TSCTP faces the reality that there is no clean exit strategy to counterterrorism (Boeke, 2014). Furthermore, terrorism is not always the central issue, and counterterrorism programs have been known to undermine community development and local governance initiatives at times. In Mali, for example, the focus on both AQIM and the Movement for Oneness and Jihad in West Africa (MUJAO) as the primary threats in the north has overshadowed the real problems that are endemic to the region. In these regions, the crisis lies much more in corruption and bad governance than in credible threats from non-state armed groups. Counterterrorism programming has at times caused institutional erosion at the local level. In the case of TSCTP, the programs that are being offered to mitigate the rise in extremism will also be used to stop future migration (International Crisis Group, 2013). Most worrisome is the fact that the TSCTP is often touted as the paradigm of future counterterrorism programming elsewhere. Unless it evolves to focus more on development, it will continue to serve as a lackluster program in complex settings, particularly where AFRICOM takes the lead.

What makes the TSCTP unique and important, however, is that it requires the facilitation of multilateral and multiagency partnerships across the region, steering the U.S. away from its tendencies to intervene in other state's affairs unilaterally. This can be seen through France's continued request for intelligence support from AFRICOM and NATO through Operation Barkhane, as well as the engagement of TSCTP with the G5 Sahel, the Economic Community of West African States (ECOWAS), and other partner consortiums (Ministère de la Défense, 2015). The next section of this paper outlines how Operations Serval and Barkhane could serve as models for improved operationalization of the TSCTP.



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## OPERATIONS SERVAL AND BARKHANE: MODELS FOR THE REGION

The U.S. had provided nearly \$6.2 billion in development assistance through the PSI and TSCTP by 2010, an amount that was overshadowed by the \$52 billion in aid that the EU and its institutions provided in that same time period (CFR, 2014). The U.S. presence has been largely seen as peripheral in the region, given its lack of operational clout. Therefore, the U.S. plan for “leading from behind” has been manifest in its support of French counterterrorism operations, its securing of the UN Security Council authorization for Operation Serval, the establishment of a drone base in Niger, and providing timely technical and intelligence assistance to the French military operations in Mali (Premier Secretary U.S. Embassy Dakar, interview, 2015). An August 2014 executive order by the Obama administration to provide funding for French counterterrorism operations in Mali and Niger underscores the emergent U.S. support for its European partners in the region (Whitehouse, 2014).

Operation Serval refers to the French campaign to remove Islamist insurgents from the north of Mali who had begun moving toward Mali’s center. French brigades deployed in support of Operation Serval possessed subject-matter expertise and intelligence training on the Malian cultural context, as well as the foresight to conduct training and interoperating military missions with other Sahelian and West African security forces. This flexible and robust engagement now serves as an example of how a technologically sophisticated army should organize and field an expeditionary force for limited operations. That said, the operation also highlighted the limitations of the French military in its capacity to conduct deterrence and conventional warfare.

By May 2013, France had drawn down Operation Serval, leaving only a small mixed combat group in Gao, Mali called the Groupement Tactique Interarmes Désert (GTIA Désert). This group was expected to support the UN Mission in Mali (MINUSMA), the ECOWAS mission (AFISMA), the EU mission (EUTM Mali), and the government of Mali’s forces in carrying on the battle against the northern insurgency (Shurkin, 2014). Following Serval’s drawdown, Operation Barkhane began on August 1, 2014 as France’s long-term counterinsurgency operation in the region. Barkhane operates from a single command post in N’Djamena, Chad, and aims to support the armed forces of the G5 Sahel countries in their actions against terrorists and non-state armed groups. It also aids in preventing reconstitution of terrorist sanctuaries in the Sahel’s ungoverned spaces (Ministère de la Défense, 2015).

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Critics of Operation Barkhane have suggested that France's military presence has not galvanized states to build capacity in their own militaries. Furthermore, they suggest that religious radicalization cannot be prevented by military means alone. Operation Barkhane does not include any development programming that emphasizes CVE, as the American model does (Gnanguènon, 2014). Barkhane illustrates the use of hard power in Africa to solve security crises, whereas the TSCTP attempts to utilize a robust consortium of soft-power diplomacy through development-focused counterinsurgency operations to do the same thing. It should also be noted that while the intervention is being touted by Europe as the paradigm for future programming in the region, there are no European countries that currently have the financial means to vigorously address terrorism. As Barkhane continues, its scope will presumably be limited to strikes on "gray areas," rather than the targeting of terrorists, trafficking networks, and cartels.

There are other aspects of Operations Serval and Barkhane however that make them potential models for the TSCTP and other interventions in the region. The light footprint of French military operations in 2012, in conjunction with France's strong reliance on African Union (AU) and UN peacekeeping troops, allowed the French government to refocus its efforts on supporting peace negotiations in Algeria and assisting the Malian government in SSR initiatives, while operationalizing a regional counterterrorism agenda through Barkhane. Accordingly, the U.S. has used this as a model of intervention in the region. The U.S., however, lacks France's historical and cultural legacy with communities in this region. These links have allowed French intelligence to achieve a superior understanding of the nuances of Sahelian cultural and security issues. According to U.S. military personnel familiar with the region, the U.S. is gradually adopting this *modus operandi* for its work in West Africa and the Sahel.

## RECOMMENDATIONS

According to the State Department's 2015 Quadrennial Diplomacy and Development Review, countering violent extremism in conjunction with development is the U.S. government's strategic priority (QDDR, 2015). The following recommendations would strengthen the TSCTP's ability to achieve this goal in the Sahel region.

- 1. Invest in academic and policy-based research in support of a more nuanced understanding of the context.** One of the risks of broad-based counterterrorism programs is that they fail to focus on the details that lead

to extremism, such as the ethno-sectarian tensions that ethnically divided governments have historically used to target minority groups during insurgency campaigns (Human Rights Watch, 2016). Following a series of interviews and discussions with experts, it was discovered that the greatest obstacle that U.S. programming faces in the region is a lack of both CVE and regional expertise. Some progress is certainly evident: The TSCTP has increased military and law enforcement capacity in partner states in the Sahel, much of which is attributable to the efforts of Operation Flintlock's annual training program. Additionally, the partnership has entrenched a military and development presence in every country in the Sahel.

The increase in terrorist attacks on Western targets, however, especially following the 2011 NATO intervention in Libya, highlights the inability of the TSCTP and its partnerships to meaningfully discredit extremist ideology. Further, evidence suggests that local counterterrorism initiatives have been weakened (Reeve and Pelter, 2014). U.S. policy in Africa regularly employs tactics that lack robust cultural and historical knowledge of the region. It often supports authoritarian regimes, such as those of Algeria, Mauritania, and Chad, in combatting terrorism. Leaders of these countries themselves often foment political instability among insurgent-turned-terrorist groups, such as AQIM and al-Murabitoun, undermining U.S. strategy. Furthermore, terrorist groups in the Sahel remain largely a mystery to U.S. intelligence, since until recently the bulk of counterterrorism programming from the U.S. government had only gone toward the Middle East and the Arabian Peninsula. Counterterrorism programming cannot respond to terrorist groups as a single unit, because in doing so, it risks oversimplifying the complexity of the threat that each group individually harnesses (Boeke and Tisseron, 2014, 32-40). Government engagements, especially the TSCTP and Operation Barkhane, will not be effective unless they are specifically tailored to the actions of a particular insurgency in a particular location (Miller, 2007, 331-350).

- 2. Implement SSRs that understand and address corruption:** A largely missing component of the discussion on SSR in the Sahel is the issue of narcotics, human, and weapons trafficking. Criminal networks have grown exponentially through the illicit trade in narcotics and weapons since 2011, in part due to the increasing presence of Colombian cartel influence in the region. The region saw an estimated \$1.46 billion in the cocaine trade in 2014 alone (UNODC, 2014). Democratization and governance goals cannot be separated from efforts to counter the illicit trafficking and narco-terrorism that largely fund and enable transnational violence. The international community must

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understand the extent to which this informal economic activity influences broader security issues, and not treat corruption as an ancillary discussion when discussing viable ways to end the GWOT. This recommendation is especially salient when implementing SSRs that involve law enforcement and government officials of Sahelian states, who themselves are often complicit in the trafficking of illicit goods (Tinti, Reitano, and Shaw, 2014).

- 3. Increase development programming:** Development must be the cornerstone of any robust security programming in the region. According to UN Security Council Resolution 2178, in order to ensure a measure of success, programs need to have a greater focus on social inclusion that will lessen the risk of disproportionality in implementing SSRs (Van Ginkel, 2014). A greater focus on development has the potential to quickly pay dividends, as NGOs like Danish Demining Group (DDG), in cooperation with international organization partners like the International Organization on Migration (IOM) and UNODC, are already active. These organizations cooperate on programming efforts, implement counterterrorism programs that focus on establishing a counter-narrative, emphasize education, and design development programming through holistic, bottom-up approaches that empower local organizations. The goal of these programs is to bolster good governance and community programs that undermine corruption. DDG, which approaches armed violence reduction through community leadership and education programs, has partnered with EUCAP and U.S. organizations to scale up CVE programming in remote border communities that are often marginalized from other development assistance projects. Its programs are based on the premise that building local governance capacity in marginalized and remote communities will enhance security and reduce the propensity for unemployed youth to join non-state armed groups (AVR Framework).
- 4. Bolster regional and state cooperation:** The only way to ensure sustainability is to combine the military element with the political will of the state, and focus on capacity building and resilience at the community level. The U.S., France, and UN partners must ensure that the G5 Sahel and ECOWAS member states are fully involved in the interventionist policies set forth in these counterterrorism initiatives. Direct military action should be only a small component of a broader foreign policy program that features heavy economic assistance, investment in partner capacity, and support for allied operations (Chivvis and Liepman, 2013).
- 5. Allow for flexibility in programming:** Counterterrorism programs must

be constantly evolving in order to deal with changing dynamics on the ground (Warner, 2014). Operation Serval is an example of how a short-term intervention can be successful if flexibility is built into it. Due to the nature of porous borders and shifting migratory populations throughout the Sahel, SSRs must be wary of implications for migrants, refugees, internally displaced persons (IDPs), and other marginalized populations in the region. Without flexibility, the risk of local insurgencies cannot be fully addressed.

**6. Encourage multilateral engagement with Europe and international organizations.** France's 2012 intervention in Mali was enhanced by the involvement of 22 other countries supporting Serval and the African-led International Support Mission to Mali (AFISMA). Since the conclusion of Serval, Operation Barkhane and MINUSMA have entrenched 9,000 permanent external security forces in the Trans-Sahara with the mission to combat terrorism (Reeve and Pelter, 2014). Furthermore, the G5 Sahel countries have pledged to establish a military cooperative that will independently begin to deal with the interstate conflict in the region, ideally building up a resilient security platform that can withstand future attacks without significant foreign assistance (Bavier, 2016). Therefore, there is no need for the U.S. to lead operations unilaterally, and the use of armed drones in the region should be guided by this same principle. Multilateral initiatives need to be leveraged in this region between the U.S., France and their other partners. U.S. government experts believe that the Sahel is the problem of France and the EU for now, and the U.S. position in the region is still not completely clear. Officials at the embassy in Dakar claimed that Europe should make the next move; for its part the U.S. will wait to see how events unfold before responding (Premier Secretary U.S. Embassy Dakar, interview, 2015). The extent to which the EU can shift resources to the region will change the U.S. position and response there in the future (CRS Analyst interview, 2015). Until that happens, though, supporting the efforts of allies in Europe, NATO and the Mediterranean Dialogue will be critical as these initiatives move forward. For example, NATO's Operation Active Endeavour's (OAE) mandate could be expanded from Mediterranean maritime coverage to oversee issues of systemic insurgencies in the Sahel itself and engage the regional powers in operationalizing their efforts there. The OAE already serves as an information platform, so in theory this could be extended to ground surveillance missions, as well (NATO, 2015)<sup>4</sup>. Furthermore, while the U.S. controls the bulk of resources in the fight against terrorist networks, it does not have authority over the operational and regional intervention in the region. The U.S. counterterrorism presence is increasingly falling under covert special operations and contingency operations, with an emphasis on

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increasing intelligence, surveillance and reconnaissance (ISR) capacity regionally, in cooperation with Operation Barkhane (Reeve and Pelter, 2014). Interpol, the World Bank, UNODC, IOM and EUCAP have individually implemented various biometric and oversight programs that monitor the flow of people across the porous borders of the Sahelian countries, honing in on the movement of illicit goods through cartel syndicates and armed groups, as well as migrants and border communities (EUCAP, 2015).

## CONCLUSION

Overall, it appears that the expansion of AFRICOM over the past decade is setting a tone of further U.S. engagement on the continent for the long term. Additionally, it looks like French and African military engagement will continue to be bolstered by U.S. assistance in training, resources, intelligence and direct military involvement (Turse, 2014). Plans for the year 2014 envisioned a permanent fixture for both U.S. and French operations in the region, with France's Operation Barkhane establishing over a dozen permanent bases across the Sahel, along with the U.S. construction of an unarmed aerial drone base in Niger and multiple security assistance agreements with states in the region.

Academic research and interviews with U.S., French and EU government officials, as well as international organizations, have indicated that ultimately, the U.S. has a very limited understanding of how to combat violent extremism right now. The tools that the U.S. government employed in Afghanistan and Pakistan to fight the Taliban and Al-Qaeda are not transferrable to West Africa, based on this analysis. Duplicating this regional-specific approach risks misrepresenting the terrorist risks in the region as a spinoff of threats emanating from the Middle East. For example, when the Pentagon announced in 2014 that it would begin utilizing tactics to counter Al-Qaeda in the Arabian Peninsula (AQAP) in Yemen against Boko Haram in Nigeria, regional experts warned that this simple appropriation of similar strategies would cause serious blowback, given that the landscapes and conflict entirely different from one another (Rekawek, 2014, 21). There is a collective belief on the ground that until enough research and nuanced data collection is conducted regarding the root causes of violent extremism, kinetic military operations combatting terrorism will ostensibly fail to create lasting effects in the region. Such efforts will ultimately serve to foment extremist behavior amongst marginalized communities instead.

Combatting terrorism is a type of irregular warfare, and therefore

counterterrorism programs should be constantly evolving to deal with the changing ground dynamics that occur in unconventional war zones (Warner, 2014). This shift from traditional interventionist policy to soft counterterrorism will continue to endure many, mostly bureaucratic, challenges in the near future. Based on the recommendations laid out in this paper, however, the TSCTP could still be positioned as the ultimate means for facilitating a cooperative move to combat terrorism by pulling on partnerships and leveraging regional and local solutions to security threats in lieu of a military expansion. I conclude by recommending that the key to combatting terrorism will be to foster state resilience and encourage regional partnerships that pull on resources and assistance from the U.S. and its European partners. Extremism and terrorism, however, will not be mitigated until states can manage their own threat problems and deal sufficiently with the internal issues that are the root causes of violent extremism (Piotrowski, Andrzej, Rekawek, 2012). This capacity requires more than supporting the military and law enforcement bodies of corrupt states. For a long-term sustainable solution to be viable, fragile states must present their populations with a set of trustworthy institutions that provide alternative livelihood opportunities and protection to those offered by non-state actors. This solution depends entirely on SSR overhaul that combats corruption and encourages the development of community-led institutions that improve economic conditions.

## NOTES

- <sup>1</sup>With permission from participants, notes were taken during interviews. Participants were informed that their information would not be attributed if they preferred anonymity, and that all interview transcript notes would be kept confidential. All interview transcripts were typed, encrypted, and stored in the cloud.
- <sup>2</sup>“United States Africa Command, in concert with interagency and international partners, builds defense capabilities, responds to crisis, and deters and defeats transnational threats in order to advance U.S. national interests and promote regional security, stability, and prosperity.” *What We Do*. U.S. Africa Command, Department of Defense. <http://www.africom.mil/what-we-do>
- <sup>3</sup>OAE was the first invocation of Article 5 of the NATO alliance after 9/11. The operation has since evolved to include the assistance of non-NATO member states in monitoring activity in the Mediterranean and has become a network of information sharing rather than just an operational mandate. *Operation Active Endeavor*. NATO. [http://www.nato.int/cps/en/natolive/topics\\_7932.htm](http://www.nato.int/cps/en/natolive/topics_7932.htm) April 2015.

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## REVISITING THE CENTRAL AMERICA REGIONAL SECURITY INITIATIVE

*Nastasha Everheart*

In July 2014, troubles facing Central American countries came to the fore as thousands of unaccompanied minors attempted to cross the Mexican border into the United States, fleeing countries with ever-increasing violence and limited government capacity to ensure citizen safety. This development presented a direct security crisis for the United States. This paper argues that the Central America Regional Security Initiative (CARSI) – a primary mechanism by which the United States promotes security and engages in democratic institution building in the region – is not achieving its stated goals effectively, and could be improved by addressing gaps in general configuration and policy coordination, impact evaluation, partner government accountability, and citizenship acceptance.

### INTRODUCTION

Central America is currently home to some of the most dangerous cities in the world. Guatemala faces 70% criminal impunity (Luhnow 2015). As of 2013, the most recent year for which World Bank data is available, Honduras held the highest murder rate in the world at 84 intentional homicides per 100,000 residents (World Bank 2013). El Salvador is considered one of the most violent countries in the world.

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The spillover risk posed by regional insecurity materialized in the summer of 2014, when thousands of unaccompanied minors arrived at the U.S. border seeking refuge. While not a new phenomenon, the sheer number of arrivals at the time caught the attention of policymakers. As shown in Figure 1, over the course of fiscal year 2014, the peak of the unaccompanied minors crisis, U.S. Customs and Border Patrol estimates that over 67,000 minors arrived at the U.S. border (U.S. Customs and Border Patrol 2016). Experts argue that children flee primarily because of poor conditions in their neighborhoods and communities, and the inability of their governments to guarantee their safety against the dangers posed by crime and drug trafficking (Olson 2014a, 3).

**Figure 1: Unaccompanied Alien Children Encountered by U.S. Customs and Border Protection, by Fiscal Year**

Country	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404	9,389	6,621
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057	13,589	8,329
Honduras	968	1,017	974	2,997	6,747	18,244	5,409	3,608
Mexico	16,114	13,724	11,768	13,974	17,240	15,634	11,012	4,658
Total	19,418	18,168	15,701	24,120	38,045	67,339	39,399	23,216

*Source: U.S. Customs and Border Protection 2016*

Central America faces widespread security troubles stemming from social and economic hardship, criminal activity, and weak institutions. Recent crackdowns by the Mexican government on criminal drug-trafficking organizations have resulted in increased violence in Central America as these organizations seek to continue their operations in areas with less government control and a decreased prominence of rule of law (Luxner 2014). A southward shift in drug trafficking activity has resulted in heightened rates of all types of crime: from gang violence to drug, human, and arms trafficking, homicide, and organized crime (U.S. Government Accountability Office 2013, 5).

The Central America Regional Security Initiative (CARSI) is a primary mechanism by which the United States promotes security and engages in democratic institution building in the region. The initiative began in 2008 as a small piece of the Merida Initiative, an aid package that appropriated \$1.5 billion primarily to Mexico to bolster regional security between 2008 and 2010 (U.S. Department of State Bureau of Public Affairs 2011). In

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2010, as drug trafficking and organized crime moved southward into Central America, due in part to crackdowns in Mexico, CARSI was removed from the Merida Initiative umbrella and was reborn as a regional security strategy specifically targeted at problem areas such as the notorious “Northern Triangle” of Guatemala, Honduras and El Salvador. This paper, however, argues that the Central American Regional Security Initiative is not achieving its stated goals effectively, and recommends that it be restructured and rebranded to address gaps in general configuration and policy coordination, impact evaluation, partner government accountability, and citizenship acceptance.

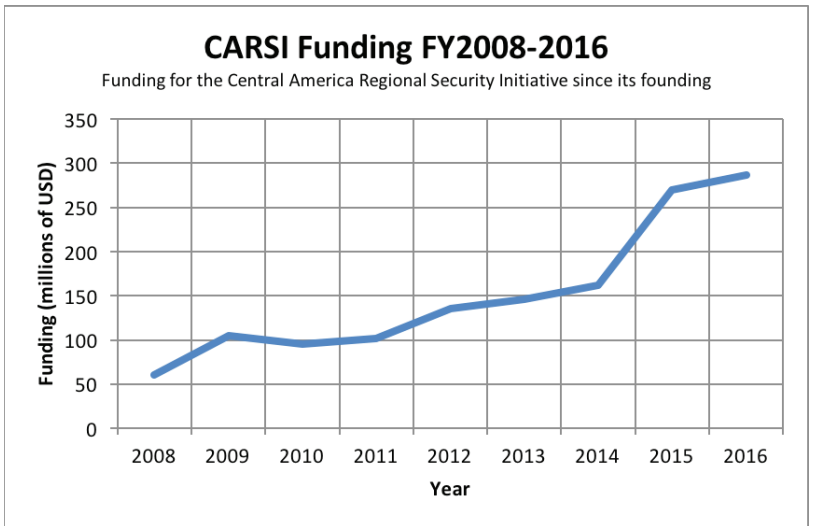
### **Overview of CARSI**

Since its inception, the Central American Regional Security Initiative has been a core component of the U.S. Department of State’s work in the region. The U.S. works with seven regional partner countries: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama (Johnson 2013). The term “partner countries” is deliberate, as CARSI operates within a framework of “shared responsibility” wherein all participants are expected to make progress on certain issues domestically and in the context of regional efforts (Nollkaemper and Jacobs 2013). When it became a standalone initiative in 2010, CARSI mirrored the Mérida Initiative from which it was born in its focus on narcotics interdiction and law enforcement, institutional capacity building, and violence prevention.<sup>1</sup> CARSI’s principal objectives are to: (1) create safe streets for the citizens of the region; (2) disrupt the movement of criminals and contraband to, within, and between the nations of Central America; (3) support the development of strong, capable, and accountable Central American Governments; (4) re-establish effective state presence, services, and security in communities at risk; and (5) foster enhanced levels of coordination and cooperation between the nations of the region, other international partners, and donors to combat regional security threats (U.S. Department of State Bureau of Public Affairs 2012).

The United States Congress plays a key role in ensuring that CARSI is able to meet its stated goals. Since its inception, Congress has approved at least \$100 million per fiscal year in budget appropriations to CARSI. As of June 2013, the most recent time that CARSI budget progress was reported by the United States Government Accountability Office, U.S. stakeholder agencies estimated that they had allocated \$495 million to CARSI programs and an additional \$708 million to non-CARSI funding that supports CARSI goals (U.S. Government Accountability Office 2013,

16). As shown in Figure 2, the 2016 CARSI budget is \$287 million – over 1/3 of the Congressionally approved \$750 million whole-of-government approach to supporting a broader U.S. Strategy for Engagement in Central America to combat issues related to unaccompanied minors and to wider migration. A significant uptick in funding in FY 2015 and FY 2016 may correspond with decreased influx of unaccompanied minors during those fiscal years.

**Figure 2: CARSI budget, 2008-2016**

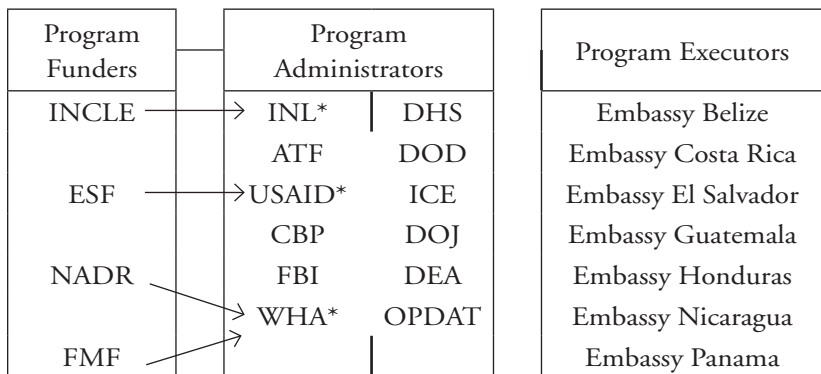


Source: Congressional Research Service (Meyer and Seelke 2015, 17)

Once the annual budget is approved, funding for CARSI comes from four foreign assistance accounts within the U.S. government: International Narcotics Control and Law Enforcement (INCLE); the Economic Support Fund (ESF); Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR); and Foreign Military Financing (FMF) (Meyer and Seelke 2015). INCLE funding, which comprised nearly 66% of total CARSI funding between FY 2008 and FY 2015, is administered through the State Department’s Bureau of International Narcotics and Law Enforcement (INL). ESF funding comprised 31% of CARSI funding in the same timeframe; it is administered by USAID. NADR and FMF funds are very limited by comparison. They are administered through the Office of Western Hemisphere Affairs at the State Department.

Numerous other agencies and sub-agencies with operations in the region provide in-kind support to the initiative by sharing their expertise and providing direct goods and services, such as training.<sup>2</sup> They are: the Department of Defense (DOD); the Department of the Treasury; the Department of Homeland Security (DHS); Immigration and Customs Enforcement (ICE); Customs and Border Protection (CBP); the Coast Guard; the Department of Justice (DOJ); the Federal Bureau of Investigation (FBI); the Drug Enforcement Administration (DEA); the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) (Meyer and Seelke 2015). WHA oversees CARSi operations throughout Central America. The principal on-the-ground executors of the Initiative are the Embassy teams that correspond with the program administrators in each of the seven CARSi partner countries. Each embassy has a working group that consists of representatives of the relevant agencies operating on the ground (Meyer and Seelke 2015).

**Figure 3: CARSi Funding and Execution**



*\*Funds-administering entities. All others support CARSi through goods and services. Some provide funding to the region via other policy programs.*

*Source: Meyer and Seelke 2015*

The final set of CARSi stakeholders is made up of regional governments and civil society in participating countries. Regional governments are particularly important because the Initiative, by design, supports the efforts of partner governments to confront the systemic issues they face. Still, nearly all CARSi programs are community based and municipally led, with the United States only fulfilling crucial equipment, training, and technical assistance needs. For that reason, CARSi assistance looks



different throughout the region—both between and within different areas of partner countries. In some areas, such as Guatemala and Honduras, the U.S. supports military intervention in domestic policing; in others, such as Belize, it focuses crime prevention by combatting the prevalence of gang culture by strengthening family life in at-risk areas.

### **Weaknesses of CARSI**

Despite undergoing steady funding increases over the course of its eight-year existence, CARSI faces both structural and implementation roadblocks to becoming the impactful, security-generating initiative that the U.S. Department of State wishes it to be. At the structural level, independent think tanks argue that the policy is built in a way that is not conducive to anything more than a modest impact, while Congressional stakeholders identify resource and policy coordination gaps as cause for concern. Both sets of issues are exacerbated by a dearth of data on the impact that CARSI projects have had in partner countries. Implementation-wise, partner governments sometimes stand in the way of achieving systemic change rather than one-off improvements. Civil-society stakeholders tend to perceive the Initiative as opaque and at times incongruous with needs on the ground. The following sub-sections outline the Initiative's overall configuration, coordination, impact evaluation, partner government accountability, and citizenship acceptance gaps in detail.

### *Configuration and Coordination Gaps*

A 2014 report by the Woodrow Wilson International Center for Scholars argues that CARSI's coordination gaps are primarily attributable to the vastness of its mandate (Olson 2014a, 2-3). Without a synchronized strategy for how programs and funding initiatives should support CARSI's overarching goals, embassy teams are left to grapple with how and where to invest CARSI funding. As a result, they often treat CARSI as a budget line rather than a specific, mission-based Initiative and use funding on an as-needed basis where projects align with one or more of CARSI's five core objectives. While treating projects as one-off still achieves positive outcomes, overall improvement of regional security can only be achieved through a series of smaller, interrelated projects that support this outcome steadily over time.

When the budget for FY2016 was under consideration by Congress, a report by the Congressional Research Service listed "resource and policy coordination" gaps among potential concerns about maintaining and increasing funding to the Initiative. Congressional concerns derive not only

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from within the initiative itself, but also from additional funding in excess of \$700 million that has been appropriated to non-CARSI projects that support CARSI goals since its inception (U.S. Government Accountability Office 2013, 16). Between State Department CARSI funding, DOD funding for counter-narcotics, development assistance (DA) funding for rule of law issues and promoting human rights, and other funding pools, tracking the activities of each budget-providing entity is very difficult. This is detrimental to CARSI because it is nearly impossible to tell whether all agencies are coordinating in a way that avoids unnecessary overlaps, unifies messaging about U.S. operations in the region, and cooperates on building positive relationships with regional governments—all of which underpin the Initiative’s ultimate success.

### *Impact Measurement*

An additional shared concern of the Wilson Center report and the U.S. Congress is a relative dearth of impact evaluation for the Initiative. In late 2014, USAID commissioned a report in partnership with Vanderbilt University’s Latin American Public Opinion Project on the impact of CARSI funded community-based crime and violence prevention efforts in Guatemala (Berk-Seligson et al. 2014). Additionally, INL currently subcontracts monitoring and evaluation of efforts in each country to SSG Advisors, a development consultancy group based in Vermont (Podlog 2014). Beyond these initiatives, impact evaluations for efforts in the region are sparse and rely heavily on basic quantitative methods and less-than-scientific qualitative reporting. INL reports to have more evaluation tools in place (Meyer and Seelke 2015, 22), but had not made them public as of the time of publishing.

Reporting on CARSI outcomes is sparse, and key performance indicators vary across projects, measurement agencies, and countries of operation. Many projects rely on basic qualitative analysis, wherein participants may report that a given effort has had a positive outcome and express general satisfaction with the way it affects them, but data is not translatable to how the effort might affect project participants or the overall security situation in a given area going forward. Quantitatively, measurement of impact often relies on project outputs. For example, in Guatemala, INL and USAID can point to the number of police trained as part of the Model Police Precincts program, the number of students who have graduated from the Drug Abuse Resistance Education (D.A.R.E.) program, and the number of street lights installed to curb gang activity, among other measures, as indicators of success (International Crisis Group 2012; Luxner 2014).

However, these measures merely catalogue activities undertaken and/or services provided; they say nothing about their impact.

CARSI successes are even less perceivable at higher levels of analysis. In terms of actual policy outcomes, the long term, sustainable effectiveness of projects like the D.A.R.E. program and Model Police Precincts in Guatemala, for example, are less clear, as they depend on bureaucratic and governmental support and reinforcement to have lasting impact. This is problematic because, as stated in a 2015 Congressional Research Service report, “U.S. officials have repeatedly asserted that CARSI allows the United States to set up pilot programs that demonstrate potentially successful approaches to improving security conditions, but that it is up to Central American nations themselves to sustain and replicate such programs” (Meyer and Seelke 2015, 19). Without a strong tax base, government transparency, and accountability at leadership levels, project maintenance and universal adoption of “what is working” is nearly impossible. The Model Police Precincts program currently faces this issue, as it does not have the support it needs from the Guatemalan government to expand operations in the country (Luxner 2014).

CARSI could gain immensely from a set of well-configured impact evaluation mechanisms that focus on outcomes – big, bold ideas like “increased security” and “stronger democratic institutions” – rather than inputs (“we spent x amount of money” or “we sent x people to help train the police in Guatemala”) and outputs (“x students went through the D.A.R.E. program in Guatemala). Impact evaluation exercises could also yield a universal set of key performance indicators for those who are executing the initiative on the ground, as well as a set of “best practices” for qualitative and quantitative data collection and analysis. Without evaluation tools, policy coordination remains difficult: everyone is measuring the success of slightly different programs differently without a strong connection to the long-term goals of the initiative.

### *Partner Government Accountability*

The most critical implementation roadblock faced by CARSI is political will of partner governments. By virtue of its classification as a shared partnership initiative coupled with the inclusion of the specific statement that it will work in coordination with local governments and civil society in its fifth pillar, CARSI executors depend heavily on the cooperation of leadership in partner countries in order to achieve shared goals. This is difficult for a few reasons: first, political and economic elites in partner countries reportedly often lack the will to carry out complex, high level

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reforms. They are willing to accept one-off project support but show little desire to implement structural changes. Where structural changes are not possible, the U.S. often defaults to providing equipment, training, and technical assistance to support immediate law enforcement operations, rather than strengthening the long-term capacities of Central American governments to address the underlying conditions contributing to broader security challenges (this often takes the form of INL-supported counter-narcotics operations). Thus, even if the Initiative sees improvements in policy coordination and impact evaluation, partner governments that are unwilling or unable to support long-term institution building stifle the Initiative's ultimate outcomes.

### *Citizen Acceptance*

While governments in the region tend to be (at least) receptive to this type of support, publics take alarm when U.S. operations align too closely with government status quo. For example, in the Northern Triangle, where crime is widespread, studies have found that “those who have been victims of crime or who perceive that crime is increasing in their countries express less support for the political system and the rule of law than other citizens” (Meyer and Seelke 2015, 3; Zizumbo-Colunga 2015). This is a difficult situation to navigate. A key concern, as identified in the Wilson Center report is that publics in recipient countries do not know enough about the variety of projects that fall under the CARSİ umbrella within a given country (Olson 2014b, 51-52).

Because CARSİ operations take place under the umbrella of the U.S. Embassy and various agencies within it that also do other work in the country, it is often difficult for the communities in which CARSİ funds are deployed to identify CARSİ programs as such. As a result, the common perception of the community is that CARSİ exclusively provides support to the (often corrupt) police and military and does relatively little for the communities in which it works, which is not a complete picture. Specifically, ESF funding, which comprises nearly 1/3 of the initiative, is administered by USAID and focuses on issues including the promotion of social development, and crime and violence prevention.

Many of the programs under the CARSİ umbrella depend on direct engagement between members of the public and policy executors. If the public at large does not trust the intentions of the program because its members perceive a lack of transparency, cooperation will be limited. To use an example already provided in this paper: in order to educate students using the D.A.R.E. model, the embassy in a given country must first have access

to the education system. A large part of what CARSI is trying to achieve relies on education, and citizen leaders are gatekeepers for the community at large. Their understanding of the program should be a top priority.

### **Proposed Policy Adjustments**

The U.S. should sharpen its CARSI strategy as it looks to deploy increased funds to the region. Any solution that the U.S. government pursues should include components that address most or all of the following core concerns (Olson 2014b):

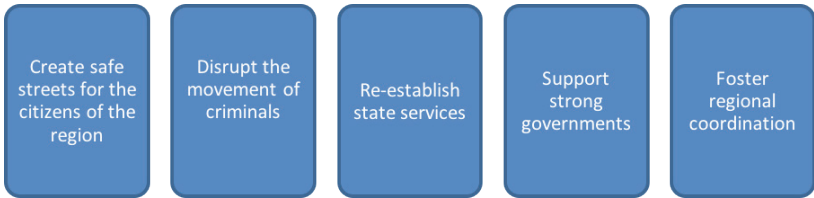
- (1) The mandate of CARSI is too large to make major progress toward any one of the Initiative's stated objectives without a strategy roadmap that breaks policy objectives into bite-sized chunks;
- (2) The initiative faces significant policy coordination gaps, between both administrative entities and individual embassy teams;
- (3) There is not enough impact evaluation to inform strategies based on best practices;
- (4) Partner governments reportedly tend to be "unwilling to prioritize structural change;" and
- (5) The public in partner countries perceives the initiative negatively.

With an increased 2016 budget allotment, U.S. policymakers theoretically have budget space with which to make improvements.

### ***Establishing a roadmap for impact***

As long as CARSI remains a primary mechanism by which to provide economic development and democratic institution building aid to the region, opportunities for removing elements of the mandate without significant blowback from stakeholders at all levels are limited. Nonetheless, there may be room to strategically reorient priorities within CARSI's mandate. This can be done by converting one layer of five broad objectives (Figure 4), some of which are means to an end, to a structure that clearly articulates one policy objective supported by a set of desired outcomes. Taking the exercise one step further, one could then identify inputs and outputs that support each desired outcome, as well as key performance indicators that would empirically show whether a given project is actually contributing to the policy objective.

**Figure 4: CARSI's current policy pillars**



*Source: U.S. Department of State Bureau of Public Affairs 2012*

Introducing “create safe streets for the citizens of the region” as the policy’s strategic goal will allow for a reorganization of policy outcomes below a single, umbrella goal or “mission.” This not only simplifies the end goal for stakeholders at every level (funders, primary and secondary program administrators, and program executors), but it provides a friendly and nonthreatening tagline under which to devise messaging to partner governments and publics. From there, each of the remaining pillars becomes a policy outcome. Policy outcomes are related but separate from each other. Any number of projects (outputs) can fall into a given outcome category. Each outcome category should have its own set of clearly articulated inputs, outputs, target audiences, and key performance indicators. The same vigorous categorization should be applied at the individual project level. For example, the Model Police Precincts should have its own set of clearly articulated inputs, outputs, key performance indicators, target audiences, desired outcomes, and strategic goals. Desired outcomes and strategic goals should align closely with the outcomes and goals of the initiative.

**Figure 5: Proposed CARSI Reorganization**



*Source: Original content*

In order to fundamentally change the structure of the policy, the proposed changes will likely require the support of the Assistant Secretary of State for Western Hemisphere Affairs, and the consent of the Office of Policy Planning, and even the Secretary of State. Given that the proposed changes directly address the concerns of Congress, independent think tanks, and regional experts alike, a persuasive case can be made for implementing the changes. At the end of the day, these changes do not substantively alter the U.S. mission or the rationale for U.S. presence in the region; they are solely intended to help those charged with executing the policy to do so in a way that lends itself to lasting impact and structural change. It thus becomes a matter of framing, both internally to stakeholders at the Department of State and externally to Congress and regional partners.

### *Improving policy coordination*

There are not budgetary concerns with applying this methodology *per se*, but doing so will require ongoing time and expertise of policy coordination staff. It will be important to enlist the support of WHA's Office of Policy, Planning, and Coordination (WHA/PPC) for ongoing strategic guidance. WHA/PPC can help increase impact potential and decrease budgetary inefficiencies by taking on the responsibility of building a roadmap from CARSI's top-line objective to the widespread tactical projects designed to support it.

Carrying out this project with in-house talent is a cost-saving measure that will require significantly fewer resources than employing an outside management consultant firm for the project. Additionally, having staff in Washington go through the process of working with embassy teams to identify inputs, outputs, key performance indicators, and other metrics for each individual project will lend itself to improved policy coordination between country teams because, presumably, the same DC team will work with all of the field teams. WHA has incentive to take on this task, given that CARSI is one of a handful of large initiatives it is undertaking in the region at the moment. Finally, should capacity in WHA not be available, there is a case to be made, especially to those in Congress who have voiced serious concerns about policy coordination, that the return on investment for an external contracted strategy development project will pave the way toward greater system-level impact and will create efficiencies in how the policy is approached. Nevertheless, building internal expertise into the project will make the proposed innovations more sustainable over time.

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### *Conducting vigorous impact evaluations*

Once the new project model has been set, it will be important to also recalibrate the manner in which impact evaluations are carried out. The U.S. Congress is keen to receive reporting on CARSİ results because it receives a growing budget allotment each year. Equipped with a broader knowledge of how individual projects (policy outputs) support and reinforce the Initiative's policy outcomes and overarching strategic goal, impact evaluation can be used to inquire as to whether a project is helping the U.S. transition from tactical improvement to system-wide progress. Additionally, should WHA/PPC take on the task of applying the same vigorous modeling to the array of projects that fall under the CARSİ umbrella using the same criteria, knowledge needs for each country team will become clearer, particularly for assessing whether key performance indicators are being met and whether country teams are contributing meaningfully to desired policy outcomes. From there, WHA/PPC could take on the task of developing evaluation mechanisms that span an array of similar programs across borders. Standardized reporting on policy impact will lend itself to a stronger case for increased funding in the future.

Over time, it will be important to continue to set aside budget space specifically for evaluation, as CARSİ executors such as INL and USAID have already started doing. Given that the budget has increased for 2016, there should be flexibility in the ESF and INCLE line items to continue carrying out impact evaluations should the will to do so be present. All signs point to this being the case and prior impact evaluations bode well for USAID, with the Vanderbilt study on crime prevention impact having been cited as rationale for increased funding for USAID programs in the region going forward.

The question that remains in terms of impact evaluation and policy coordination is that of authority. This study suggests that WHA/PPC take on both roles for the sake of standardization and efficiency-building, but it is unclear how this would be possible, given that INCLE and ESF have carried out their own impact evaluations in the past and have incentive to do so because they are the ones providing the bulk of the CARSİ funds. The 2014 Wilson Center report suggests that a high level coordinator or special envoy for CARSİ be appointed. The report states, "This person should have the capacity to alter course and redirect resources (in consultation with Congress) when impact evaluations suggest programs are not being successful" (Olson 2014a, 6). This would be a helpful—albeit somewhat symbolic—appointment, as it would point program administrators and executors to a single coordinating actor. Still, this person would need a staff behind them to help carry out the role, which could involve WHA/PPC.



### *Political Will in Partner Countries*

The issue of partner government accountability and cooperation should be re-evaluated over time. At the moment, it would be unrealistic to think that regional governments should welcome structural reform with open arms when the strategy leading to high level, impactful reform has yet to be built. It is true that the governments involved in this project are not the most reliable and often face corruption issues. Achieving positive structural outcomes will thus be a delicate diplomatic dance that should be executed at the highest traditional diplomatic levels, once the U.S. strategy for maximizing impact is underway. Indeed, once the United States sees its own roadmap to achieving lasting impact begin to materialize, it will be better able to verbalize, incentivize, and reward partner governments for meeting its expectations in terms of policy outcomes. Once this is in place, it will be up to traditional diplomats and high-level stakeholders within the Department of State to ensure that governments are well informed and invited to “buy in” to policy objectives. The only immediate risk of restructuring the Initiative vis-à-vis partner governments is that they may perceive that the U.S. is shifting its focus from immediate law enforcement and interdiction operations to broader structural reform for which they may not be ready. In order to quell this potential concern, either the newly appointed special envoy or the current U.S. ambassadors in each partner country should make a point to hold high level strategic meetings with government officials to discuss the changes.

### *Improving strategic messaging to regional stakeholders*

The most public-facing risk associated with the simple reshuffle of strategic orientation proposed here is that the public in partner countries might perceive the U.S. to be moving toward pursuing harder security objectives and abandoning CARSI’s softer elements. In order to quell potential concerns of local stakeholders, U.S. government executors should build a branding strategy based on the “safer communities” concept that will move to the forefront of the initiative should the changes proposed here be adopted. WHA should employ the expertise of Public Diplomacy and Public Affairs Officers (PAOs) in partner country embassies to both mount an awareness campaign and to gauge public perceptions of the initiative in an ongoing way. The campaign should utilize a variety of quantitative and qualitative evaluation tools, including opinion polling, surveys, and focus groups. A public diplomacy campaign would serve to bolster transparency and show dedication to improving conditions in the region.

In terms of messaging, the campaign should take a “bottom-up” ap-

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proach. In order to ensure community buy-in, it will be important to focus not on the hard security elements of the initiative, for example the counternarcotics work of INL, but rather on the softer, community-oriented elements undertaken by USAID. This framing is not intended to mislead, but to demonstrate that there is more to the Initiative than what community members tangibly can see as American police tactics, military training, and hardware supporting corrupt police and government structures. Beyond these things, CARSI is also taking preventative measures: educating families on healthy relationships and keeping children out of gangs; allowing for more expedient justice by keeping courts open for longer; and installing bullet proof windows on witness testimony stands, for example. It is important for community members to understand and, importantly, have a say in where funds are directed with these elements as well.

This effort will require additional manpower but not necessarily budget space: PAOs in partner countries are already working on increasing the understanding and acceptance of American values and policies and promoting dialogue between the U.S. and governments and civil society in partner countries. Given that CARSI is the principal U.S. policy for the region, PAOs were already talking about CARSI projects in some manner. However, the Initiative needs a revamp to its messaging. Once high-level stakeholders at State approve the initial policy adjustments, public affairs specialists will have the mandate they need to coordinate with embassy staff in partner countries and ensure that messaging is duly adjusted.

## CONCLUSION

CARSI has great potential for achieving the stated goals of the U.S. in Central America: improving regional security and building democratic institutions. As such, it is important that the U.S. gets it right in terms of strategic planning and prioritization. At the moment, the initiative represents a hodge-podge of individual projects that lack branding and mission. By strategically restructuring the initiative in a way that is more precise in its mandate and oriented toward outcomes rather than outputs, the U.S. will take important steps toward promoting structural reform in the region. Initiatives should be evaluated at every step to ensure a positive trajectory over time. Partner governments and their publics can be hindrances to meeting policy objectives if expectations do not align. PAOs and other embassy staff in the region can do much to ensure public support if they are situated to start from a place of clearly articulated policy objectives. Partner governments cannot be expected to fundamentally change their

systems until the U.S. can articulate the changes it would like to see, and provide a clear path toward achieving lasting impact. While the current version of CARSI is not optimized for reaching its full potential, the small steps proposed in this paper will strengthen the Initiative for the future by consolidating its mandate, improving policy coordination, emphasizing impact evaluation, improving relations with partner governments, and promoting the Initiative with citizens. This is especially important given the recent uptick in funding: executors of the Initiative should use additional resources to make the Initiative sustainable in years where funds may wane, while also realizing that increased scrutiny over the use of funds generally comes alongside increased budget allotments. Now is the time to optimize.

## NOTES

- <sup>1</sup>In December 2008, Mexico and the United States signed the first Letter of Agreement for the Mérida Initiative, opening a chapter of historic cooperation and acknowledging the shared responsibilities of the United States and Mexico to counter drug-fueled violence threatening citizens on both sides of the border. Through six years of implementation, the Merida Initiative has led to a new architecture for bilateral security cooperation, provided tangible support to Mexico's security and judicial institutions and helped to galvanize U.S. efforts to stop the flow of weapons, money and the demand for drugs (U.S. Diplomatic Mission to Mexico 2016).
- <sup>2</sup>For example, the State Department administers the FMF account, but the Department of Defense oversees the procurement and distribution of military goods and services. This is the extent of DoD's involvement in CARSI (Meyer and Seelke 2015).

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## EXPLOITING THE HEAVENS, LAWFULLY. POLICY RECOMMENDATIONS FOR THE LAWFUL IMPLEMENTATION OF H.R. 2262

*Andrej Litvinjenko*

It takes approximately 661 kg of fuel to get 1 kg of materials to Mars or the asteroid belt (about 300,000,000 km away). 650 of those kilos are expended just to travel the first 300 km. This ratio demonstrates that the greatest impediment to humankind's exploration and colonization of space is Earth's gravity well. Everything we need up there needs to be first brought from down here. What if we changed this equation? Our solar system contains unfathomable amounts of precious metals, ice (water), and fuel. The exploitation of asteroids or other celestial bodies would revolutionize humankind's relationship with outer space. After all, the settlers of the New World did not bring all of their own timber, metal, water, and food... The legality of exploiting space resources has been obscure for decades, holding back investment. In November 2015, the US unilaterally legalized the private appropriation of space resources by US citizens. The reaction has been predictable: industry is

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ecstatic; academics are divided. The debate, however, is focused on the wrong legal question. The legality of space mining is a foregone conclusion; the real question to ask is how it can be done in accordance with international law.

This paper accomplishes two objectives. First, it determines that the arguments of space mining critics are based on incorrect applications and interpretations of international law. Secondly, the paper identifies the international obligations the US must observe and provides general policy recommendations for the lawful implementation of space mining. The treaty governing outer space requires use to be “in accordance with international law.” As such the paper draws heavily from environmental and sea law to elucidate the legal principles the US will have to follow, refuting criticisms by some scholars that H.R. 2262 will lead to a “wild west” or “might makes right” outcome. The policy recommendations seek to balance US commercial interests with international obligations as well as provide for the development of a clear multilateral legal framework.

H.R. 2262 is a ground-breaking development in space law. US companies are raring to initiate ventures and this may give them the assurances necessary to attract substantive investment.

## INTRODUCTION

Approximately 98% of all the energy required to get 1kg of material to Mars is used to escape Earth’s gravity. This is a major impediment to our exploration and colonization of outer space. The exploitation of space resources would provide us with the materials necessary to flourish in the celestial commons. The legality of appropriating them, however, has been obscure.

Although international law entitles states to the “free use and access” of outer space, use may not result in national appropriation (*de jure* or *de facto* territorial claims) of celestial bodies like asteroids or planets. This point is uncontroversial. What has been contested, however, is whether the appropriation of resources from celestial bodies amounts to national appropriation and is therefore illegal. Last November, the US legalized private appropriation of space resources with H.R. 2262 *US Commercial Space Launch Competitiveness Act*.<sup>1</sup> The statute specifically disclaims that the

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US does not consider appropriation of resources in celestial bodies as amounting to national appropriation.<sup>2</sup> Debate on the measure continues to focus on the wrong issue. As this paper will demonstrate, legality is a foregone conclusion. Rather, the debate must shift to address the lawful *implementation* of space mining. Space mining, simply put, is the extraction of physical resources, such as rare earth metals, from celestial bodies such as planets, moons or satellites, asteroids, and comets.

Contrary to the fears of some scholars, this unilateral action by the US will not result in a wild-west like, lawless “gold-rush” in outer space. The operation of space law incorporates customary rules and obligates states to act accordingly. In particular, customary rules from the law of the sea and international environmental law fill the *lacunae* of space law. Of course, customary rules are neither a sufficient nor satisfactory alternative to a detailed, multilateral agreement. President Obama has until late May, 2016 to submit a report to Congress as to how H.R. 2262 may be lawfully implemented in accordance with US international obligations. The purpose of this paper is to identify these obligations and synthesize policy prescriptions for the lawful implementation of H.R. 2262. Readers familiar with the infant status of space mining technology, law, and global political consensus may raise an eyebrow at the timing and appropriateness of this paper. However, given that the US has unilaterally proclaimed space mining as legal, it has become prudent to critically discuss the ensuing legal and policy framework. It also bears mentioning that Luxembourg has also declared it will not only pursue a regime similar to the US, but also actively seek to establish itself as a European investment hub for space mining activities (Amos 2016). To be clear, this paper and derived policy recommendations are strictly concerned with the *legal* aspect of US space mining activities.

The paper will proceed as follows. Firstly, the status of space law will be examined. This will consist of a distinction between applicable and non-applicable sources of law as well as the interpretation of applicable sources. Investigations concluding the illegality of space mining are, I submit, a consequence of inaccurate interpretation of space law and inappropriate application of international law. Secondly, state practice on the use of common goods (*res communes*) will be examined. For the restriction on use to include space mining it must be demonstrated, as a matter of law, that the generation of property rights in resources is indivisible from the generation of property rights in the exploited territory. It will be demonstrated that private appropriation of resources and appropriation of territory are conceptually and legally distinct. However, it does not follow that unilateral use is



unrestricted, nor that methods of exploitation cannot amount to national appropriation *de facto*. Finally, the relevant international obligations will be examined, followed by policy prescriptions for lawfully implementing H.R. 2262. These recommendations will seek to balance American commercial interests with international obligations. Ultimately, the US should implement a framework conducive to the mutual recognition of mining rights with other states. This will contribute to the much-needed renewal of space law.

The development of space infrastructure and exploitation of space resources could significantly stimulate the global economy. Some even hypothesize that the first trillionaire will be a space mining entrepreneur (Rothkopf 2015). However, any such developments will rely on a clear, internationally accepted regulatory regime. Failure to accomplish general consensus will starve investment flows and likely lead to political conflicts. It is crucial for unilateral regulatory initiatives to comply with existing treaty and customary obligations in good faith and, moreover, to enable graduation to a multilateral regime.

## **PART I - STATUS AND APPLICATION OF OUTER SPACE LAW**

There are two principal arguments against the legality of space mining. The first claims that the Moon Treaty (MT)<sup>3</sup> is authoritative as customary international law, explicitly prohibiting space mining (Odutan 2015). The second claims that the Outer Space Treaty's (OST)<sup>4</sup> prohibition on national appropriation implicitly includes resource exploitation (Jakhu, U.S. Space-mining law seen to possible treaty violations 2015) (Jakhu and Buzgodan, Development of the Natural Resources of the Moon and Other Celestial Bodies: Economic and Legal Aspects 2008). These arguments reveal more than just scepticism on the status of space mining, they illuminate a fundamental disagreement over the content of international space law. It is not possible to derive a clear set of international obligations if the sources of law are disputed. The purpose of this section is not only to refute criticisms against space mining but also to delineate the correct body of space law.

### **A. Limited Applicability of the Moon Treaty**

The first tension concerns which treaty is authoritative on resource exploitation, the OST or MT. The 1967 OST currently has 128 signatories or ratifications, including all major space faring states. By contrast, the 1979

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MT has only accumulated 16 signatories or ratifications with France as the only major space-faring member. The importance of this discrepancy is addressed below.

State sovereignty is the bedrock of international law. States accept international obligations on the basis of consent. Typically, this takes the form of a treaty wherein two or more states delineate a framework of legal rights and obligations on an issue. It is possible, through customary international law, for states to become bound without explicit consent. Customary international law reflects wide-spread, long-standing, and consistent state practice on an issue (Currie 2014). If a state fails to publicly and consistently object to a developing or otherwise established customary rule, it becomes bound by acquiescence. A more detailed obligation on an issue takes precedence over a more general one. For example, both the OST and MT prohibit national appropriation. However, the MT goes further to explicitly stipulate that this includes the exploitation of resources within celestial bodies. States which are party to both would adopt the MT standard on resource exploitation. Moreover, if we accept the MT as customary law, OST parties would have the MT standard apply to them as well. Herein lies the fundamental flaw with the first argument.

The MT is not customary international law. As stated, few states are parties. Moreover, only one major space-faring state is a member. In *Northern Sea Continental Shelf Cases* the International Court of Justice (ICJ) stated that in the development of customary rules, in addition to wide-spread practice, it may be prudent to examine the practice of states most affected.<sup>5</sup> In this context, the wisdom would be to develop the law of outer space based on the practice of states which *actually go* to space. Furthermore, both the US and the Soviet Union explicitly protested against the implementation of the MT when it became clear it would restrict resource exploitation (Francis and Larsen 2009). In that regard, the US would be a persistent objector meaning that even *if* the MT were accepted as customary international law, it would not bind the US. Furthermore, the MT is not treated by the academic community as being authoritative on resource exploitation. In 2002 the International Law Association (ILA) reviewed the entirety of space law vis-à-vis commercial space activities and concluded that the restrictive framework concerning resource exploitation was the principal barrier to the greater adoption of the MT (International Law Commission 2002). Finally, the restrictive principles of the MT are not upheld anywhere outside the treaty. The UN has passed various resolutions on the status of space law. All have explicitly upheld the principles of the OST and reaffirmed and encouraged in broad terms

states' right to "free use and access" of outer space.<sup>6</sup> There has never been an explicit reference to restricting use with regard to resource exploitation. Although UN declarations are not sources of international law, the ICJ stated in *Nuclear Weapons* that they can serve to identify the content of customary rules.<sup>7</sup> In that sense, we see the overwhelming preference and reaffirmation of the OST's broad, "enabling" interpretation of space law, in contrast with the sparsely supported, "restrictive" MT (Doyle 2007), as indicative of the correct body of law on space.<sup>8</sup>

We can conclude with confidence that the MT is not authoritative on the matter of resource exploitation. At most, it applies only between its 16 signatories and ratifying parties. Again, even if it could be proven as customary law, its restrictions would have no effect on the US. Consequently, it bears no effect on the lawful implementation of H.R. 2262. We now proceed to examining the second argument.

## **B. The Scope of National Appropriation**

Some critics of space mining hold that Article II of the OST includes resource exploitation under national appropriation, thereby prohibiting it. Article II reads:

*"Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."*

Some scholars assert that the proper interpretation and application of Article II is that it prohibits all forms of property rights *in* celestial bodies (White 1997).<sup>9</sup> Moreover, that since property rights only exist if recognized by a state, some argue that it follows any rights in resources project sovereignty into the territory they are acquired from, amounting to national appropriation *de facto*. Scholars are correct to conclude Article II prohibits national appropriation of any kind by any means, public or private. They are incorrect, however, in equating resource exploitation to territorial acquisition. An examination of state practice demonstrates that resource exploitation is conceptually and legally distinct from territorial acquisition. That is, use of resources beyond national jurisdiction (the commons or *res communes*) does not inherently project sovereignty into the territory of the resource.

States routinely separate the appropriation of a resource from territorial claims to the exploited territory. In space, the International Telecommunications Union gives exclusive use rights to limited orbital spots. Use licenses, however, in no way generate sovereign or exclusive ownership of the spot.

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Under the law of the sea, states can fish on the High Seas and exercise exclusive ownership of *resources* in their exclusive economic zone and on their seabed.<sup>10</sup> None of these activities amount to national appropriation of the exploited territories. In fact, the practice of separating exploitation from territorial acquisition is explicitly recognized in H.R. 2262:<sup>11</sup>

*“The United States does not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any celestial body.”*

This disclaimer is consistent with the US courts’ interpretation of Article II. In *Nemitz* a US citizen tried to claim ownership over an asteroid. The Court remarked that since property rights are an extension of a state’s sovereignty, private ownership of a celestial body would amount to national appropriation “by any other means” (Kelly 2004). However, on resource exploitation and rights to the resources *in* celestial bodies, the Court remarked:

*“This is not to say that natural persons, corporations and non-governmental entities might not be able to acquire some types of property interests in lunar and celestial property or engage in some types of private activities.”*

This distinction, in regard to space resources specifically, is perhaps best illustrated by examining state practice on moon rocks. Throughout the space race the US and USSR appropriated several hundred pounds of lunar rocks. Many of these rocks were gifted to other states as “goodwill” rocks. These rocks were treated as and remain the property of the US/Russia (USSR) or their recipients. There is no evidence to suggest that any state ever disputed the right of the US/USSR to acquire them, gift them, or for recipient states to assert property rights in them. In fact, in *US v One Moon Rock*<sup>12</sup> the state of Honduras petitioned for the return of its stolen goodwill rock when it ended up in a US court in a civil forfeiture case. The Court recognized that Honduras accepted the gift and vested it under Honduran law as “cultural property.” The court recognized Honduras had legal title to the rock and at no point contested the legality of owning a moon rock (apart from obtaining it illegally, i.e. through theft). In doing so the Court also implicitly recognized the legality of the US’s initial appropriation of the rock as well as its right to gift it to Honduras. Finally, the state ownership of moon rocks was not found to constitute any sort of territorial right to the moon itself. Although US court decisions are not sources of international law, they do reinforce the distinction in state practice between exploiting common resources and manifesting territorial

claims. Nevertheless, Article II remains unclear and its scope debated. This requires a holistic interpretation of the OST, including the supplementary UN declarations and ancillary treaties.<sup>13</sup>

Per the *Vienna Convention on the Law of Treaties* (VCLT), treaties must be interpreted in their entirety and with due regard to their application in state practice.<sup>14</sup> We dealt with state practice above. The prohibition on national use, therefore, must still be interpreted relative to the broader objectives of the treaty which heavily emphasize “free use and access” by all states. As mentioned above, the emphasis on “free use and access” is consistently reiterated in UN declarations. No effort is made to add or expand the enumerated restrictions on “use.”

Absent explicit obligations to the contrary, state conduct is presumed lawful.<sup>15</sup> However, states are obligated to perform treaty obligations in good faith.<sup>16</sup> As such, even if an act is not explicitly prohibited in a treaty, it is likely still unlawful if performing it would run contrary to the fundamental objectives of the treaty. As the above examination demonstrated, state practice distinguishes resource exploitation from national appropriation. More importantly, “free use and access” of space is consistently encouraged by the international community in broad terms. In fact, a 2014 UN declaration stated:<sup>17</sup>

*“Deeply convinced of the common interest of all humankind in promoting and **expanding the exploration and use of outer space**, as the province of all humankind, for peaceful purposes and in continuing efforts to extend to all States the benefits derived therefrom...” [Author’s emphasis]*

Controversy over space mining’s legality is not new. However, declarations continue to support the OST’s broad, “enabling” framework. Moreover, the international community rejected and continues to reject the MT regime’s restrictions on use, *specifically* resource exploitation. It cannot be sincerely concluded that space mining is either implicitly prohibited by the OST or that it would amount to a violation of good faith. Consistent with the *Lotus Doctrine*, states do not need a positive (legal) right; they need only not have an obligation to the contrary. Some critics raise concerns over whether space resources should be shared, that exploitation may amount to national appropriation, or that it could further pollute Earth’s orbits. None of these questions concern legality, they are questions of *implementation*. It warrants repeating that the international community has failed to protest the US/USSR’s routine appropriation and gifting of lunar rocks. The OST either prohibits property rights in space resources or it does not.

If absolute prohibition was the intent, state practice has clearly interpreted the provision otherwise.

The entitlement to “free use and access” is not a *carte blanche* right. In fact, because it is a right of *all* states, it concurrently obligates states to exercise their use with due regard for the use rights of all others. We proceed then to examine and comprehend outer space as a commons, regulated by both treaty and customary law.

## PART II – NAVIGATING THE CELESTIAL COMMONS

### A. Operation of *Res Communis*

Art. I of the OST establishes outer space as the “province of all mankind.” Consequently, it incorporates the customary rules on *res communis*. *Res communis* is a property rights regime derived from Roman law denoting territories belonging to and for the use of all (Bovenburg 2006). Our contemporary understanding predominately derives from the writings of Hugo Grotius (Grotius 1916) and his critic, William Welwood (Morell 1992). The right to use and access is balanced with the obligation to execute such use with due regard for the rights of others. Use is inherently unrestricted until such a time intervention becomes necessary. “Due regard” is subjected to a standard of reasonableness. Unsurprisingly, without a detailed legal framework, it can be difficult to determine when a state’s use exceeds “reasonableness.” In *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* the International Tribunal for the Law of the Sea examined state responsibility in regard to the conduct of their commercial entities on the deep seabed.<sup>18</sup> The Tribunal determined that for a state to be responsible for the conduct of its commercial entities there needs to be some positive obligation the state failed to discharge and that the resulting damage is causally linked to that failure.<sup>19</sup> The standard of due diligence appears consistent with customary rules on harming foreign state interests. The *Trail Smelter* and *Corfu Channel* cases established that states are not to *knowingly* allow use of their territory, or interests under their jurisdiction, which could harm the interests of others.<sup>20</sup> This is commonly referred to as the “no harm principle.” Finally, the reasonable use standard is also informed by the obligation of performing obligations in good faith.

### B. Rights, Obligations, and Considerations

Use of outer space is subject to several treaty and customary restrictions.

The OST's rights and obligations of concern are as follows:

<b>Article I</b>	<ul style="list-style-type: none"> <li>• Exploration and use of space is to be carried out for benefit and in interest of all states.</li> <li>• Free use and access</li> <li>• Freedom of scientific investigation</li> </ul>
<b>Article II</b>	<ul style="list-style-type: none"> <li>• Prohibition of national appropriation</li> </ul>
<b>Article III</b>	<ul style="list-style-type: none"> <li>• Use and access subject to international law</li> </ul>
<b>Article IV</b>	<ul style="list-style-type: none"> <li>• Prohibition of militarization of outer space</li> <li>• Use and access must be for peaceful purposes only</li> </ul>
<b>Article VI</b>	<ul style="list-style-type: none"> <li>• States are liable for national activities in space, including activities by their national non-governmental entities</li> <li>• States must authorize and regulate the conduct of its non-governmental entities in space</li> </ul>
<b>Article VII</b>	<ul style="list-style-type: none"> <li>• States are liable for the objects they launch</li> </ul>
<b>Article VIII</b>	<ul style="list-style-type: none"> <li>• States retain jurisdiction over the objects they launch (under their registry)</li> </ul>
<b>Article IX</b>	<ul style="list-style-type: none"> <li>• Use and access to be carried out with due regard for interests of other states</li> <li>• Use and access to avoid harmful contamination of space</li> </ul>
<b>Article XI</b>	<ul style="list-style-type: none"> <li>• Use and access to be transparent, reported to the UN</li> </ul>

The relevant customary rules are as follows:

<b>Operation of res communis regimes</b>	<ul style="list-style-type: none"> <li>• Entitlement to free use and access of the interest, subject to due regard for interests of others</li> </ul>
<b>No Harm Principle</b>	<ul style="list-style-type: none"> <li>• States are obligated to ensure use and access of the interest avoids harm to the interests of other states<sup>21</sup></li> </ul>
<b>Application of Jurisdiction to Extra-Territorial Events</b>	<ul style="list-style-type: none"> <li>• States are entitled to exercise jurisdiction in their territory in response to events that have or may occur beyond their territory<sup>22</sup></li> </ul>

These general rights and obligations illuminate many of the issues a regulatory framework for space mining will have to address. The principal issue is that ensuring use and access does not amount to national appropriation. Firstly, operation licenses should be issued instead of recognizing claims to any particular sites. Any sort of recognition and/or protection of a right to a specific territory may amount to national appropriation *de facto*. Instead, states may organize their license system so as to direct where and how non-governmental entities may *operate*. The rigorous regulation of mining activities will be essential. States will need to ensure they do not enable actors to establish “operational sprawl” or “shell operations.” That is, anti-competitive and monopolistic behaviour of operating below efficiency in multiple or large locations, thereby precluding access to others. There may be reasonable restrictions on use however. For example, geosynchronous orbital slots are assigned on a first-in-time basis. Slots are limited and licenses to them are exclusive. By their consent to the *International Telecommunication Convention*<sup>23</sup>, states have accepted this restriction as reasonable in order to effect efficient allocation and use. Lastly, space is dangerous and therefore operators must be given reasonable zones of non-interference for safety purposes. This can be controversial. Indeed, it was a provision included in the previous US *ASTEROIDS Act* which tried to legalize space mining in 2014.<sup>24</sup> However, as a matter of customary international law, states are obligated to ensure their territory, or interests under their jurisdiction, do not harm the interests of other states. This can be recognized as an obligation *erga omnes* – an obligation owed to all. Therefore, the placement of mining operations should balance safety concerns for other domestic or foreign operations with ensuring that this does not amount to unreasonably impeding access, i.e. amount to national appropriation. Again, the use of orbital slots serves as a practical example on establishing non-interference zones for safety, and in this case technical, reasons.<sup>25</sup>

Although Article I of the OST entitles all states to benefit from the use of outer space, it does not follow that technologically advanced, space faring states must forbear or retard their space activities or even provide technology/capacity/resources without compensation. The right to benefit from space is a negative right, not a positive right. That is, states are entitled to freedom from *interference* from accessing the benefits of states. States do not have a positive claim to the benefits of space. Some scholars believe that space, like the deep sea-bed, is subject to a “common heritage of humankind” (CHH) regime. CHH is a proprietary regime akin to *res communis* but which obligates sharing of benefits (which can include forced



technology transfers or compensation) (Kiss 1985). This belief is derived from Article II of the MT which establishes space as a CHH. However, as demonstrated thoroughly above, the MT is not indicative of space law and is not customary international law and even if it would not apply to the US.<sup>26</sup> Rather, the right to benefit from the use and exploration of outer space is again well illustrated by the use of orbital slots. Although not all states enjoy any or equal use of orbital slots, they are all able to benefit from satellite-communication services such as GPS, telecommunications, remote-sensing, etc. These benefits and their corresponding technologies are typically available on a market basis (Baskaran 2005). In that regard, it follows that the benefits of space mining, including its corresponding technologies, should be made available similarly. That is, forcing non-governmental entities to only sell to or engage with other domestic entities may run afoul of the OST. A final comment on benefits: during the negotiation of UNCLOS III, developing states were concerned what effect exploitation of new resources in the deep sea-bed would have on their market shares and world prices (Garrison 2007). Objectively, this is a fair concern but it is socio-economic and not rooted in law given that space is not CHH. Therefore, there is no obligation to impose quotas or price ceilings/floors. Trade in space-derived resources, at least on Earth, would be subject to WTO law insofar as the resources can be considered a “good” and space mining services a “service” under WTO law.

Next, we consider the obligation to *avoid* harmful contamination of space. This is a difficult issue to qualify given the ongoing generation of human-made space debris in Earth’s orbits. The accumulation of space debris has become so acute that some researchers predict the pollution will reach a threshold triggering a “cascade effect” of collisions, perpetually generating additional debris and annihilating most assets at a particular altitude and increasing the danger of leaving Earth’s orbit (Wouters 2015). Despite all this, the international community has not adopted any legal instruments to regulate the matter. Voluntary guidelines have been crafted but it is ultimately up to a state’s discretion as to whether and to what extent to implement them or other standards. For its part, the US has been vigilant on developing and implementing debris mitigation standards (Salter 2015). Moreover, and most importantly, when China deliberately destroyed one of its satellites in a weapons test (Weeden 2012), further polluting Low Earth Orbit with dangerous debris, it was not considered internationally wrongful by other states (Spencer 2007). It should be noted that China’s act did not substantively harm other states. If future acts are challenged as internationally unlawful, this precedent may imply a high

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threshold for causality and/or evidence of material harm. The generation of space debris from space mining operations, particularly far from Earth orbit may not require strict regulation. An exception may be debris that unreasonably precludes access to unexploited regions of a celestial body. Regulation of this issue will likely be progressive: as use degrades sustainability, intervention will be modulated.

The use of mined space resources for military applications should not be a concern. Satellite systems are routinely used by states for military purposes. Likewise, resources mined in space could be lawfully used for military applications, including scientific research conducted by military personnel and/or with military equipment in space.

Finally, we turn to concerns of oversight, liability, and transparency. These obligations are more detailed than the others. In fact, there are two separate treaties dedicated to the registration of space objects and state liability. Article XI of the OST obligates states to monitor the launch and ongoing activities of all space objects under their registry and report these activities to the UN, to the greatest extent reasonably possible. Commercial entities are obligated to report their activities only to the extent demanded by domestic regulations. Reporting obligations for satellite operations are fairly high. However, Lyall and Larsen observe that despite high reporting expectations, states often report late or do not fully implement various UN recommendations. Of course, the US is not obligated to adopt standards more stringent than the international norm.

Commercial space activities are capital intensive. It may be prudent to modulate regulation as necessary instead of imposing possibly excessive and costly requirements on an infant industry. The US remains liable for any damage caused by its space objects on Earth or in the atmosphere and is strictly liable for damage caused in space. So far as international law is concerned, provided the US gives satisfactory compensation for any harm they cause, there is no problem *per se*. The extent to which the US establishes a civil liability regime to internalize these costs is predominantly a domestic concern. In that regard, it should be noted H.R. 2262 indemnifies commercial spaceflight operators from liability until 2023 and provides other flexibility to encourage investment and development (Countable 2015).

### **PART III - POLICY RECOMMENDATIONS**

The White House has yet to comment on how space mining may be regulated in compliance with US international obligations. This paper has identified the applicable sources of space law with which the new

US regulatory regime must comply. These obligations are a minimum standard for safeguarding the rights and interests of other states. The following recommendations seek to balance US pro-commercial interests and international obligations:

### **Recommendation One: Domestic Regulatory Framework**

The US should introduce legislation similar to the Deep Seabed (DSB) Hard Mineral Resources Act, particularly provisions on the:

- establishment of a domestic authority to issue licenses for exploration, operation, transit and sale of goods and/or services
- duration of licenses
- protection of the space environment
  - civil liability in the event of harmful contamination
  - conservation of resources
- safety of life and property in outer space
- prevention of interference with other uses of outer space
- reciprocal recognition of claims with other states

The regulatory framework should provide clarity on the following issues:

- What is the scope for protecting US entities engaged in the “recovery” of space resources?<sup>27</sup>
- How will operators be expected to demonstrate capacity for effective use of a license (i.e. to preclude anti-competitive behaviour)?
- What standard of care does the US owe to other states *vis-à-vis* US commercial activity and potential harm to the space environment or foreign property in space?

### **Recommendation Two: Multilateral Regulatory Framework**

Like with its attempted DSB regime, the US should pursue a network of reciprocal agreements between space faring states. This would efficiently establish a multilateral regime capable of monitoring and possibly regulating mining activities. Although an international regime may be more inclusive, it could also introduce too many different perspectives, delaying implementation. The US and like-minded states could always broach the subject in the United Nations Committee on the Peaceful Uses of Outer Space to determine the feasibility of a new convention on space mining. The multilateral regime could then be integrated into the international one.

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In the interim, the operation of the multilateral body must not interfere with the free use and access rights non-member states enjoy under the OST.

### **Recommendation Three: Promote Equal Access to Resources**

Although most states currently lack launch capacity, India has demonstrated that it is possible to develop capable space infrastructure, relatively quickly and cheaply.<sup>28</sup> Should space mining prove feasible, the US should fully benefit from its pioneering spirit and innovation. However, in keeping with the spirit of space law and internationally developing sentiments to CHH, the US should promote equal access to space resources. The necessary technology should be made available for acquisition and/or licensing on a non-discriminatory basis and on commercial terms. Furthermore, the US should collect royalties on space resources for the purpose of continuing to provide space debris mitigation and, eventually, remediation and, if necessary, to insure against liability claims if civil liability is insufficient or if the US prefers to undertake the risks itself.

## **CONCLUSION**

Space mining is a long way away from manifesting as a fully-formed commercial sector. However, given the pace of technological innovation and energy/resource consumption rates, perhaps exploiting the heavens is inevitable. In the interim it will be necessary for the US to establish a comprehensive and flexible framework, conducive to both international and commercial interests. Most importantly, this framework must strive to integrate itself amongst eventual foreign iterations, paving the way for a multilateral framework. Discussions on regulation are cautioned to not overlook the sheer vastness of space. The staggering amount of resources and the relative insignificance of humankind's conduct among the stars should humble policymakers.

## **NOTES**

<sup>1</sup> US, Bill HR 2262, *US Commercial Space Launch Competitiveness Act*, 114th Cong, 2015, s § 51301 (enacted) at s § 51302(a)(3).

<sup>2</sup> *Ibid*, see s 403.

<sup>3</sup> Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 18 December 1979, RES UNTS 34/68, (entered into force 11 July 1984).

<sup>4</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 27 January 1967, RES UNTS 2222, (entered into force 10 October 1967).

- <sup>5</sup> Northern Sea Continental Shelf case, see North Sea Continental Shelf Cases, Judgment [1969], online: < <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=cc&case=52&code=cs2&p3=4>.
- <sup>6</sup> International Cooperation in the Peaceful Uses of Outer Space, GA Res, UNGA, 2014, A/Res/69/85.
- <sup>7</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 35 at par 70.
- <sup>8</sup> This includes the Rescue of Astronauts, Liability, and Registration treaties by their reference of incorporating the OST; Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 22 April 1968, RES UNTS 2345, (entered into 3 December 1968); Convention on International Liability for Damage Caused by Space Objects, 29 March 1972, RES UNTS 2777 (entered into force 1 September 1972); Convention on Registration of Objects Launched into Outer Space, 14 January 1975, RES UNTS 3235, (entered into force 15 September 1976).
- <sup>9</sup> Supra note 14 at 220; supra note 6; White, W. 1997. “Real Property Rights in Outer Space” [unpublished].
- <sup>10</sup> *Convention on the Law of the Sea*, 10 December 1982, UNTS 1833, (entered into force 16 November 1994), see Arts. 87, 89, 56, and 77-79.
- <sup>11</sup> Supra note 2 at Sec. 403.
- <sup>12</sup> *United States v One Lucite Ball Containing Lunar Material (One Moon Rock) and One Ten Inch by Fourteen Inch Wooden Plaque*, 252 F Supp (2d) 1367 (Fla 2003).
- <sup>13</sup> The ancillary treaties are enumerated in note 17.
- <sup>14</sup> *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, 8 ILM 679 (entered into force 27 Jan 1980), see Art. 31.
- <sup>15</sup> This principle is based on the notion of sovereignty and states only being bound to what they have consented to. This was discussed in detail in the S.S. *Lotus* case developing what is known as the “Lotus Doctrine,” see in: S.S. “*Lotus*”, *France v Turkey*, (1927), Judgement, PCIJ (Ser A) no 10.
- <sup>16</sup> Report of the International Law Commission, UNGA, 56th Sess, Supp No 10, UN Doc A/56/10, (2001) at 37, Art. 3 Commentary (5).
- <sup>17</sup> Supra note 17, see also: UN Doc A/Res/69/85.
- <sup>18</sup> *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, [2011] Seabed Disputes Chamber of the International Tribunal for the Law of the Sea 9 at par 2-3.
- <sup>19</sup> *Ibid* at pars 168 and 181.
- <sup>20</sup> *The Corfu Channel Case – Assessment of the Amount of Compensation Due from the People’s Republic of Albania to the United Kingdom of Great Britain and Northern Ireland (Albania v United Kingdom) Judgement* of 8 December 1949, [1949] ICJ Rep 244.

- <sup>21</sup> Stockholm Declaration on the UN Conference on the Human Environment, UNGA, UN Doc A/Conf-48/14; 1992 Rio Declaration on Environment and Development, UNEP, 1992, UN Doc A/CONF 151/26, (1992).
- <sup>22</sup> Supra note 25 at 19.
- <sup>23</sup> International Telecommunication Convention, 1959, online: [http://www.itu.int/dms\\_pub/itu-s/oth/02/09/S02090000085201PDFE.PDF](http://www.itu.int/dms_pub/itu-s/oth/02/09/S02090000085201PDFE.PDF).
- <sup>24</sup> American Space Technology for Exploring Resource Opportunities in Deep Space Act, USC tit 51 sec 513.
- <sup>25</sup> Each slot allows for broadcasting at a certain frequency. Placing satellites too close together will result in signal overlap and interference.
- <sup>26</sup> The US is particularly opposed to the CHH principle. In fact, it has still not ratified UNCLOS because of its inclusion under Part XI.
- <sup>27</sup> Supra note 2, see Annex I, §51303.
- <sup>28</sup> Baskaran, A. 2005. "From Science to Commerce: evolution of space development policy and technology accumulation in India." *Technology in Society* 155 at 172.

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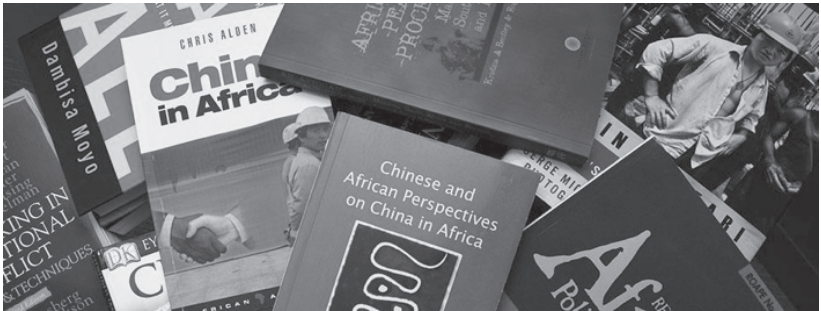
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# 5

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## AN IMAGINED THREAT? A PANEL DATA ANALYSIS OF CHINA'S FOREIGN DIRECT INVESTMENT IN SUB SAHARAN AFRICA

*Kabira Namit*



*Photo Credit: China – Africa Knowledge Hub*

This paper examines the locational determinants of China's foreign direct (FDI) investments in Sub Saharan Africa and assesses whether their choice of investment destinations substantially differs from other global players.

Using a panel dataset created from recently updated macro-economic data from the United Nations Conference on Trade

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and Development (UNCTAD) and the World Bank, I find that China's choices of investment destinations in Africa over the last decade are substantially similar to traditional Western investors. Like other investing countries, China's FDI appears to be largely profit driven and its investments are concentrated in natural resource rich countries with relatively large domestic markets.

Much has been made of the fact that, in contrast to other global players, China appears to be indifferent to the existence of stable property rights or rule based governance in the host country (see Chen, Dollar and Tang, 2015 among others). Yet, using regression diagnostics, I find that these findings are incredibly sensitive to outlier countries with substantial Chinese investment. China's sensitivity to property rights and rule of law in Sub Saharan Africa hinges on the inclusion or exclusion of outlier countries like South Africa, Sudan and Zimbabwe.

Implications for public policy are explored in the final section of the paper.

Sensationalism and paranoia hinder our understanding of China's increasing engagement with Sub Saharan Africa. China is perceived as 'a rogue investor that's colonizing Africa.' Due to the paucity of available data, it has been difficult to subject the conventional narrative to rigorous econometric analysis. And so, idle speculation continues to drown out meaningful conversation on the implications of China's increased presence in Africa.

This paper challenges the preconceived wisdom of China's role in Africa by examining the actual share of China's Foreign Direct Investment in Sub Saharan Africa (SSA) and contrasting it with global players.

Right from the outset, it must be noted that this paper focuses only at China's outward FDI. This paper does not examine China's vast trade with Africa, Chinese aid to Sub Saharan African countries, or engineering contracts. Moreover, for the sake of this paper, FDI is defined as "an investment involving a long-term relationship and reflecting a lasting interest and control by a firm in an enterprise resident in a foreign country" (UNCTAD WIR, 2005, p.297). The limitations of FDI data available in the public domain are discussed in a subsequent section. Also, any portfolio investments are beyond the scope of this paper, as Foreign Institutional Investments are a relatively flexible instrument and tend to be used for short-term financial profit.

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This paper briefly examines the existing literature on the determinants of FDI and data sources before providing a snapshot of Chinese investment in SSA. The regression specification, results, and diagnostics make up the subsequent section and are followed by policy implications.

There is a vast amount of empirical literature on the issue of determinants of FDI. However, the literature is also 'disorderly' (Chakrabarti, 2001). Moreover, it has not been possible to categorize investment decisions into a theoretical pattern that has broad based consensus.

According to the categorization of Dunning (1993), most FDI can be classified into three types:

- Resource - seeking
- Efficiency - seeking
- Market – seeking

Thus, traditionally the empirical literature has focused on the availability of natural resources, cost and quality of factors of production, and the size of the domestic market. For example, Janicki et al. (2005) found evidence that the size of the domestic market is positively associated with increased FDI while distance between the two countries significantly reduces FDI flows.

More recently, macroeconomic trends like exchange rates, inflation rates, trade openness, and debt levels have also been included in the analysis. Anyanwu (2011) from the International Monetary Fund (IMF) used results from a panel of seven five-year non-overlapping windows for the period 1980-2007 to indicate that there is a positive relationship between market size, openness to trade, natural resource endowment, high government consumption expenditure, and FDI inflows.

Other papers have also found that government stability, internal and external conflict, corruption and ethnic tensions, law and order, democratic accountability of government, and quality of bureaucracy are significant determinants of foreign investment inflows (See Hayakawa, Kimura and Lee (2011), Aizenman and Spiegel (2006), Davoodi and Tanzi (1997) and Egger and Winner (2006) among others).

However, due to the fact that researchers have only recently become interested in the subject and there is limited availability of data, there is a lack of a systematic understanding of the determinants of FDI from developing countries. Given the high volume of outward FDI flowing from

BRIC countries (and particularly China), this is a particularly interesting avenue for wider research.

Wu and Chen (2001) argued that in the 1980s, the majority of Chinese enterprises involved in transnational operations were under government control and were used to serve the political and diplomatic motivations of the Chinese government. After 1991, a greater number of Chinese enterprises began to go overseas to search for higher profits.

Buckley et al (2007) examined the statistical data from China's Ministry of Commerce to explore the determinants of FDI. They concurred with Wu and Chen and also argued that the determinants of Chinese FDI have varied across time periods. They found that Chinese companies were more likely to invest in countries with greater political risk in the 1980s. From the early 1990s, they found no statistical association between political risk and Chinese outward FDI. They also found that Chinese outward FDI was less likely to go to countries within the same geographical proximity in the 1980s but once again, the effect disappeared in the 1990s. They also found that market size of countries and trade relations with China are positively associated with increased Chinese FDI. However, their dataset only accounts for Chinese outward FDI till 2001.

Chen, Dollar and Tang (2015) examine firm level data (number of deals made rather than their monetary value) and find that China's FDI is similar to Western investment. They also find that China's investments in SSA are uncorrelated with a measure of property right and rule of law, whereas traditional investment favors countries that have better governance climate.

New macroeconomic data from the UNCTAD and World Bank make it possible to empirically verify the findings of Chen, Dollar and Tang using the actual volume of FDI inflows into SSA from China and other global players over the last decade while using their parsimonious regression specification to compare Chinese FDI to Global FDI.

This paper harmonizes data from three distinct sources. UNCTAD serves as the source of data for FDI from China, the G7 countries, and global FDI inflows over the last decade (2003 – 2012). The economic, financial, and political risk variables are available from the International Country Risk Guide (ICRG). Their dataset ranges from 1984 – 2015 and thus allows for greater flexibility in lagged variables. Finally, the World Development Indicators (WDI) and the World Governance Indicators (WGI) serve as the source for the GDP of countries, their population, natural resource rents as a share of GDP, and the Country Policy Index Assessment (CPIA) from the World Bank. The World Bank data ranges

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from 1960 – 2014. These three datasets were merged and checked for consistency errors.<sup>1</sup>

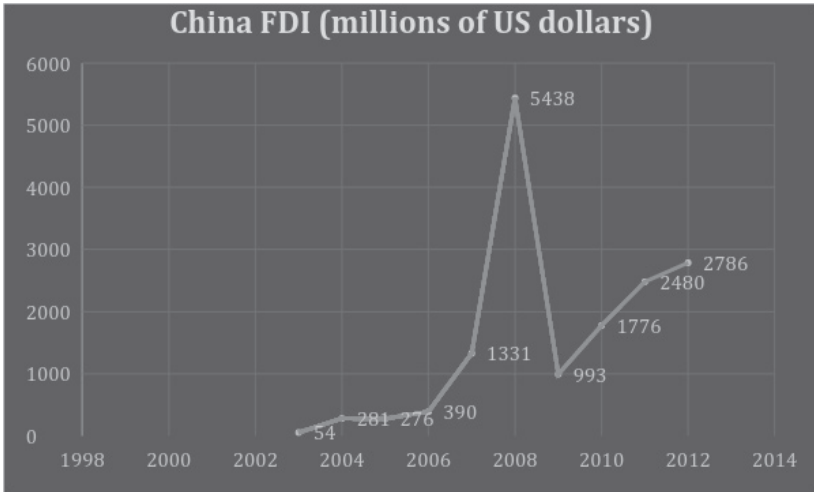
UNCTAD's primary data source for Chinese FDI is the official Statistical Bulletin of China's Outward FDI, published jointly by China's Ministry of Commerce, the National Bureau of Statistics, and State Administration of Foreign Exchange. However, Chinese FDI to Africa may be significantly underestimated because the data indicates that a disproportionately high level of investments flow into offshore jurisdictions like Mauritius, Cayman Islands, and other comparable areas. These locations are not the final destination for the investments and are reinvested in the country of final destination. Moreover, given that typical Chinese financing packages involve the Chinese government and state owned enterprises on the one hand and an African government on the other, Mlachila and Tabeke (2012) argue that it is impossible to disentangle genuine FDI from bilateral aid and construction contracts.

Thus, it is nearly impossible to estimate the precise volume, nature, and geographic distribution of FDI due to a number of intrinsic data weaknesses, including inconsistencies between different data sources and a risk of systematic estimation errors (Mlachila, 2015).

With caveats regarding the quality of data in mind, at the end of 2012, China's share of total FDI in Africa was approximately 3.2% (UNCTAD). As Chen and Dollar (2015) argue, China's investments may be growing, but it continues to remain a relatively small player in Africa. A majority of FDI in Africa comes from the global north. FDI from France, the United Kingdom, South Africa, and the United States all separately overshadow those made by China. China's investments are only 4.4 percent of the total flows into the continent (UNCTAD World Investment Report).

Moreover, it appears that Chinese FDI into SSA is falling. According to a recent Financial Times report,<sup>2</sup> Chinese FDI investment in new projects and expansion of existing projects fell by 84 percent in the first half of 2015 as compared to the previous year (from \$ 3.54 billion to \$ 568 million). Thus, China's share of foreign equity investments in Africa are less than 5% of global investments and may be on the decline, though official figures for 2015 are yet to be declared.

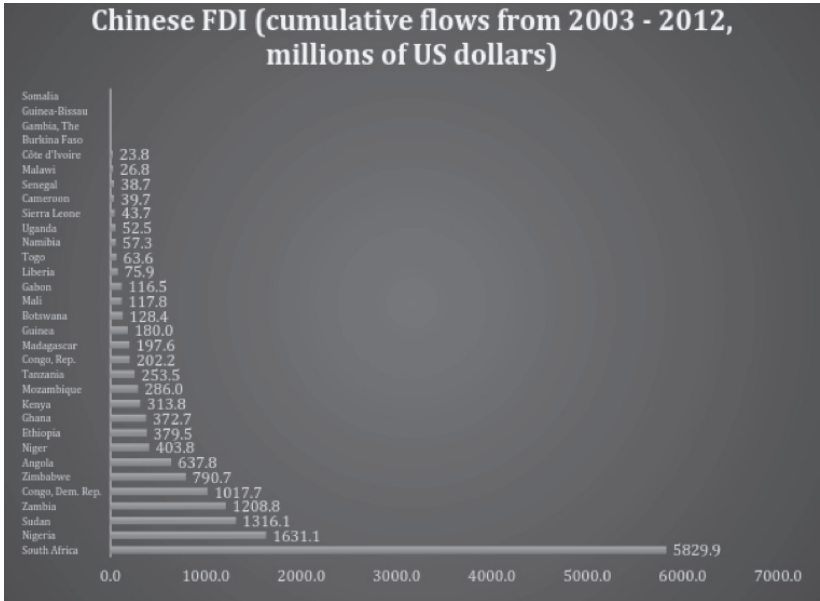
Figure 1: FDI from China to Sub Saharan Africa by year, from 2003 - 2012 (millions of US dollars)



Source: UNCTAD.

China's FDI is concentrated in countries that have natural resources as a significant share of their GDP (Figure 2). For the 2003 – 2012 period, cumulative flows for the top ten FDI destinations were all in natural resource exporting countries such as South Africa, Angola, Nigeria, Democratic Republic of Congo, Sudan, Zambia and Zimbabwe. These countries accounted for more than eighty percent of all FDI flows from China into SSA in this period. However, as Mlachila (2015) points out, that figure is 'inflated' due to the fact that there was a large FDI flow into South Africa in order to purchase banking sector equity in 2008.

**Figure 2: FDI from China to Sub Saharan Africa by destination country, cumulative from 2003 – 2012 (millions of US dollars)**



Source: UNCTAD

A quick snapshot of FDI from source countries shows that China's mean investment in SSA is a little less than sixty million dollars per investment. China's largest investment of 4.8 billion US dollars was made in South Africa in 2008 for the aforementioned banking sector equity.

**Table 1: FDI by source, 2003 – 2012 (millions of US dollars)**

(FDI – millions of US dollars)	Observations	Mean	Std. Dev.	Min	Max
Global FDI	311	855.49	1,514.02	1.00	9,209.00
G7 FDI	196	483.35	1,470.07	0.53	9,383.65
China's FDI	266	59.42	307.41	-	4,807.86

China's FDI is a small percentage of GDP of the destination country and is overshadowed by G7 investments.

**Table 2: FDI as a % of destination country GDP by source, 2003 – 2012 (millions of US dollars)**

FDI - % of GDP	Observations	Mean	Std. Dev.	Min	Max
Global FDI	293	5.55	8.54	0.07	90.95
G7 FDI	192	1.47	3.99	0.00	35.44
China's FDI	256	0.0022	0.0048	-	

As discussed in the determinants of FDI section, there are several variables that could be included in the regression specification. Inflation rates, exchange rate stability, lagged Chinese FDI (to measure agglomeration effects), civil conflict, and other controls were tested in a wider regression model (with country fixed effects). The results are available in an online Appendix.

However, though these additional explanatory variables absorb additional variation in the data, we can create a parsimonious regression with a relatively high goodness of fit while using only three explanatory indicators. Essentially, the regression specification used in this paper (discussed below) mirrors the Chen, Dollar and Tang specifications. Like Chen, Dollar and Tang (2015), market size is used as the first component for the regression. Market size is a widely acknowledged motivation of FDI and it has obtained confirmation from several empirical studies (Chakrabarti, 2001). Moreover, in recent years, with an 'over-invested' Chinese economy, Chinese companies have faced excessive competition, low profit margins and overcapacity (Chen, Dollar and Tang, 2015). Using market size as one of our explanatory variables helps us examine if Chinese companies have been investing abroad in a bid to gain greater access to new and emerging markets over the last decade.

The second explanatory variable in the regression equation is access to natural resources. Conventionally, this has been an important variable to explain FDI. As we have already seen, almost eighty percent of China's investments in Africa are in natural resource rich countries.

Finally, like Chen, Dollar and Tang, stable property rights have been included into the regression as an explanatory variable. In their paper, they find that stable property rights matter to traditional Western companies but are immaterial to Chinese investment.

So the regression specification is as follows -

FDI (as a percentage of GDP) =  $\alpha + \beta_{\text{size}} + \gamma_{\text{NRR}} + \delta_{\text{PA}} + \text{P} + \varepsilon$   
 where:

$\alpha$ : Constant

Size: Size of the domestic market (GDP of the recipient country);

NRR: Natural resource rents as a share of the economy, and

PR: Property rights and rule of law (CPIA index ranging from 1 (least) to 6 (highest))

P: Country fixed effects

Dependent variables for the panel regressions –

- Global FDI as a % of GDP: Defined as (Nominal Global FDI in year  $y_i$  / Nominal GDP of the destination economy in year  $y_i$ ) \*100
- Chinese FDI as a % of GDP: Defined as (Nominal Chinese FDI in year  $y_i$  / Nominal GDP in year  $y_i$ ) \*100

**Table 3: Panel estimation (with country fixed effects) using the Chen, Dollar and Tang specification. T-statistics in parentheses.**

	(1)	(2)	(3)
	Global FDI as a % of GDP	Chinese FDI as a % of GDP	Chinese FDI as a % of GDP (without outliers)
Log GDP	9.266***	0.00791**	0.00678*
	(3.38)	(2.96)	(2.26)
Rule of Law and Property Rights	5.811**	0.00321	0.00776*
	(2.66)	(1.36)	(1.96)
Natural Resource Rents	0.664	0.00138	0.00166
	(0.87)	(1.53)	(1.58)
Constant	-234.8***	-0.202**	-0.187**
	(-3.59)	(-3.13)	(-2.65)

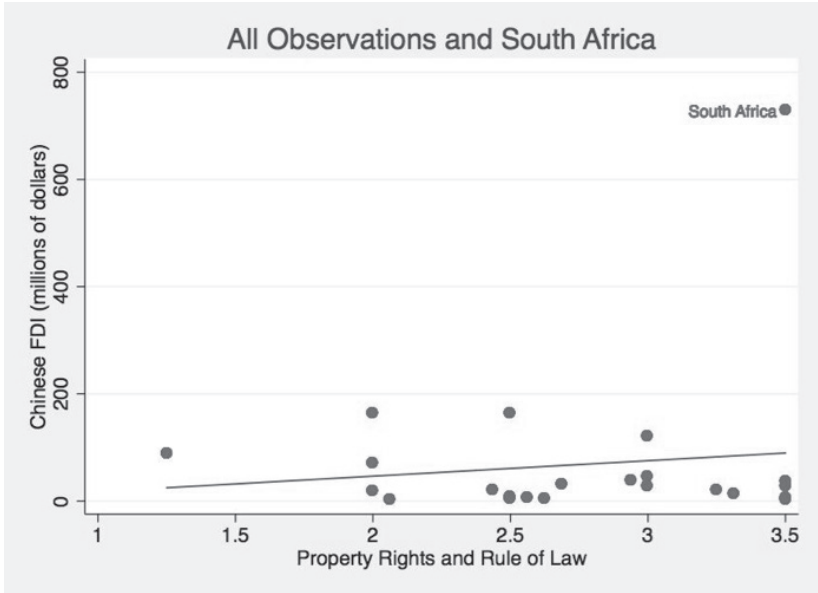


R <sup>2</sup>	.67	.39	.41
t statistics in parentheses			
=** p<0.05	** p<0.01	*** p<0.001”	
N	198	169	146

Thus, using panel data with the actual volume of investments over time, the Chen, Dollar and Tang results broadly hold. The size of the market is statistically and positively associated with increased investment. It appears that stable property rights and rule of law matter to global players but not to China. As expected, with a country fixed effects regression model, where the average effect of the country is removed, natural resource rents are no longer statistically significant explanatory variables.

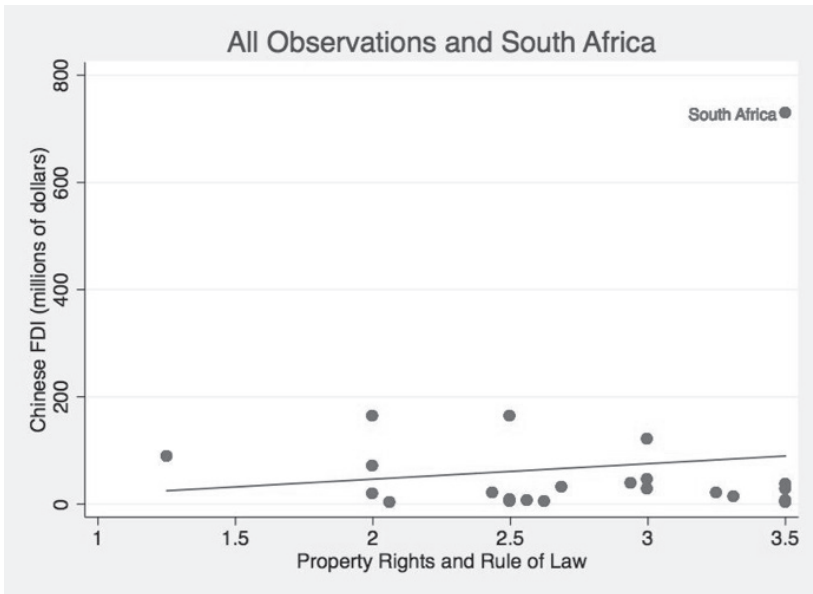
The departure in our analysis from the Chen, Dollar and Tang paper comes in a deeper examination of how and why rule of law and property rights seem to matter to global players but not to China. In order to assess whether these findings are fairly robust, it becomes important to question if one or two outlier countries in our panel are driving these results. Using regression diagnostics (Jack knifed and Cook's distance), it is evident that the results depend on extreme countries that determine the slope of the line. A simple scatter plot with a fitted line illustrates this point. Figure 3 below shows the statistically significant and negative relationship between Chinese FDI and Property Rights & Rule of Law in the absence of any controls.

**Figure 3: Relationship between Chinese FDI and Property Rights & Rule of Law**



As a middle income country, South Africa is not eligible for IDA loans and does not have a CPIA rating for property rights and rule of law. However, just to demonstrate the sensitivity of our model, let us extrapolate South Africa's CPIA index score by looking at South Africa's property rights and rule of law rating from comparable indicators. Global Property Index consistently rates South Africa on par with Ghana over the last decade. Assigning South Africa the same score as Ghana (3.5) makes China's investments incredibly and positively associated with stable property rights and rule of law. The coefficient changes sign and becomes highly statistically significant. Given that South Africa is by far the highest recipient of Chinese FDI in SSA and has the highest Cook's distance rating (greater than 3), it creates a significant impact on the final results, making Chinese FDI appear positively motivated by rule of law.

**Figure 4: Relationship between Chinese FDI and Property Rights & Rule of Law (with South Africa)**



Moreover, the relationship between FDI and rule of law is also sensitive to the inclusion of countries like Angola and Sudan. As seen in Column 3 of Table 3, removing such outliers once again makes China sensitive to rule of law and property rights at the traditional 5% level of significance.

China's largest share of foreign investment is not in Angola or Sudan, but middle income, relatively well governed and stable South Africa. Thus, by examining the regression results with our fixed effects model and through the scatterplot, it is evident that the negative relationship between Chinese FDI and Rule of Law and Property Rights is driven by the fact that South Africa is not an IDA country and does not have a CPIA index ranking.

The focus of this paper has been on the most recent period of China's investments in SSA (2003 – 2012). This period has also coincided with exponential growth in Chinese FDI into the region. However, at less than 5% of global investments (as a flow), China remains a relatively minor player in the FDI arena in SSA.

This paper found that the Chen, Dollar and Tang (2015) hypothesis holds even when we use the actual volume of investments in a panel with country fixed effects. China and the global players are relatively similar in their investment preferences and tend to invest in countries with large domestic markets.

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If investing firms largely care about domestic market size and natural resources, can countries do anything substantial to attract greater FDI investment? Policy makers in SSA can improve the attractiveness of their country to FDI from China by undertaking a few policies. Our analysis suggests that larger countries (and consequently larger markets) tend to attract greater FDI. As the size of a country is fixed, greater regional integration within the preexisting communities in Africa (like SADC, COMESA and ECOWAS, etc.) may be one way to increase the size of the common market and that could contribute to the development of greater FDI.

This paper has also highlighted the sensitivity of results regarding FDI investments in SSA to model and data specification by using China's sensitivity to rule of law and property rights as an illustrative example. The regression results indicate that restricting the regression to exclude outliers makes China positively and statistically sensitive to property rights and rule of law. The scatter plots with the fitted lines confirmed these results and also showed that the absence of South Africa may be driving the 'China invests in countries with a poor record of rule of law and property rights' narrative.

An alternative explanation for China's investments in Angola and Sudan in particular may be that China was a late entrant in the FDI world and the low hanging fruit of lucrative investments in democratic regimes had already been tied up by the first movers (Western countries). The only countries that Western companies were discouraged from operating in countries with weak rule of law by the Foreign Corrupt Practices Act and Dodd Frank's Section 1502 rule on conflict materials. These countries became the most viable choice for Chinese investment as Chinese investors could exploit these relatively undercapitalized markets.

Thus, fears about Chinese investments in Africa may be exaggerated. If policy makers across the globe are to understand the true nature of increased competition from China, they require a more realistic understanding of China's engagement with Africa instead of merely an alarmist one. Once we look beyond the paranoia, we can focus on other aspects of China's presence in Africa that perhaps deserve greater attention.

One particular facet of China's presence in Africa that Brautigam (2011) argues deserves greater attention is that China is a country where the norms of corporate social responsibility are still developing. Chinese entrepreneurs come from a country with lower safety standards and operating in the new African space may cause a decline in general standards and an increase in risks to the environment and to labor (*ibid*). This is an avenue where policymakers can play a strong role through advocacy, setting better

examples and helping African countries improve their local enforcement capacity. Non-government organizations can be similarly trained to provide an advocacy or overseer role.

Additionally, this paper suggests that with a limited number of countries in SSA and a limited number of data points about Chinese foreign direct investment, future empirical work may be sensitive to model specification, the choice of dependent variables, and choice of dataset. Thus, perhaps the strongest recommendation from this research paper is to treat each result emerging from this field with caution.

## NOTES

<sup>1</sup>The Panel dataset, the STATA log and do file have been uploaded online and are freely available via a public Dropbox link and on Academia. For any particular queries regarding the data, please email me at Kabira.namit@gmail.com

<sup>2</sup> <http://www.ft.com/cms/s/3/10648918-773b-11e5-a95a-27d368e1ddf7.html#axzz3sikknim2>

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#### APPENDIX: LIST OF COUNTRIES IN THE REGRESSION

COUNTRY	COUNTRY_ID	INCOME_GROUP
Angola	AGO	Upper middle income
Botswana	BWA	Upper middle income
Burkina Faso	BFA	Low income
Cameroon	CMR	Lower middle income
Congo, Dem. Rep.	COD	Low income
Congo, Rep.	COG	Lower middle income
Côte d'Ivoire	CIV	Lower middle income
Ethiopia	ETH	Low income
Gabon	GAB	Upper middle income
Gambia, The	GMB	Low income
Ghana	GHA	Lower middle income
Guinea	GIN	Low income
Guinea-Bissau	GNB	Low income
Kenya	KEN	Lower middle income
Liberia	LBR	Low income
Madagascar	MDG	Low income
Malawi	MWI	Low income
Mali	MLI	Low income
Mozambique	MOZ	Low income
Namibia	NAM	Upper middle income

Niger	NER	Low income
Nigeria	NGA	Lower middle income
Senegal	SEN	Lower middle income
Sierra Leone	SLE	Low income
Somalia	SOM	Low income
South Africa	ZAF	Upper middle income
Sudan	SDN	Lower middle income
Tanzania	TZA	Low income
Togo	TGO	Low income
Uganda	UGA	Low income
Zambia	ZMB	Lower middle income
Zimbabwe	ZWE	Low income

## APPENDIX 2

FDI INFLOWS FROM 2003 - 2012 (MILLIONS)		
COUNTRY	CUMULATIVE G7 FDI	CUMULATIVE CHINESE FDI
Angola	10097.68	637.8
Botswana	29.29	128.43
Burkina Faso	92.77	0
Cameroon	765.89	39.69
Congo, Dem. Rep.	63.48	1017.67
Congo, Rep.	3187.72	202.21
Côte d'Ivoire	575.89	23.84
Ethiopia	124.03	379.53
Gabon	1059.73	116.51
Ghana	1720.93	372.69
Guinea	25.49	179.96
Kenya	1825.16	313.84
Liberia	1376.05	75.89
Madagascar	375.03	197.56
Malawi	3.22	26.83



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Mali	117.18	117.77
Mozambique	172.06	286.05
Namibia	197.58	57.26
Niger	12.42	403.81
Nigeria	13926.33	1631.14
Senegal	504.39	38.72
Sierra Leone	8.04	43.73
South Africa	57623.8	5829.91
Sudan	53.28	1316.14
Tanzania	122.02	253.46
Togo	151.39	63.64
Uganda	16.64	52.5
Zambia	74	1208.78
Zimbabwe	434.17	790.71
Grand Total	94735.66	15806.07

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## GENDER GAPS IN IRAN: EDUCATED WOMEN'S LIMITED PARTICIPATION IN THE WORKFORCE

*Saman Rejali*

The purpose of this analysis is to identify factors besides education that influence women's rates of labor force participation in Iran in order to recommend how they can be addressed through policy changes. The case study of Iran illustrates that standard policy models advocating for education as a pathway to higher female employment rates do not completely account for the social and cultural factors, which significantly influence educated women's levels of participation in the workforce. More women than men graduate from Iran's higher education institutions, yet this is not reflected in the country's work force. There are three main causal factors leading to this seeming paradox. First, there are long entrenched gender ideologies that have created a public/private divide in the country, where a woman's role is limited to the household if the household does not depend on a second source of income. Second, even if women are interested in partaking in the labor force, occupations are viewed through a gendered lens and only some are considered female-friendly. Third, the social stigma against women partaking in occupations meant for men is coupled with the fact that relevant

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jobs to fields of study are reserved for those with connections, which keeps many willing women from finding employment. By taking the aforementioned factors into consideration, more thorough policy analyses can be conducted into the effective measures that would allow for bridging the gender gap in the Middle East and North Africa (MENA) region.

## INTRODUCTION

Iran is one of several countries in the Middle East and North Africa (MENA) region where there has been a near reversal of the gender education gap since the turn of the century (Schwab et al. 2014, 219). Yet, while women's enrollment rates in institutions of higher learning in Iran exceeded that of men's by 11 percent as of 2006, the gap between male and female employment in the country is widening (Greig et al. 2006, 76). Women are increasingly staying at home rather than participating in the workforce (76).<sup>1</sup> As of 2015, female participation in Iran's labor force stood at a meagre 18 percent (Bekhouche et al. 2015, 202). Instead of female participation rates increasing as more women obtain higher levels of education, in Iran the female labor force participation (LFP) rate has almost halved since 2006 (Greig et al. 2006, 76). Presently, a higher percentage of Iran's women complete tertiary level education compared to men, yet the country has one of the five-lowest female LFP rates in the world (Bekhouche et al. 2015, 202; Schwab et al. 2014, 28). This paper analyzes the main factors that contribute to Iran's high employment gap between men and women.

Human capital theory (Mincer 1974; Becker 1991) predicts policies that facilitate women's participation in institutions of higher education will positively influence their rate of labor force participation. Proponents of this stance argue that policy reforms redressing the education gap between the sexes will open more pathways for women in the labor force. After all, in many Western countries as women received higher education at higher rates their participation in the workforce also increased. However, the case of Iran demonstrates that not all countries have followed this trajectory.<sup>2</sup>

Table 1. Gender Gap Scores of Countries in the “Upper Middle Income” Category, 2015

Data: Global Gender Gap Report 2015, 17

Upper-Middle Income		
Country	Overall Score	Overall Rank
South Africa	0.7527	18
Ecuador	0.7455	21
Bulgaria	0.7444	22
Cuba	0.7317	30
Argentina	0.7317	31
Belarus	0.7300	32
Namibia	0.7219	40
Kazakhstan	0.7210	43
Peru	0.7198	45
Panama	0.7195	46
Costa Rica	0.7165	48
Botswana	0.7129	51
Jamaica	0.7128	52
Colombia	0.7122	53
Serbia	0.7086	54
Thailand	0.7027	61
Macedonia, FYR	0.6943	70
Brazil	0.6941	71
Romania	0.6936	72
Montenegro	0.6934	74
Dominican Republic	0.6906	78
Mexico	0.6900	80
Albania	0.6869	83
Venezuela	0.6851	86
China	0.6830	87
Hungary	0.6701	100
Azerbaijan	0.6753	94
Belize	0.6701	100

Maldives	0.6557	105
Mauritius	0.6541	106
Malaysia	0.6520	107
Suriname	0.6504	109
Angola	0.6311	121
Fiji	0.6286	122
Tunisia	0.6272	123
Turkey	0.6182	125
Algeria	0.6182	126
Jordan	0.5968	126
Lebanon	0.5923	135
Iran, Islamic	0.5811	137

There are three main causal factors contributing to why more women than men graduate from Iran's higher education institutions without subsequent increases in women's participation in the country's workforce. First, there are long entrenched gender ideologies that have created a public/private divide in the country, as part of which women's role is limited to the household if the household does not depend on a second source of income. This view, however, is divergent from the view the populace holds towards higher education, which is seen as a necessary stepping stone before women are wedded off and plays a significant role in the bride price determined for Iranian women.<sup>3</sup> Second, even if women are interested in partaking in the labor force, occupations are viewed through a gendered lens to be either female-friendly and appropriate for women or male-friendly and inappropriate for women. Third, the social stigma against women partaking in occupations meant for men is coupled with the fact that relevant jobs to fields of study are reserved for those with connections, which keeps many willing women from finding employment.

Some of these factors, such as the role of gender ideologies and the public/private divide in households can be extended to the broader MENA region, and taken into consideration in future policy considerations targeted at decreasing the LFP gap in the region. Other factors, such as the role of the bride price in determining women's enrolment in institutions of higher education are particular to Iran and critical in explaining the heterogeneity witnessed in terms of the gender gap divide in the country.

To elaborate on these factors this paper outlines why closing the gender gap in employment is important. It then assesses the previous approaches

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applied to closing the gap in the West. This paper evaluates the trajectory of Iranian gender rights in relation to the education and employment gaps from the post-revolutionary period until the present day. Finally, the paper identifies three factors that should be addressed in order to increase the limited participation of educated Iranian women in the country's workforce.

## WOMENOMICS

### **Why Is It Important to Close the Employment Gap?**

Before tackling why there is a low education gap yet high employment gap in Iran it is necessary to establish why closing the employment gap is a policy issue worth addressing. First, closing the employment gap positively affects countries' Gross Domestic Product (GDP) (The Economist 2011, 4). Quantitative analyses reveal that economic output increases as the gender gap in employment decreases. In the United States, for example, the GDP is 25 percent higher with women in the workforce than without. Eliminating the remaining employment gap could boost US GDP by 9 percent.<sup>4</sup> Second, getting women to work should help remedy labor shortages (5). Third, higher female labor force participation positively affects the number of women in senior positions. High numbers of women in senior positions are, in turn, positively correlated with better company performance. Finally, women's entry into the workforce can strengthen their position in the political system in terms of collective action, and can reinforce women's rights (Haghighat-Sordellini 2011, 179). Collectively, these factors point to the urgency of closing the employment gap—particularly in countries such as Iran where it is widening.

## BACKGROUND

### **Past Approaches to Closing the Employment Gap in the West**

Previous approaches to closing the employment gap have focused primarily on closing the education gap as remedy. According to the human capital theories of Mincer (1984) and Becker (1991), there is a causal relationship between levels of education and quality of employment and income. Therefore, investment in women's education and training should positively influence their rate of labor force participation. Indeed, this is the trajectory observed for many countries in the Western hemisphere that underwent what Goldin (2006) terms "A Quiet Revolution" of increased female participation in the labor force, which followed as a by-product of increased female enrollment in institutions of higher education (1-3).<sup>5</sup>

Yet, as Ganguli, Haussmann and Viarengo's (2009, 10) cross-country analysis of 40 sample countries reveals, and the case of Iran exemplifies, not all countries have followed the aforementioned Western trajectory, whereby a more educated labor force translates into higher female LFP. For these countries, the application of Western modernization theory does not hold up (Haghighat-Sordellini 2011, 175), since the closing of the education gap does not necessarily "foretell" the closing of the employment gap (Ganguli, Haussmann and Viarengo 2009, 1).<sup>6</sup> Ganguli, Haussman and Viarengo's research reveals that in fact the relationship between the decline of the education gap and the decline of other gaps such as the employment gap is "weak and varies across countries." Thus, there is a large share of the labor force participation gap for each country that is left unexplained, even after accounting for the education gap (19).

Given that Ganguli, Haussmann and Viarengo's lauded research and consequent results run counter to previous theories directly tying women's education to their rate of LFP, it is pertinent to conduct a case-study to determine the other causal factors that influence otherwise educated women to abstain from partaking in the workforce. The purpose of this analysis is to identify the other factors besides education that impact women's rates of labor force participation in Iran, in order to recommend that they be address through policy changes. To this end, the following section outlines the efforts for gender equality in Iran and the principal factors that help show why Iranian women compose only 18 percent of the share of the labor force (Bekhouche et al. 2015, 52).

### **Post-Revolutionary Efforts for Gender Equality in Iran**

It is important to highlight the efforts made in achieving gender equality in Iran after the Islamic Revolution of 1979, as they reveal an important trend across the past 36 years. While women have consistently sought political inclusion in the country, there has been no active movement by women inside Iran to fight for their inclusion in the workforce.<sup>7</sup> As such, the Islamic regime's policies towards women and their non-political rights have driven the trajectory of gender rights in the country because they were left unmitigated by external pressures from civil society, including feminist organizations (Povay 2001, 44-45).

There are four key post-revolutionary periods that mark the governmental policy shifts impacting gender rights, and thus gender gaps, in Iran. The first period is the two years from 1978 to 1980, marking the build-up to the 1979 Revolution and its immediate aftermath. During this period Ayatollah Khomeini, the clerical leader that would dethrone

Reza Shah of Iran, mobilized women against the monarchy and gained their allegiance by endorsing their uniquely political rights (Kian 1997, 76). Concomitantly, however, under the Islamic civil and penal laws of Sharia, women lost their civil rights.<sup>8</sup>

**Table 2. Number and Percent of Student Applicants to University Admission Exams, 1983-2001, by Sex**

**Data: Karnameh Haghighi and Akbari 2005, 81**

Year	Women	Men	Total	% Women	% Men
1983	131,427	181,240	312,667	42	57
1984	133,066	218,197	351,263	38	63
1985	143,350	254,274	397,624	36	64
1986	202,841	383,245	586,086	35	65
1987	184,532	310,280	494,812	37	63
1988	159,783	249,420	409,203	39	61
1989	161,635	279,549	441,184	37	63
1990	301,992	488,998	790,990	38	62
1991	317,720	513,459	831,179	38	62
1992	357,430	554,821	912,251	39	61
1993	397,479	621,391	1,018,870	39	61
1994	456,754	656,064	1,112,809	41	59
1995	558,531	718,651	1,277,182	44	57
1996	582,535	676,493	1,259,028	46	54
1997	665,411	684,292	1,349,703	49	51
1998	739,665	696,739	1,436,404	51	49
1999	788,448	672,367	1,460,815	54	47
2000	818,972	640,560	1,459,532	56	44
2001	913,305	680,185	1,593,521	57	43

The peak in the regression of women's rights in Iran was during the aftermath of the revolution and throughout the eight years of the Iran-Iraq war from 1980 to 1988 (Rezai-Rashti & Moghadam 2011, 423). During this very ideological period of post-revolutionary state-formation, the Islamization of the country's legal system put into place the misogynist beliefs of the Ulama who reinforced the public-private divide between the genders (Kian 1997, 76).<sup>9</sup> Perceiving women "primarily as biological reproducers and house workers" the leaders of the Islamic regime confined



women to the private realm of the house. The duties of the “New Muslim Woman” were solely that of a wife and mother who “sacrifices her sons and husband for the Islamic cause” (Kian 1997, 75).<sup>10</sup> Thus, limitations were imposed on women’s rights both in the public and private realms.<sup>11</sup> Most notably, women were excluded from the workforce across many sectors<sup>12</sup> and barred from numerous fields of study.<sup>13</sup> Expectedly, during this period both the education and employment gaps in Iran increased: by 1986, the female workforce participation was less than 10 percent, down from 13 percent in 1976.

**Table 3. Number and Proportion of Women Admitted to University by Field of Study, 1991-2002**

Data: Kazemipour 2004, 34

Fields of study	1991-1992		2002-2003	
	Total admitted	% Women	Total admitted	% Women
Humanities	28,139	31	88,481	61.9
Sciences	10,305	37.9	22,296	78.2
Agriculture & Veterinary Sciences	4,101	2.5	14,499	51.1
Technical & Engineering	13,392	6.6	56,240	20.9
Medicine	14,347	46.1	24,098	73.7
Arts	1,149	38.1	10,422	74.5

The third period, following the end of the Iran-Iraq war, was marked by the death of the Supreme Leader Khomeini, and the ascendancy of Akbar Hashemi Rafsanjani (1989-1997) to the presidency. Rafsanjani’s tenure was marked by privatization and liberalization policies. During this time there was an exponential increase in women’s participation in higher education (Rezai-Rashti & Moghadam 2011, 424-425). The Islamic Azad University, a private university with more than 400 branches across the country, was instated and direct efforts were made to develop the country in the aftermath of the war by lifting the remaining restrictions on women’s education and employment. By 1993, women were allowed to partake in all fields of study at university, which could have opened up new employment opportunities for women.<sup>14</sup> In practice, however, women’s share of

the labor force remained at a comparatively low rate of 12.7 percent; less than before the revolution.

Following Rafsanjani the reformist Mohammad Khatami won the presidency from 1997 to 2005, and ensured that Iran's environment was "more conducive to female participation in higher education."<sup>15</sup> As a result, the admission of women to universities increased and by 1998 the gender education gap had been reversed, with female enrollments higher than that of males (Table 2). Moreover, there was an increased female participation in every field, with the period between 2002 to 2003 witnessing more female students than male students in all fields except engineering (Table 3).

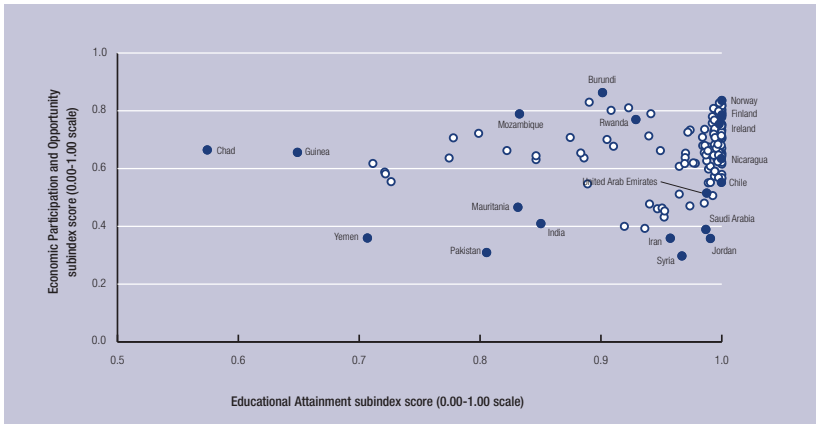
However, from this period onward, higher education did not translate to either better employment opportunities or higher access to decision-making positions for women in Iran (Rezai-Rashti & Moghadam 2011, 426-28). The employment gap was further widened during the era of Ahmadinejad's presidency (2005-2014), when he "purged" many of the female employees—particularly those employed in the social sciences and humanities fields—who were affiliated with the reform-seeking "Green Movement" of 2009.

### **Current National and Regional Trends**

Despite Ahmadinejad's policies, there have generally been "vast investments in increasing women's education levels" in Iran, as well as the rest of the MENA region over the last decade (Schwab et al. 2014, 24). Currently, the country has a higher percentage of women in tertiary education compared to men (28). However, while educational attainment in Iran is high, economic participation is low (42; Figure 1). As Fennell (2008) points out, in order to understand the impact of education, we need to look at its impact on the work-force composition. Unfortunately, in the case of Iran the female LFP rate has decreased at an alarming rate from 39 percent in 2006 to a mere 18 percent in 2015 (Greig et al. 2006, 76; Bekhouche et al. 2015, 202). On the other hand, male workforce participation has remained steady over the last decade, ranging between 74 and 77 percent. A similar pattern of gender inequality is also evidenced in the difference in wages, with women earning 17 cents to every dollar earned by men (Bekhouche et al. 2015, 54). These indices thus mark Iran as one of the five-lowest performing countries in terms of women's workforce participation. (Schwab et al. 2014, 28).

**Figure 1. Economic Participation and Opportunity Sub-Index vs. Educational Attainment Sub-Index**

**Data: Global Gender Gap Report 2014, 42**

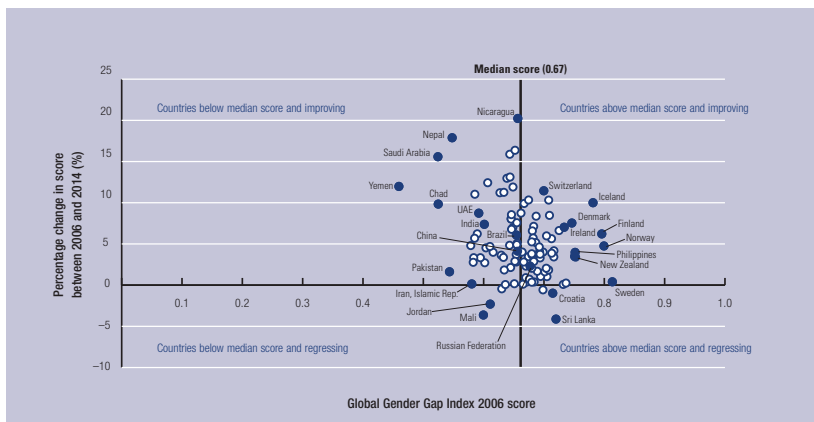


*Source: Global Gender Gap Index 2014*

*Note: Economic Participation and Opportunity and Educational Attainment sub-index scores have been truncated to enhance readability*

Regionally, the low education gap and high employment gap observed in Iran is not unique to the country. This trend can also be observed in other countries across the MENA region, including in Syria, Jordan, and Saudi Arabia (Figure 2). There are 17 countries in the world that have ranked especially low in their ability to close the economic participation and opportunity gap between men and women. In all of these countries, less than 50 percent of the economic participation and opportunity gap has been closed, and 11 are from the MENA region, with Iran, Yemen, Jordan, and Syria among those holding the last five spots.

Figure 2. Gender Gap Country Performance Relative to Starting Point  
Data: Global Gender Gap Report 2014, 36



Source: *Global Gender Gap Indexes 2006 and 2014*

## THE CASE OF IRAN:

### A HIGH EMPLOYMENT GAP & LOW EDUCATION GAP

What are some of the factors that could explain why more women than men are graduating from Iran's institutions of higher education, yet only 23 women are hired for every 100 men of equal education and skills (Schwab et al. 2014, 64)? Iran's low education gap does not significantly impact its high employment gap but several other trends besides education could explain why Iranian women with advanced degrees do not end up joining the country's workforce. The following section elucidates these factors and recommends they be brought to light for policy solutions.

#### Higher Education as a Necessary Stepping Stone Before Marriage

To understand why an educated Iranian woman would stay at home rather than work, the assumption that women attend institutions of higher education solely in order to become more employable needs to be challenged. In Iran, there are several other explanations for why women attend university. An alternative reason is that women's attainment of higher education in Iran is seen as a necessary stepping stone before getting married. As Haghghat-Sordelinni (2011) points out, Iranian families often support their daughter's efforts to attend university, as the attainment of a higher education degree improves the daughter's chances of "finding a suitable husband of a similar or higher social status," which in turn adds to the family's collective status (176).

Furthermore, a more educated woman can ask for a higher *mehrieh* or bride price under the Islamic marriage contract. As Rezai-Rashti & Moghadam (2011, 435-36) point out, the Iranian practice of paying the bride price traditionally comes in two parts: one part which is paid at the time of marriage, and another which is paid upon the dissolution of marriage or the husband's death. A larger portion is customarily excluded from the initial payment because it allows the woman room to defend her rights in the marriage, and counter the risk of divorce by threatening the payment of the remaining *mehrieh*. The transcripts for one of the interviews that Rezai-Rashti conducted perfectly capture how this bride price works in practice. As the interviewee states:

*Mehrieh should not be seen in the traditional sense. In this country women cannot negotiate their civil and legal rights through legal means. I was married for five years and found out that I could not live with my husband any longer. We discussed divorce but he said no. My mehrieh was 1370 gold coins. I threatened that I would litigate for my mehrieh. This was the only way that I could secure my divorce. I am absolutely sure that because of this high mehrieh he agreed to divorce.*

As the interviewee's response illustrates, the impact of the bride price in Iran is not actually to buy the bride, but rather to ensure that she has a reserved negotiating power that can counteract the discriminatorily patriarchal family laws that are enforced by the government.<sup>16</sup> Thus, many Iranian women get a higher education and use the credentials as leverage to get a higher *mehrieh* and acquire more negotiating power within their marriage.

Another appeal of higher education to Iranian women is that it allows for them to partake in an activity between finishing high school and getting married and serves as a venue for men and women to meet each other. Due to the limited rights that women have in Iran, going to university is increasingly seen as the only right women have in society (Haghighat-Sordellini 2011, 175). As Shirin, an undergraduate student in Iran points out, "some [women] study because they have nothing else to do" (Rezai-Rashti & Moghadam 2011, 433). Given such limited freedoms, the "Islamic packaging" of higher education has meant that these institutions have become the only "viable" venues through which "women can alter their public role and status (Haghighat-Sordellini 2011, 175)." As Rezai-Rashti's qualitative interviews illustrate, institutions of higher education leave a space for women to feel more confident by doing well

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academically and foster gender equalizing views in both genders as men witness women's ability to participate positively (Rezai-Rashti & Moghadam 2011, 432).

### **The Public/Private Divide: Women's Role in the Home**

Even though universities foster more gender equal views, Iran is still by and large a patriarchal society (Haghighat-Sordellini 2011, 177). Therefore, the prevalent view is one that men are the breadwinners and they provide the finances for their family members. Accordingly, while many women obtain university degrees, whether for better marriage prospects, higher bride prices, or to meet their future husband, they do not see a necessity in working upon graduation unless the male breadwinner cannot cover the finances of the household.

As Haghighat-Sordellini (2011) points out, there is little incentive for women to work outside the home, since whether they work or not, they are still held accountable for all of the domestic responsibilities of the house (176; Olmsted 2011). In many MENA countries, including Iran, the government sees it as more beneficial to reinforce this public/private divide and "patriarchal gender norms." The byproduct of this process is that women are relegated to the home where they continue to carry out unpaid labor as housewives and mothers, while men continue to be the breadwinners (Becker 1981).

### **Gendered Occupations & Perspectives in a Stagnant Economy**

The patriarchal social structure in Iran also plays a critical role in the hiring process of females, since men, as the breadwinners responsible for many dependent others, are given priority over women in access to jobs (Haghighat-Sordellini 2011, 176). This is aggravated in Iran due to high unemployment rates of 16.8 percent for women and 9.1 percent for men, and an economy that cannot support more workers (Schwab et al. 2014, 211; Haghighat-Sordellini 2011, 177).

Moreover, since occupations are seen through a gendered lens of female-appropriate and male-appropriate jobs, higher education becomes a necessary requirement for women seeking employment but certainly not a sufficient one. This can be attributed to several gendered limits on women's employment. First, men have more options available to them because there is a range of male-only occupations—such as taxi driver, factory worker, or security guard—that do not require college degrees, while there are few female friendly occupations available (Rezai-Rashti & Moghadam 2011, 433). Second, it is very difficult for educated women

with the correct credentials to obtain jobs in technical fields, since “the perception is that men are more capable of performing these jobs.” Third, employers prefer to hire men, because they fear that the populace and fellow employers “would not accept women’s authority.” This limitation in particular is reflected in the 0.17 female to male ratio of legislators, senior officials and managers in Iran (Schwab et al. 2014, 67).<sup>17</sup> Fourth, many women who do want to work may be dissuaded because they do not have the right connections, which are the primary way to obtain jobs in Iran. Alternatively, they cannot find relevant work, especially if their field of study was in the humanities and social sciences.

Coupled with a lack of appropriate employment policies (Vice Presidency 2014, 5), the patriarchal structure of society can also create a hostile work environment for the women who do choose to work in the public sphere. In such cases, the corollary to female LFP can be the exploitation of female employees by employers.

## CONCLUSION

Analyzing the seeming paradox of the widening gender gaps in Iran despite the nearly reversed education gap reveals that there are other factors besides access and participation in educational institutions that greatly influence women’s participation in the labor force. The case study of Iran illustrates that standard policy models advocating for education as a pathway to higher female employment rates do not completely account for the social and cultural factors which significantly influence educated women’s levels of participation in the workforce. Future policies exploring gender gaps and women’s LFP should account for these factors and explore how trends within Iran apply to the broader MENA region. Some of these factors, such as the role of gender ideologies and the public/private divide in households can be extended to the broader MENA region, and should be taken into consideration in future policy considerations targeted at decreasing the LFP gap in the region. Other factors, such as the role of the bride price in determining women’s enrollment in institutions of higher education are particular to Iran and critical in explaining the heterogeneity witnessed in terms of the gender gap divide in the country. Taken together, factors such as the various purposes for obtaining a higher education for Iranian women, the ongoing public/private divide in a patriarchal society, and economic limitations coupled with gendered views should inform future policy investigations into why LFP gaps exist in the MENA region despite decreasing and nearly reversed education gaps.

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## NOTES

- <sup>1</sup>The education gap refers to the “difference in educational attainment between men and women, as measured by years of schooling and levels of education” (Haussman, Ganguli and Viarengo 2009, 1).
- <sup>2</sup>The employment gap, or the LFP gap, refers to the difference between the share of men in the labor force with that of women (Haussman, Ganguli and Viarengo 2009, 8).
- <sup>3</sup>Mehrieh, the pride price custom practiced in Iran, is a marital gift under the Islamic marriage contract, which is “payable to the bride by the groom after the consumption of marriage. The nuptial gif is usually divided into two parts: that which is paid at the time of marriage, and the deferred amount, which is paid upon the dissolution of the marriage or the husband’s death.” (Rezai-Rashti 2011, 435)
- <sup>4</sup>Additionally, eliminating the employment gap in Europe could boost the continent’s GDP by 13 percent and Japan’s GDP by 16 percent, according to data aggregated by the Economist (2011, 4-5).
- <sup>5</sup>Goldin (2006) outlines that the Western trajectory of increasing female LFP started in the 1920s. At that time, young and single women had jobs in factories and as domestic servants; working women were those who were forced to work due to dire economic circumstances (3-4). In the 1930s, it became more common for girls to go to high school and college, and attain a different caliber of jobs in offices. In the 1940s, it became more acceptable for married women to work, but in “women-friendly” part time jobs as secretaries and teachers (5). By the 1970s, women “having watched their mothers go to work, took it for granted that they would do the same” (The Economist 2011, 3-4). This was facilitated by the inception of the birth control pill, which allowed women to put their careers first, and marry later. It was also influenced by the rising rate of divorce, which engrained in the new generation of women the importance of investing more in their education, and thereafter having an independent income. This rise in female LFP was reflected in the narrowing education gap. By the 1980s, American women had started to graduate at the same rate as men, and have since overtaken men in education.
- <sup>6</sup>The analysis is of 40 countries composed of 27 countries with a closed education gap and 13 with an existing education gap (Ganguli, Hassmann & Viarengo 2009, 10).
- <sup>7</sup>An example of such quests in the rise of “Islamic feminist” groups, who see politics as “an agent for radical change in women’s status” in Iran (Kian 1997, 75).



- <sup>8</sup>The paradox of women having equal political rights, but unequal civil rights is assessed by Kian (1997), who points out how “women’s legal evidence is not accepted unless it is corroborated by that of a man, whereas her vote is equal to a man’s vote” (78). Under Sharia law women lost their right to initiate divorce, and men regained their right to divorce women unilaterally and engage in polygamy (Rezai-Rashti & Moghadam 2011, 423).
- <sup>9</sup>The Ulama are the group of Muslim religious “scholars” in Iran who came into power after the success of the 1979 Islamic Revolution led by Ayatollah Ruhollah Khomeini. They espouse their interpretations of Islamic jurisprudence, which have historically been patriarchal—particularly in their assertion that a woman’s proper place belongs in the home as a wife and caretaker.
- <sup>10</sup>The Islamic regime repealed the Shah’s Family Protection Act of 1967, which heralded women’s rights on numerous fronts (Rezai-Rashti & Moghadam 2011, 423-424). Among other rights, the Shah’s Family Protection Act of 1967 gave women more rights in divorce and custody of underage children, and restricted the right of men to have more than one wife (Rezai-Rashti & Moghadam 2011, 423).
- <sup>11</sup>The limitations imposed under Islamic law included but were not limited to: the enforcement of the Islamic dress code, enforcement of the Islamic veil, limitations in women’s rights for divorce and child custody, and the “purification” of public and private sectors of secular women (Kian 1997, 76-77).
- <sup>12</sup>Women were barred from acting as judges, and women were removed from top level government posts (Rezai-Rashti & Moghadam 2011, 423).
- <sup>13</sup>The fields of study from which women were barred included the veterinary sciences, geology, mining, and some engineering programs (Rezai-Rashti & Moghadam 2011, 423).
- <sup>14</sup>The expansion of universities resulted in increased enrollment in tertiary education of women from lower-middle class and rural regions (Rezai-Rashti 2011, 54).
- <sup>15</sup>This view was also reflected in the attitudes of the Iranian populace. A World Values Survey in 2001 found overwhelming disagreement with the statement “university education is more important for a boy than for a girl” (Moaddel 2007, 221).
- <sup>16</sup>The legal discrimination against women is especially pronounced when it comes to their limited rights within the family (Butch 2015). Men can unilaterally decide to divorce; in the context of the court, a woman’s testimony is weighed less than that of a man’s. Married women also require their husband’s approval to travel abroad.
- <sup>17</sup>Additionally, women hold only 9 out of 288 seats in parliament and there is a 0.11 female to male ratio of women in ministerial positions (Gender Gap Report 2014, 75-76).

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## PROTESTS, POLICING, AND CRIME: AN ANALYSIS OF EVIDENCE REGARDING THE FERGUSON EFFECT

*Alisa Tiwari*

Numerous scholars and law enforcement officials claim there is a “Ferguson Effect,” referring to spikes in violent crime in certain American cities. According to this theory, protests against alleged police misconduct and heightened scrutiny of law enforcement have caused officers to pull back from proactive policing efforts, thereby emboldening criminals and allowing crime across America to escalate. This paper addresses such claims, investigating the proposed Ferguson Effect. Ultimately, it finds that the theory is unconvincing: There is little reason to believe that such an effect is driving up crime rates across the nation or locally in jurisdictions where criticism of the police has been marked. Furthermore, research on law enforcement contradicts the idea that scrutiny of the police leads to declines in proactive policing. Advocating a theory without evidence, especially one that has widespread implications about the actions of our law enforcement officers and citizenry, is at best premature and at worst detrimental and misleading.

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## INTRODUCTION

From Ferguson to Baltimore to Chicago, the country has experienced outbreaks of protest following fatal encounters with the police. While race relations and police accountability have received much public attention, a dialogue concerning the consequences rather than the causes of such protests has also emerged. On May 29, 2015, *The Wall Street Journal* published an op-ed titled “The New Nationwide Crime Wave.” In the article, Manhattan Institute fellow Heather Mac Donald described a rise in homicides and other major crimes, claiming that America’s two-decade-long decline in crime may be over. She attributed this to a Ferguson Effect, explaining, “The most plausible explanation of the current surge in lawlessness is the intense agitation against American police departments over the past nine months... This incessant drumbeat against police has resulted in... officers [scaling] back on proactive policing” (2015). A few months later, *The New York Times* elevated the conversation, publishing, “Murder Rates Rising Sharply in Many U.S. Cities.” Reporters Monica Davey and Mitch Smith wrote, “Cities across the nation are seeing a startling rise in murders after years of declines” (2015). To explain this crime increase, the authors referenced Milwaukee, St. Louis, Baltimore, Washington, New Orleans, Chicago, Kansas City, Dallas, New York, and Philadelphia—all of which have indeed experienced upticks in homicides. Davey and Smith then lent further legitimacy to the Ferguson Effect as an explanation, noting, “The notion that less aggressive policing has emboldened criminals... is a popular theory for the uptick in violence” (ibid.).

At first glance, the theory seems plausible. After a series of controversial shootings of unarmed black men, one could imagine that a glaring spotlight on police activities might cause officers to pull back from proactive policing efforts, causing crime to increase. However, these ideas were met with intense criticism as well as applause, eliciting thousands of comments online and myriad responses in an array of publications. The Ferguson Effect soon became part of the daily news cycle, as politicians, police chiefs, reporters, and academics joined a heated debate to discuss: Are we experiencing a national crime spike due to a substantial shift in policing—a less aggressive stance that is encouraging criminal activity?

This paper finds that there is little evidence for a Ferguson Effect in cities across the nation or even locally in jurisdictions where criticism of the police has been marked. It explains the Ferguson Effect and its origin; examines available evidence to evaluate whether the Effect is causing a national crime spike or whether criticism of the police could be impacting

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crime in jurisdictions at a more local level; and concludes by considering some of the policy implications of this debate.

## BACKGROUND

Mac Donald was not the first to mention the “Ferguson Effect.” The term originated in November 2014, months before her article, when St. Louis Police Chief Sam Dotson referenced the city’s crime spike, claiming, “It’s the Ferguson effect. . . I see it not only on the law enforcement side, but the criminal element is feeling empowered by the environment” (Byers 2014). He voiced the theory that protests against alleged police misconduct, in particular the reactions to the deaths of Michael Brown and Freddie Gray, are causing crime increases (Davey and Smith 2015). More specifically, the theory posits that heightened criticism of the police has demoralized and frightened officers to such an extent that they refrain from vigorous enforcement activities, such as arrests, traffic stops, and field interviews. This less aggressive policing is believed to embolden criminals, leading to elevated crime rates across the nation (Byers 2014). For example, some proponents of the Ferguson Effect claim that increases in the number of murders in certain cities, such as Baltimore, St. Louis, Chicago, Milwaukee, and New York, are indicative of a broader national condition—that cities *across America* are seeing spikes in crime after years of declines. They attribute this to a specific cause: the Ferguson Effect (Mac Donald 2015).

Two closely related concepts have also received public attention. One is the idea that federal consent decrees cause officers to pull back from discretionary enforcement activities, a notion known as “de-policing.” Consent decrees occur when the U.S. Department of Justice (DOJ) finds that police departments have engaged in widespread, systemic civil rights violations with respect to the Constitution and federal law. Often, DOJ enters into consent decrees with the relevant jurisdiction to address misconduct. Similar to Dotson’s line of reasoning, some politicians and law enforcement officials posit that this process demoralizes and frightens officers, allowing crime to increase as officers worry that their actions will elicit punishment and thus hesitate to police proactively (O’Brien 2015).

The second intertwined concept, known as the YouTube Effect, is that officers are failing to police proactively because they fear losing their jobs after a viral video. At the Attorney General’s Summit on Violent Crime in 2015, Chicago Mayor Rahm Emanuel said, “We have allowed our police department to get fetal and it is having a direct consequence. . . They have pulled back from the ability to interdict. . . [T]hey don’t want to be a news story themselves, they don’t want their career ended early, and it’s

having an impact” (A. C. Davis 2015). Again, according to this theory, a new wave of criticism towards the police—supported by social media tools—degrades officers’ ability to enforce the law.

These ideas have been hotly debated, especially within President Barack Obama’s administration. The White House and top officials at DOJ dispute the validity of such theories (Ross 2015; Schmidt and Apuzzo 2015). However, Federal Bureau of Investigation (FBI) Director James Comey (2015), after claiming that most of America’s 50 largest cities have seen an increase in homicides and shootings in 2015, said:

I spoke to officers privately in one big city precinct who described being surrounded by young people with mobile phone cameras... They told me, ‘We feel like we’re under siege and we don’t feel much like getting out of our cars.’... I don’t know whether this explains it entirely, but I do have a strong sense that some part of the explanation is a chill wind blowing through American law enforcement over the last year. And that wind is surely changing behavior.

The acting chief of the Drug Enforcement Administration, Chuck Rosenberg, lent further legitimacy to Comey’s words, stating that Comey was “spot on.” He added, “I think there’s something to it. Rightly or wrongly, you become the next viral video...” (Graham 2015).

These viewpoints have raised a number of concerns. One involves citizens’ First Amendment rights. Journalist Trevor Timm (2015) states:

‘Viral videos’ are recordings of police officers by citizens who have the first amendment right to record law enforcement activities in public – just as Black Lives Matter protesters have the first amendment right to protest police brutality. So what the two top law enforcement officers are complaining about is Americans increasingly exercising their constitutional rights...

Another concern relates to the nature of police behavior. The theories imply that officers are withholding interventions because they routinely engage in potentially unlawful behavior or because they are afraid that those interventions might be perceived as unlawful (Roman 2015). This suggests that officers cannot provide security without widespread violations of the rights of citizens or that the police cannot provide public safety under scrutiny (Graham 2015). According to Ronald L. Davis, former police chief in East Palo Alto, California, this unfairly characterizes the police:

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[W]e need to be very cautious ... that in having this discussion, we're not suggesting that the brave men and women who serve in law enforcement – and this is based on my 30 years – are somehow scared, which is the word I've heard people say, reluctant, or even suggested they're cowards and will not do their job because they're afraid of public scrutiny... Public scrutiny is not a negative. It's the foundation of policing in a democratic society. (Reilly 2015)

Despite such concerns, it is important to ask: Is there validity to the arguments put forward by Dotson, Mac Donald, and even some of our government's top law enforcement officials?

## A NATIONAL FERGUSON EFFECT?

### **Insufficient Evidence to Suggest a National Crime Wave**

A national Ferguson Effect implies that recent protests, criticism, and negative publicity concerning alleged police misconduct have initiated a crime wave across the country. However, the cities used to illustrate a national crime spike often are not selected in a meaningful way. For example, the *New York Times* article describing a widespread violent crime increase focuses on ten cities with populations that range from over 8 million (New York City) to just over 317,000 (St. Louis) (Davey and Smith 2015). However, there are 60 U.S. cities with estimated populations in that range, and the article only mentions four of the 20 most populous U.S. cities (Frederick 2015). It appears that the story highlights jurisdictions receiving national attention for higher levels of violent crime—the cities are not randomly selected. Thus, they are unlikely to represent crime profiles across America (Denvir 2015).

Meanwhile, unmentioned by the *Times* article, violent crime has declined in several major cities. In particular, a number of large cities experienced a drop in homicides in 2015 when compared to the previous year, including Boston, Austin, San Antonio, Phoenix, Detroit, and Memphis (Ehrenfreund and Lu 2016).

An examination of the most populous American cities conducted shortly after the publication of the *Times* article reveals a less pervasive crime increase than one might expect after reading the news. In September 2015, The Vera Institute's Bruce Frederick (2015) analyzed 16 of the 20 most populous American cities—those for which data were publicly available—and found that only three of these cities experienced statistically significant increases in homicides in 2015 compared to 2014.



Soon after, expanding upon Frederick's findings, *FiveThirtyEight* writer Carl Bialik (2015) examined available homicide numbers for America's 60 most populous cities. He determined that, in his sample, homicide numbers had increased by 16 percent overall when compared to the same time period in 2014. However, Bialik also found that only 16 of the 60 cities experienced a homicide increase that was statistically significant. The author thus concluded that "most cities have not shown a significant increase in homicides over the last year" (ibid.). In addition, Bialik noted that his method of data collection might have skewed numbers upwards since the analysis relied partially on media reports for data.

In early 2016, the Brennan Center for Justice released an even more comprehensive analysis giving a preliminary look at crime and murder rates across the nation in 2015. The report considers the 30 largest U.S. cities by population, with 25 cities reporting data on murder and 22 cities reporting data on crime.

The report comes to two major conclusions. First, the 2015 murder rate rose by approximately 13 percent in the 30 largest cities. Six cities experienced decreases in murder, while 19 experienced increases (Grawert and Cullen 2016, 1). The researchers assert, however, that the increase should not elicit widespread alarm. This is because the underlying rate of murders—in absolute terms—is low. Thus, a small numerical increase can translate to a large percentage increase (ibid.). And, even considering the 2015 increase, murder rates are similar to those in 2012 (ibid.). In other words, the country is not experiencing the alarming rates evident in the 1990s and early 2000s.

Even more striking is the fact that the homicide increase may be driven by only a few cities with dramatic spikes in murder. Three cities, Baltimore, Chicago, and Washington, D.C., account for more than half of the increase in murders, implying that the rise in homicides is a somewhat local phenomenon instead of a larger trend sweeping across the country (ibid.). Given this information, the researchers conclude, "These serious increases seem to be localized, rather than part of a national pandemic, suggesting that community conditions remain the major factor" (ibid.).

In a second key finding, the report determines that crime overall (as opposed to just murders) in 2015 remained largely the same as in the previous year. In fact, crime *decreased* by .1 percent across the cities examined (ibid.). This conclusion is crucial and suggests that *there is no new national crime wave*. Interestingly, the increase in the murder rate is insufficient to escalate the overall crime rate—an important point underscoring that

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using murder as a proxy for crime can be misleading (Friedman, Fortier, and Cullen 2015, 1).

A more definitive answer regarding the national crime and murder rate will emerge with the release of statistics from the FBI Uniform Crime Reports, which provide official crime data including nearly every jurisdiction nationwide. Unfortunately, the 2015 report will not be available until late 2016. However, when considering a more representative sample of American cities rather than cherry-picking jurisdictions, the increase in the murder rate appears to be moderate and driven by homicide numbers in a few cities. Critically, there does not appear to be a marked change in overall crime across the country.

This calls into question the very core of the Ferguson Effect. Why would the criminal element be “empowered,” but only to commit certain crimes, such as murders? Why would this effect not lead to an overall increase in crime? It seems unlikely that police pulling back from proactive measures would impact homicide rates but not crime rates overall. At the very least, those who promote the Ferguson Effect have some questions to answer; the evidence currently available is not enough to substantiate the theory. Furthermore, even if one assumes that the uptick in murders is a result of the Ferguson Effect, given that this very uptick appears to be driven by homicide spikes in a few cities, it is likely that the Effect is not impacting crime on a national level, but perhaps on a local level in select jurisdictions.

In addition, there is little reason to believe that an uptick in murder represents a significant, lasting shift in crime conditions or, as Mac Donald suggests, the end of America’s crime decline. Increases in homicides are not always substantively meaningful—such changes often occur in normal year-to-year fluctuations (Frederick 2015). Criminologists even compare murder rates to the stock market: there can be short-term volatile swings with no apparent cause (Savidge 2015). In other words, crime data—and murder data in particular—are extremely noisy. Even when a statistically reliable increase has occurred, a single year-to-year increase, while worrisome, does not immediately warrant panic, especially if it comes after a long-term decline (Frederick 2015). Some experts also refer to an irreducible minimum, explaining that in a period of relatively low crime rates, everything else being equal, rates are more likely to rise than to fall (Chapman 2016). Overall, they emphasize that an increase in murder could be a blip.

There are precedents for a temporary uptick: While the national murder rate rose in 2005 and 2006, it then declined for years afterwards (*ibid.*). And, despite this increase in the murder rate, both years are considered

part of an overall decline in the rate experienced across America over the past two decades (Lopez 2015).

On a local level, New York and Chicago are good examples of misleading short-term changes. In 2015, New York's murder rate increased by approximately five percent (Shallwani and Morales 2016). While this seems concerning, it is important to note that a rise in the city's murder rate, including twice by over 10 percent, occurred four times in the past fifteen years, but the trend across the entire time period was downward (Gelinas 2015). Chicago's murder rate increased in 2015 as well, by around 13 percent (Sanburn 2016). This sort of uptick, however, is unsurprising given Chicago's past homicide profile. From 2009 to 2010, the number of homicides increased by approximately five percent. There was subsequently a 13 percent decrease, followed by a 29 percent increase the next year. Then, the city had declines of 16 percent and three percent in 2013 and 2014, respectively, before homicides climbed in 2015. Over a longer time period, the numbers do not demonstrate a clear trend (Frederick 2015).

### **Empirical Study Disputes the Effect's Existence**

In a statistical study published in February 2016, Scott Wolfe and Justin Nix analyze data from a sample of sheriff's deputies in a southeastern metropolitan county, an agency somewhat removed from high-profile events such as those in Ferguson, Missouri. In fact, Ferguson is almost 800 miles away from the county studied (Wolfe and Nix 2016, 7). Thus, the authors consider whether recent controversial events and the negative publicity that followed could be far-reaching enough to impact officer motivation and willingness to work with local community members to solve problems. More specifically, they ask, "Does the 'Ferguson Effect'—as indicated by reduced motivation stemming from negative publicity—influence deputies' willingness to engage in community partnership?" (ibid., 2).

Wolfe and Nix acknowledge that a relationship between criticism of the police and crime rates may be difficult to observe. Thus, they attempt to operationalize the Ferguson Effect within officer surveys to find the degree to which police officers feel recent negative publicity has harmed their motivation. Their independent variable—*Ferguson Effect*—captures perceptions regarding how criticism of the police affected officers (ibid., 5). The researchers then consider the possibility that the Ferguson Effect may impact policing and crime rates through community partnership. Community partnership can be considered a key part of proactive policing. It involves engaging with the community to address local issues, often enhancing the ability of the police to fight crime. Officers who lack

motivation as a result of recent negative press, according to Wolfe and Nix, would be less inclined to actively engage with the community in crime-fighting efforts (ibid., 3).

Using a series of statistical analyses, the researchers find that a Ferguson Effect did not lead to less willingness to partner with the community. While surveys indicated that officers feel less motivated due to negative publicity, robust regression results revealed that the Ferguson Effect variable was insignificant after accounting for confounding factors, such as perceived organizational justice and self-legitimacy (ibid., 3–7). Thus, the proposed link between negative publicity and law enforcement activity was definitively broken. Those deputies who did exhibit less willingness to engage in community partnership seemed to be motivated by low self-legitimacy or a perceived lack of organizational justice in their police department, as opposed to reactions to negative press (ibid., 7). As a result, the researchers ultimately conclude, “[F]or the most part, our findings suggest that the Ferguson Effect fearmongering may need to stop” (ibid.).

It is important to note that the route through which the researchers investigate this effect—by using willingness to collaborate with the community in problem solving to reflect officer engagement in proactive policing—can be criticized. However, willingness to collaborate with the community is certainly *a significant part* of proactive policing. Thus, the inability to find a Ferguson Effect on this outcome measure does not support the idea that criticism of law enforcement officers is causing less proactive policing across the nation.

## A LOCAL FERGUSON EFFECT?

A local Ferguson Effect would imply that, while criticism of the police may not be driving a national crime wave, there is a more localized effect on law enforcement activity and crime in cities that have been the site of protests. Given that the rise in homicides in 2015 appears to be driven by spikes in a few cities, this concern is important to explore. There are at least two such cities, Baltimore and St. Louis, where the 2015 statistics show worrisome spikes in crime—in particular, homicide (Ehrenfreund 2015). These two cities have also had passionate protests over the deaths of black men in police encounters. This has led some to suggest that police are now too cautious in doing their jobs, perhaps on a more local, rather than national, level (ibid.).

Timing, however, poses a significant problem for this theory. Most strikingly, homicides and other violent crimes in St. Louis had already begun to spike in 2014 before the death of Michael Brown. Since Brown’s death is

the event that spurred nationwide protests in the first place, this sequence of events contradicts the idea that criticism of the police is driving crime and suggests that other factors were involved in causing the city's crime spike (Rosenfeld 2015).

In addition, data from Baltimore show both a decline in arrests and an increase in the number of homicides and gun-related shootings in 2015 *before* Freddie Gray's death in April. In light of this, there are other factors likely driving changes in Baltimore's enforcement activity (Lopez 2015). For example, during the past year, the police department has experienced reduced staffing levels and scheduling problems. Protests and civil unrest are unlikely to be a primary cause of Baltimore's violent crime spike (*ibid.*).

Therefore, in the very places where intense protests and troubling homicide spikes have occurred, the Ferguson Effect theory does not fit well with the numbers. "The people who point to the Ferguson effect as the reason for the increase haven't been consulting calendars very carefully," said Franklin Zimring, a criminologist at the University of California, Berkeley (*ibid.*).

Further, homicides did not spike dramatically in some jurisdictions with serious conflicts and protests over law enforcement activities. New York is a prime example. The New York Police Department's controversial use of stop and frisk elicited heated protests for years until a federal judge ruled it unconstitutional in January 2014. In the same year, Eric Garner died during an arrest, and a jury did not indict the involved officer, initiating a new wave of protests against the police (Ehrenfreund and Lu 2016). Yet, despite these continued tensions, New York has experienced a 35 percent decrease in the number of murders since 2010 and only a slight homicide uptick in 2015 by approximately five percent (*ibid.*).

It is also interesting to note that some of the cities recording the most dramatic increases in homicides in 2015 have not been the site of major controversies over law enforcement activities. For example, the number of homicides increased by over 80 percent and 60 percent in Nashville and Oklahoma City, respectively, in 2015 (*ibid.*). Washington, D.C. has also experienced a dramatic increase in murders, ending 2015 with a homicide spike that exceeds 50 percent. Police-community relations have not notably deteriorated in these jurisdictions (*ibid.*). Thus, while this information does not directly contradict the Ferguson Effect theory, it does imply that local protests are not driving a number of substantial crime spikes across the nation.

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## CONSENT DECREES CAUSING DE-POLICING

In some ways, consent decrees can be considered an even more significant form of criticism against the police. DOJ generally investigates a police department for civil rights violations, releases a findings letter that clearly outlines misconduct, and negotiates a consent decree with the jurisdiction that requires concrete changes to policy, training, accountability, and other relevant areas. A large part of the decree involves implementing a court-enforced monitoring system to ensure that the police department complies with new requirements. In that sense, police officers in these jurisdictions are not only associated with widespread wrongdoing, but also have a new, federal force watching as they move forward.

Two studies have addressed whether criticism of the police in the form of consent decrees is responsible for de-policing. Most recently, a team of scholars from Harvard University evaluated a consent decree over the Los Angeles Police Department (LAPD). They questioned whether the decree caused LAPD officers to reduce their work effort.

There was reason to believe that this was a significant concern. The researchers heard various de-policing claims frequently during departmental interviews and focus groups. Officers insisted that the consent decree was impeding effective policing, admitting to sometimes avoiding contact with citizens and looking the other way when observing illegal behavior to avoid penalization (Stone, Foglesong, and Cole 2009, 19). A survey also suggested widespread belief in de-policing, with a vast majority of officers agreeing that the decree hindered the LAPD's ability to reduce crime; and that officers are not proactively doing their jobs because of fear of community complaints or of being disciplined (*ibid.*).

However, according to the report, the consent decree did not lead to de-policing. This conclusion is based on two key pieces of evidence. First, concerns regarding discipline were likely not inspired by the consent decree: Officers reported similar fears before the decree took hold in the department (*ibid.*, 20). Second, the quantity and quality of enforcement activity increased during the consent decree. For example, discretionary stops dramatically increased, and arrests kept pace with the increase in stops (*ibid.*, 22). Thus, the researchers write, "The answer appears to be an emphatic no...De-policing, in short, does not appear to be a problem in Los Angeles..."(*ibid.*).

Before the study in Los Angeles took place, a team of researchers at the Vera Institute evaluated a consent decree with the Pittsburgh Police Department. They similarly assessed whether the decree was associated

with de-policing (R. Davis et al. 2002). The team heard comparable claims of de-policing among officers. Officers said that the decree had negative consequences for police activity and public safety; that they were afraid to be proactive in their police work; and that they were less active on the street and making fewer stops (*ibid.*, 48–49). They also reported fearing both the early warning system, which is intended to catch problem officers, and citizen complaints (*ibid.*, 49).

However, trends in data refuted de-policing claims. The researchers found no increase in the use of sick time or separation from the department, two measures used as indicators of morale (*ibid.*, 53). They similarly found no decline in summons rates, which can be considered an indicator of enforcement activity. Furthermore, since a steady downward trend in arrests began well before the decree, the decree itself likely did not cause the decline in this type of law enforcement activity (*ibid.*, Executive Summary).

Thus, in both instances, studies found that decrees *do not* cause de-policing. These two cases do not prove that this effect is absent across the board in jurisdictions with consent decrees, but the policing data from both cities certainly cast doubt on the idea that intense spotlights on police misconduct as well as increased oversight over law enforcement activities consistently cause officers to police less proactively.

## CONCLUSION AND POLICY IMPLICATIONS

After examining evidence concerning the proposed Ferguson Effect, it appears that the theory lacks support. The idea that protest activity directed at alleged police misconduct has caused recent crime increases due to reduced law enforcement activity is uncorroborated. The theory is not convincing on a national or local level. Meanwhile, studies contradict the idea that criticism of the police, in the form of protests, negative press, or federal consent decrees, leads to declines in proactive policing—a link central to the Ferguson Effect’s theoretical underpinning.

Given this lack of credible and comprehensive evidence, spreading concern over a Ferguson Effect may be counterproductive. One particularly troubling consequence includes directing attention away from local or regional factors that may be driving crime. The notion that economic deprivation and lack of opportunity are contributing to murder spikes has been cited by public policy publications as well as police chiefs in cities from Milwaukee to Atlanta (Davey and Smith 2015; Donnan 2015; Friedman, Fortier, and Cullen 2015, 11). Other officials claim that an abundance of guns has spurred recent increases in homicide (Davey and

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Smith 2015). In Washington, D.C., police and politicians attribute the rise in violence to an influx of synthetic drugs (Madhani 2015). Future research should examine whether changes in these factors can be connected to cities' shifting homicide rates.

In addition to drawing attention away from local factors, giving credibility to the Ferguson Effect could lead to a misallocation of police resources. For example, policymakers or politicians in cities experiencing homicide spikes may urge their police departments to dramatically escalate measures of proactive policing, such as discretionary stops, searches, and arrests, across the jurisdiction to combat a supposed Ferguson Effect. However, given evidence that lethal violence is often highly concentrated within segments of a locality, advocating such an approach may not be productive (Margulies 2015).

More broadly, the discussion surrounding the Ferguson Effect can be understood as a symptom of a larger problem. Too often debates over policing techniques and crime are informed more by anecdote and guesswork rather than robust data analysis. Given this pattern, we would benefit from studying these issues in a more structured manner.

First, we must seek out new and rigorous approaches for answering the difficult questions that arise in the fields of criminology and policing. With respect to the Ferguson Effect, the various areas examined in this paper would benefit from additional analysis. We need to examine this issue longitudinally—in different law enforcement agencies with larger data collection efforts—and to investigate various other causal pathways by which national controversies and protests may impact crime or police behavior.

Studying the impact of consent decrees on de-policing is one such area requiring further exploration. DOJ has undertaken dozens of police department investigations, with nearly 20 concluding with settlements over civil rights violations. However, there are few studies addressing the impact of these consent decrees with respect to de-policing. Thus, both the federal government and researchers should collaborate to illuminate a clearer and perhaps more nuanced answer regarding how increased attention, criticism, and monitoring of the police impact law enforcement efforts.

Second, we must remain diligent in our analysis of crime statistics. While upticks in murder rates are worrisome, it is dangerous to draw quick conclusions from short-term changes in select crime outcomes in scattered cities. Crime is not a singular category, and we should be critical of theories that aim to represent overall crime by focusing on only one



measure—especially murder numbers, which are particularly volatile and often fail to reflect other crime conditions.

Lastly, we must expand the data available for studying these issues. In particular, the federal government should improve its system for tracking and reporting crime. While the projected increase in homicide does not appear large or pervasive, the only reliable way to know if there is a national increase in murder, and more generally in crime, is to examine the FBI's 2015 Uniform Crime Report with the nationwide end-of-year numbers including each city. However, with diligent tracking and more frequent updates instead of annual reports released with significant delay, we could avoid conclusions based on incomplete data, refute unsubstantiated speculations, and prevent some of the misperceptions fostered in discussions on crime and law enforcement.

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## POOR GOVERNANCE, WEAK SYSTEMS, AND THE IMPACT ON HUMAN SECURITY: A GENDER ANALYSIS OF MILITARIZED GOVERNANCE IN SOUTH SUDAN

*Michael Wagner*

This paper analyzes the gender implications of the historic exclusion of women from public institutions and processes in South Sudan. Despite their varied roles as combatants and peacemakers during the 1983-2005 Sudanese Civil War, and despite Dr. John Garang's vision of an inclusive New Sudan, women were sidelined during the Comprehensive Peace Agreement Negotiations. This less-than-comprehensive process laid the foundation for a state-building project that does not account for gender, while prioritizing the maintenance of militarized patronage networks over the development of education and health systems. The failure to expand health and education systems is one reason that South Sudan has among the worst human development indicators in the world. As South Sudan emerges from the current round of post-independence violence and the Transitional Government of National Unity is formed, this paper argues that the need is greater than ever to ensure the inclusivity of this process.

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## INTRODUCTION

Tens of thousands of people have been killed and more than 1.6 million have been internally displaced since civil war broke out in South Sudan in December 2013. The impact of this most recent round of conflict became shockingly clear on 11 March 2016, when the UN Human Rights Office released a report describing a multitude of horrendous human rights violations, including a Government-operated “scorched earth policy,” and deliberate targeting of civilians for killing, rape, and pillage (OHCHR 2016).

How did South Sudan slip so quickly back into civil war despite massive donor and United Nations investment since the signing of the Comprehensive Peace Agreement (CPA) in 2005? In retrospect, the CPA was far from inclusive, having failed to open political space for individuals beyond the political elite. This shortcoming laid the foundation for the current kleptocratic state, which is characterized by militarized governance. Recurrent conflict has led to the militarization and masculinization of South Sudanese society, weakening state institutional capacity while further reinforcing traditional gender norms. This paper argues that the militarized governance structure in South Sudan systematically blocks women from engaging in the political process, and that it is necessary to ensure the political process in South Sudan is more inclusive moving forward.

### MARGINALIZATION OF WOMEN IN SOUTH SUDAN

In 2000, the United Nations Security Council passed Resolution 1325 on Women, Peace and Security (UNSCR 1325), which addressed not only the impact of war on women, but also the critical role that women should and do play in conflict resolution and sustainable peace (United States Institute of Peace 2016). During the 1983-2005 Sudanese Civil War, political leaders within the Sudan People’s Liberation Movement (SPLM/A), particularly Dr. John Garang, articulated a progressive agenda for an all-inclusive New Sudan. Unfortunately, the SPLM/A’s rhetoric stemmed from the need to solicit international support, rather than from a sincere desire to promote inclusive societal change in southern Sudan.

The international support that Garang obtained fostered the current political environment, in which international donors and DC-based lobby groups, such as the ENOUGH Project and Christian Solidarity International, fail to openly criticize SPLM/A elites and their patronage networks (de Waal 2015). The management of these patronage networks, which drives instability and perpetuates violence against civilians, has limited the Government of the Republic of South Sudan’s (GRoSS) ability to extend

basic services to its civilian population (throughout this document, GRoSS will refer to both the Government of southern Sudan (pre-2011) and the Government of the Republic of South Sudan). Power is consolidated in these networks, and coupled with GRoSS's crackdown on dissent, they have stymied the development of an opposing voice (Associated Press 2015). This has furthered the SPLM/A's advancement of a militarized political project that fails to account for gender (that is, a gender-blind state-building project) that endangers human security and jeopardizes durable peace (Ellerby 2012, 5).

Furthermore, the perceived role of South Sudanese women, especially amongst military elites and political leaders, has historically been limited to their reproductive function, to reproduce the next generation of soldiers. This in turn has restricted opportunities for women to influence public discourse (Jok 1999, 427-429). Despite the end of the North-South conflict, during which women were subjected to militarized male domination through rape and sexual exploitation, women's well-being and security remain under threat (Calderbank 2013). While GRoSS has pledged to ensure equality and rights for all its citizens, incessant spending on the military and internal security, coupled with neglect towards developing inclusive government institutions, most notably the judiciary, have led to the adherence to customary laws and underdeveloped state and county institutions that remain a source of insecurity for women (Small Arms Survey 2012).

This marginalization of women in South Sudan has led to what Jok Madut Jok refers to as the "nationalization of the womb," which has limited the ability of South Sudanese women to assume rights over their sexual and reproductive health (Jok 1999, 432). The "nationalization of the womb" perpetuates violence against and furthers the marginalization of women by limiting their access to power, security, and communal support, making it difficult to address issues of women's health and rights. Changing societal norms, due to perpetual conflict, has led to the legitimization of rape and domestic violence, in a context where access to judicial recourse and health services are nonexistent. The dearth of female, skilled health care providers and women's limited influence in government institutions, due to the government's failure to commit funds to education and training programs, further reduces their security (Jok 1999, 434).

Despite the New Sudan agenda advanced by the SPLM/A, which was inclusive of ideals expressed in UNSCR 1325, and Garang's proclamation that women represent the "marginalized of the marginalized," women were afforded minimal representation during the Comprehensive Peace

Agreement (CPA) negotiations in Machakos, Kenya (Ali 2011, 3) (the Comprehensive Peace Agreement, signed by the SPLM and the Government of Sudan, was comprised of The Machakos Protocol, or Chapter I, an Agreement on broad principles of government and governance). During the CPA process, women were completely excluded as both signatories and mediators, while only comprising a meager nine percent of the total witnesses. Such limited roles restricted their ability to advance an inclusive peace process (UN Women 2012).

During the development of the Machakos Protocol, the exclusion of civil society groups and national non-governmental organizations from the CPA negotiating table (UN Women 2012), despite General Sumbeiywo's development of the Nakuru Document, furthered their marginalization (Ellerby 2012, 9) (whereas the Comprehensive Peace Agreement, laid the foundation for an inclusive Sudan, the Nakuru Document recognized the possibility of two separate states, while also laying the foundation for good governance standards in the autonomous region of southern Sudan). Even if the movement pushed for equality, the failure to include reference to women in the SPLM/A Manifesto limited their ability to develop a specific agenda and bargaining position while in negotiations with the Government of Sudan (Pinaud 2015, 378). As a result, women's demands were perceived as detracting from the major priorities of the Government of Sudan (GoS) and the SPLM (Ibid, 383).

## MILITARIZED GOVERNANCE AND LACK OF SERVICES

For a patriarchal society like South Sudan, the effective promotion of gender-inclusive programs and policies would require strategic investments in social and political programs that prioritize women's meaningful participation (Ellerby 2012, 9-11). However, between 2005 and 2011, the SPLM thought that a relapse into conflict with Khartoum was probable, and this resulted in the failure of GRoSS to downsize the SPLA. The view that Khartoum would attempt to disrupt the implementation of the Comprehensive Peace Process by supporting proxy militias in southern Sudan to interfere with the 2011 Referendum, especially after the death of Garang, reinforced the SPLM's practice of committing significant financial resources to the security sector (Rands 2010, 7-9).

After the signing of the CPA, and through the post-independence period, the continued need to incorporate militia groups into the SPLA to maintain relative stability resulted in limited investment in government ministries charged with service delivery (Ibid, 9). As a result, the Government failed to enhance basic service provision or to strengthen health and



education systems that had been neglected during decades of war. The challenge of balancing security sector reform with long-term development planning and support is perhaps best evidenced by the failure of GRoSS and its international partners to effectively implement the Multi-Donor Trust Fund for South Sudan (MDTF-SS) (Fafo Institute for Applied International Studies 2013, 17).

Led by the government, the \$718 million MDTF-SS was created in 2005 by GRoSS and 14 international partners with the stated mission to support reconstruction, poverty reduction, governance and human development (World Bank 2013). MDTF-SS objectives complemented the SPLM's "Strategy for a War to Peace Transition," initiated in 2003 by the Joint Assessment Mission (JAM). The JAM outlined the complete lack of physical infrastructure and public services that resulted in southern Sudan's human development indicators being amongst the lowest in the world (JAM Sudan 2005, 9). This is perhaps best evidenced by the appallingly low health care coverage in southern Sudan, as illustrated by the number of physicians per 100,000 people, of less than 1 in the South, in 2005.

However, MDTF-SS implementation concerns were noted by key stakeholders as early as 2007. In 2007-2008, the government's spending priorities shifted, reducing contributions to MDTF-SS (Fafo Institute for Applied International Studies 2013, 19-20). This time period also saw GRoSS increase its defense spending to over 40 percent of total government expenditure (de Waal 2014). Even more concerning was that due to the historic marginalization of women, gender was not integrated into MDTF-SS's strategic priorities as a cross-cutting issue until 2009-2010 (Fafo Institute for Applied International Studies 2013, 19-20).

MDTF-SS was originally meant to draw on oil revenues as a primary source of funding, but when the SPLM halted oil production in January 2012, investments aimed at expanding basic service provision all but stopped (AU Commission of Inquiry on South Sudan 2014, 287). Furthermore, The IMF estimates that South Sudan's GDP contracted by 55 percent in 2012, from \$22 billion in 2011 to just under \$12 billion, due to the shutdown of the Greater Nile Oil Pipeline which runs from the Unity Oil Field, South Sudan to the Red Sea (Global Impact Investing Network 2015, 4). This contraction of the economy forced the government to enact austerity measures, which reduced the Ministry of Health (MoH) and Ministry of Education (MoE) budgets by 20 percent, while also cutting the South Sudan Reconstruction and Development Fund by 85 percent. However, the Ministry of Defense's budget was only reduced by 10 per-

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cent, and salaries to public servants went untouched. This again showed the critical link for GRoSS leadership between maintaining security and funding existing SPLM patronage networks. The continued reluctance of SPLM elites to reduce security spending levels has resulted in a majority of GRoSS revenues being directed towards defense, despite the austerity budget (Mampilly 2012, 5).

Prior to the shutdown, oil proceeds were used to support defense spending, which was estimated at 35 percent of total government expenditures. Of this, approximately 80 percent was allocated to salaries (de Waal 2014, 356). South Sudan's military patronage system has resulted in a bloated military, in which 200,000 soldiers, including 700 generals and 40,000 "ghost soldiers" draw salaries (Ibid). The same patronage networks led to the development of a central government with 382 Parliamentarians (MPs), the highest number of MPs per capita in the world (Garang 2013, 6). The management of the "political marketplace" (de Waal 2014, 348) has become the business of SPLM elites and has resulted in the near universal exclusion of women from the public arena.

Notwithstanding the 25 percent quota for women in elected positions, GRoSS has not adequately addressed how its institutions and lack of service provision impact women's rights and human security. This inability to adequately perform legislative and oversight functions stems from inconsistent and insufficient funding (Torres and Wright 2013, 5-6). This has led to the failure of government policy and institutions to address gender-specific needs, furthering the marginalization of women while neglecting the basic needs of all South Sudanese (AU Commission of Inquiry on South Sudan 2014, 285). This is underscored by the fact that since the establishment of the National Legislative Assembly, in 2011, female MPs have been unable to sponsor a bill dealing specifically with women's concerns and interests (Edward 2014, 27-28). As a result, budget documents are not gender sensitive, and government programs cannot address the lived realities of South Sudanese men and women (Ibid, 30).

## EDUCATION LOST

As detailed above, the GRoSS budget reflects the priorities and policies required to govern a militarized socio-political environment, at the expense of developing basic services and infrastructure that could improve South Sudan's abysmal human development indicators. Government funding allocated to the MoE and MoH continues to decline, and at seven percent, even the servicing of debt represents an expenditure that exceeds GRoSS investments for health and education (Attipoe, Choudhary, and Jonga

2014, 6). The consequences are felt primarily by women of reproductive age and children.

Since it signed the CPA, the GRoSS has failed to prioritize developing the national education system, with budget allocations to the MoE averaging between five and seven percent, and with actual spending estimated at closer to four percent (Mayai and Hammond 2014, 1-4). Despite the growth in primary school enrollment, the lack of government support, including the inability to pay teacher salaries, has resulted in a decrease to teaching staff (Ibid). Estimates suggest that approximately 1.3 million primary school-age children in the South Sudan are currently not in school (World Bank "Children out of Primary School").

Since well before South Sudan became independent, recurrent conflict has led to young girls being denied access to educational opportunities. Additionally, cultural norms may impede their access. For example, girls may need to miss school as a result of additional household responsibilities, or they may be withdrawn due to high levels of insecurity in their area (North, Unterhalter, and Aikman 2006). As a result, about two-thirds of the children who are not enrolled in primary school are female. Also, it is estimated that throughout South Sudan, fewer than 600 girls are enrolled in the final grade of secondary school (Smith and Steer 2014). Early marriage and other socio-cultural practices further limit education attainment for girls, which increases gender disparities (Human Rights Watch 2013, 3-6). It is not only these marginalized women who are affected by such barriers to education, but also their future children, and in particular their daughters, as they will be more vulnerable to these cyclical disadvantages (Ibid, 88).

Improving educational access and attainment in South Sudan will require government action on several key issues. The chronic shortage of qualified teachers directly impedes learning (UNESCO 2011, 1-3). The average ratio of students to teachers in the country is 50 to 1, and it escalates to 145 to 1 in the conflict-affected states of Jonglei, Upper Nile and Unity. Moreover, less than 40 percent of teachers have educational training, and therefore lack the skills to provide a quality learning environment. The scarcity of educational opportunities for women has further restricted the number of female teachers, thus reinforcing gender disparities. Throughout the 10 states, on average, only 13 percent of primary school teachers are female (Global Education First Initiative 2013, 3-5). Furthermore, figures from the College of Education at the University of Juba indicate that the average profile of admitted students consists of nine percent female students (Edward 2014, 38-39).

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Limited levels of educational attainment among women have long-term negative consequences on women's participation in politics and other leadership roles, as evidenced by the inability of South Sudan's National Legislative Assembly to advance a gender-sensitive agenda (Ibid, 42). Given that the primary factors affecting maternal mortality in South Sudan relate to the education of both the healthcare provider and the expectant mother, the government should reallocate their priorities and resources. Increased access to education would not only enhance the public profile of women in South Sudan, but it would also increase the educational attainment of front-line health workers, which would result in enhanced levels of health care (Buor and Bream 2004, 3-5). Unfortunately, without a shift in government priorities, South Sudan's health system will continue to have limited reach, and as a result, a 15 year old girl will continue to have a greater chance of dying in childbirth than of completing primary school (UNICEF August 2015).

## HEALTH SYSTEMS UNDERDEVELOPED

The GROSS's prioritization of internal security and national defense at the expense of other services has also reduced the funds that should be dedicated to developing the national health system (Arcel and Kastrup 2004, 42-46). While combat deaths correlate to male fatality rates, it is the "indirect consequences" of conflict that have the most profound impact on women and children, as basic services become even more limited and infrastructure is destroyed (Mazurana 2013, 5). The impact of these indirect consequences is shown in health indicators, such as child and maternal mortality rates, both of which exceed emergency thresholds (WHO 2009, 16).

Since December 2013, the conflict has either destroyed or forced the closure of approximately 70 percent of the health centers in Jonglie, Upper Nile and Unity states (ACAPS 2014). This has further limited the accessibility of health services, which had been restricted to less than 25 percent of the population before the most recent outbreak of violence (Ministry of Health 2009, 9-13). In rural areas, home to approximately 80 percent of the South Sudanese population, there are an estimated 14,000 persons per health unit (PHCU), 75,000 per health center (PHCC) and 400,000 per hospital. Naturally, this leads to adverse health outcomes (Ministry of Health 2013, 12). Because less than 40 percent of the population is settled within a five-kilometer radius of a functional health facility, expanding primary care services will require targeted investments in education aimed at increasing staffing levels and infrastructure development in remote rural

communities with minimal access to primary health care facilities (Taylor 2012, 5-8).

Sustainable Development Goal 3 (SDG3) aims to reduce the global maternal mortality ratio to less than 70 per 100,000 live births by 2030. The 2013 South Sudanese Health Facility survey, however, confirmed that only three percent of pregnant women reported receiving a complete package of ante-natal care (ANC) services (UN Women 2016). Moreover, the South Sudan National Assessment for Emergency Obstetric and Newborn Care (EMONC), conducted in October 2013, indicated that only 11.6 percent of the total deliveries conducted in South Sudan were conducted by skilled health workers, and that only 4 percent of these deliveries took place in an EmONC facility (USAID 2014, 5-7). The lack of government commitment to funding the procurement of these essential commodities contributes to South Sudan's current Maternal Mortality Rate (MMR), estimated at between 823 and 2,054/100,000 live births (World Bank, "Maternal Mortality Ratio"), ranking amongst the highest in the world (Ministry of Health 2009, 14-16). Such numbers indicate that one in seven women will die over the course of their reproductive life during childbirth due to the government's failure to invest in developing the health system (Small Arms Survey 2012).

Building an effective health system in South Sudan remains a long-term proposition that will require consistent and predictable government and donor funding. As in many resource-limited countries, the limited pool of qualified health workers represents the health system's biggest constraint. It is estimated that only 10 percent of health posts are filled by qualified health workers (Sima 2014, 1237-1248). Limited investment by the government has meant that less than half of all health facilities possess acceptable, essential infrastructure and have essential medicines available. Staff shortages remain chronically severe, and only 16 percent of health facilities maintain staffing requirements as per the government-developed Basic Package of Health Services (BPHS). Moreover, since the enactment of austerity measures, health worker salaries have been reduced by the MoH. Donors have been forced to continue paying MoH salaries through NGOs, which has meant that human resources for health staff in the government system are not currently sustainable (Hutton 2013, 19 & 27).

Despite the health sector's clear need for greater government funding, its budget as a proportion of the national expenditure declined from 7.9 percent in 2006 to the 2013 level of 2.2 percent (World Bank "Health expenditure"). With incorporated out-turns, funding levels fall considerably short of the 15 percent target established by the Abuja Declaration (Taylor

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2012, 5-7). In comparison, security-related spending has surpassed \$2.5 billion, or 40-45 percent of the national budget. To realize government commitments to universal access to health care, the government will need to increase the health sector budget in progressive increments, from the 2013 2.2 percent to at least 10 percent (Ministry of Health 2012, 13 & 27-30).

## RECOMMENDATIONS AND PATH FORWARD

United Nations Security Council Resolution 1325 recognizes the unique experience of women during conflict and confirms the important role that women play in conflict resolution and post-conflict reconstruction (U.N. Office of the Special Advisor on Gender). When South Sudan once again emerges from conflict, the inclusivity of this process must be ensured. Building on the gender-blind shortcomings of the CPA process and the MDTF-SS state-building project, international donors and implementing partners should pressure GROSS to create substantive access for women to peacebuilding and development initiatives (Ellerby 2012, 9-11). As opposed to the top-down, Juba-centric approach that drove the CPA process and MDTF-SS initiative, international donors and organizations should support GROSS to enhance a bottom-up approach to service provision, in order to more effectively fulfil John Garang's vision of "taking the town to the people."

The Agreement on the Resolution of the Conflict in the Republic of South Sudan was signed by Riek Machar for the SPLM/A-IO and by Pagan Amum for the Former Political Detainees on 17 August 2015. On 26 August 2015, President Kiir signed the Agreement. Multiple violations of the Cessation of Hostilities Agreement have been noted since the signing, and the parties to the conflict continue to attack civilians and humanitarian assets. This Agreement, unlike the CPA, has provisions for including women in governance (Mai 2015). International donors and the government should prioritize efforts aimed at empowering women in decision-making positions at the national and state government level, where women's representation has been limited. Women must also be supported to advance an inclusive agenda. GROSS should adhere to the existing 25 percent quota, and UNSCR 1325 should be used as a guiding principle for the formation of government committees to ensure effective gender mainstreaming into official policy. Moreover, the Transitional Government of National Unity, with support from international partners, should enhance funding to the Ministry of Gender, Child and Social Welfare to address issues of gender inequality (Ibid). Funding to the MoH and MoE

should also be increased and aligned with international standards.

While the ARCRSS provided for the establishment of a Special Fund for Reconstruction, women were not afforded representation in the Fund's administration (Ibid). With the understanding that gender-blind reconstruction efforts have negative consequences, it is critical that international donors support programs to build the capacity of civil society organizations (CSOs) and national NGOs to hold national and local governments accountable for ensuring effective service delivery (AU Commission of Inquiry on South Sudan 2014). Moreover, building upon established women's organizations, such as the South Sudan Women's Empowerment Network, international donors and implementing partners should form consortia aimed at supporting national organizations to facilitate service delivery in remote communities that complement government service provision (Mai 2015).

International partners must acknowledge the failure to incorporate gender into the development of MDTF-SS, and they should also support GRoSS to ensure that women's organizations participate in the peace building-process, and that gender is included as a cross-cutting theme in development programming (Ellerby 2012, 12). Given the need to ensure that development initiatives are inclusive, a special emphasis on the collection and analysis of sex-disaggregated data should be included in all public policies and budgetary planning (Mazurana et al. 2011, 8). Moreover, gender mainstreaming efforts in South Sudan will need to take into account the highly politicized ethnic diversity and disparities between women in the rural and urban areas of different social groups.

The international community needs to shift away from their "go-easy" approach with GRoSS. Donor engagement should be more proactive and assertive than it was during the 2005-2011 interim period. Donors must also understand the impact of a militarized culture on women and the resulting impact on service provision and establish clear benchmarks for progress related to the development of national health and education systems (Downie 2016, 14-16).

To improve health and education indicators, the rapid scaling-up of institutional and human resource capacity is required. Given that human resource development is dependent on having an educated populace, GRoSS should prioritize funding primary and secondary education. It is therefore imperative that multilateral institutions support GRoSS to develop an appropriate accountability framework to ensure that the proceeds guaranteed under the Petroleum Revenue Management Act are used for development. Records of payments made to the oil-producing states

(2% to the state and 3% to communities) should be regularly published by the Ministry of Finance for public scrutiny and accountability (SPLM Political Leaders, FPD).

Since Independence in 2011, the portion of the government budget allocated to health has remained stable at about four percent. Based on the WHO Global Health Observatory Data, this is low for the region (Taylor 2012, 5-7). GRoSS funding to health services should be established in accordance with the Abuja Declaration (Ibid). Health partners should work with the MOH to ensure that health facility rehabilitation and maternal-child health initiatives are prioritized, and that funding is available for essential first-line medicines and vaccines. Moreover, GRoSS and its health partners should prioritize the training of mid-level health staff on maternal-child health interventions. Accepting that women as caregivers are better placed to support women, the development of female health staff should be prioritized.

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