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Boko Haram: Obama Fails to Designate Nigerian Sect a Terrorist Organization

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On Thursday, the U.S. State Department designated three Nigerians as Specially Designated Global Terrorists (SDGT). Abubakar Shekau, Abubakar Adam Kamar, and Khalid al-Barnawi are leading members of the Nigerian Islamist sect Boko Haram.

While the Obama Administration acknowledges these individuals as parties to terrorist activity, it stopped short of designating Boko Haram as a Foreign Terrorist Organization (FTO). This is regrettable, because such a designation would limit Boko Haram's capacity for future attacks on the U.S. homeland.

Legally Speaking: SDGT vs. FTO. Under Executive Order 13224, “those foreign persons that support or otherwise associate with ... foreign terrorists” are subject to SDGT listing.¹ Shekau is Boko Haram's most

visible leader, and al-Barnawi (likely a pseudonym) and Kamar are associated with Boko Haram's main cell. It has been confirmed that Boko Haram maintains ties to al-Qaeda in the Islamic Maghreb (AQIM), and there is evidence that Boko Haram militants have trained with al-Shabaab in Somalia. The U.S. government has designated both AQIM and al-Shabaab as FTOs.

Executive Order 13224 blocks access to all property and interests in property of designated terrorists and individuals and entities supporting them under U.S. jurisdiction. While the Treasury Department is the leading agency that adds individuals to the SDGT “list” and then freezes their assets, the process is done in consultation with the Departments of State and Justice.

The FTO list is a separate designation and pertains to organizations rather than individuals. It also maintains an immigration element, which the SDGT label does not.² In order for an organization to qualify for FTO designation, it must fulfill three requirements:

- The organization is a foreign organization;

- The organization engages in terrorist activity or terrorism or retains the capability and intent to engage in terrorist activity or terrorism; and
- The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.³

Unlike the SDGT, the Secretary of State has the authority to designate an organization as an FTO if it fulfills the legal criteria. The group can be removed at any time by the Secretary or an act of Congress.

Incomplete Policy. The listing of the three Nigerians as SDGTs is a first step by the Administration to take measures against the threat that Boko Haram poses to international security. But it is not enough.

Representative Patrick Meehan (R-PA) and Senator Scott Brown (R-MA) have taken the lead in Congress, urging the Administration to closely assess Boko Haram and the threat the organization poses to U.S. security. Under the Boko Haram Terrorist Designation Act of 2012 (H.R. 5822) and its Senate counterpart (S. 3249), the State Department would

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determine whether the organization meets the legal criteria for FTO designation. Furthermore, last January, Assistant Attorney General Lisa Monaco, the Justice Department's top national security official, sent a letter to the State Department in support of designating Boko Haram as an FTO.⁴

FTO Designation Still Needed. SGDT designation is not a viable substitute for designating Boko Haram as an FTO. Not only would FTO designation provide legal clarity for classifying Boko Haram and its actions; it would also force the U.S. government to hold members of the organization and individuals who provide material support to it criminally liable. FTO designation also forces closer interagency counterterrorism coordination, as all U.S. agencies recognize listed organizations.⁵

While the State Department has provided little insight as to why Boko Haram is not being considered

for FTO designation, some Nigeria watchers contend that Boko Haram is unique from other international terrorist groups and that designation would discourage political solutions that address the political and economic grievances that underlie Boko Haram's campaign against the Nigerian state.⁶

The U.S. should respond to these concerns by partnering with the Nigerian government to develop a comprehensive approach for countering Boko Haram. This should include addressing standards of development in the northern part of the country, establishing a U.S. consular office in Nigeria, and working with Nigerian intelligence and security agencies to ensure that U.S. assistance is being used effectively.

Do Not Underestimate Boko Haram. The Obama Administration should not take the threat Boko Haram poses lightly. Terrorist organizations such as al-Qaeda in

the Arabian Peninsula and Tehrik-i-Taliban in Pakistan were once underestimated by the U.S. government until they attempted attacks on the homeland. While it is unlikely that Boko Haram currently possesses the will or capabilities to attack the U.S. directly, this does not mean that the organization's ambitions will not expand in the future.

Designating Boko Haram as an FTO would not only demonstrate that the Obama Administration takes the threat seriously, but it would help limit the ability of Boko Haram to wage an attack against U.S. soil.

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1. Terrorism means an activity that involves a violent act or an act dangerous to human life, property, or infrastructure and appears to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking. See U.S. Department of the Treasury, "Executive Order 13224—Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/terror.pdf> (accessed June 21, 2012).
2. Audrey Kurth Cronin, "The 'FTO List' and Congress: Sanctioning Designated Foreign Terrorist Organizations," Congressional Research Service Report for Congress, October 21, 2003, p. 4, <http://www.fas.org/irp/crs/RL32120.pdf> (accessed June 21, 2012).
3. Immigration and Nationality Act 219, Designation of a Foreign Terrorist Organization, <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-5017.html> (accessed May 22, 2012).
4. John Shiffman, "U.S. to Slap 'Terrorist' Label on Nigerian Militants," Reuters, June 20, 2012, <http://www.reuters.com/article/2012/06/20/us-usa-militants-bokoharam-idUSBRE85J1NC20120620> (accessed June 22, 2012).
5. Morgan Lorraine Roach, "The U.S. State Department Should Designate Boko Haram a Foreign Terrorist Organization," Heritage Foundation Issue Brief No. 3612, May 22, 2012, http://www.heritage.org/research/reports/2012/05/boko-haram-should-be-designated-as-a-foreign-terrorist-organization#_ftn3.
6. A. Carl LeVan et al., letter to Secretary of State Hillary Clinton, May 21, 2012, <http://carllevan.com/wp-content/uploads/2012/05/Boko-Haram-FTO-letter-to-Clinton-5-21-2012.pdf> (accessed June 21, 2012).