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Human Rights Vetting: Nigeria and Beyond
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I would like to begin by thanking Chairman Smith and Ranking Member Bass for holding this important hearing and for their leadership on human rights.

I have worked on the Leahy Laws in one form or another for nearly 17 years and have discussed them with countless State Department and Defense Department officials, as well as with human rights experts working all over the world. I also spent a period of time as a Franklin Fellow in the Department of State during which time I was able to learn in detail about the process for implementing the Leahy Laws. I have been engaged on detailed questions about the application of the Leahy Laws in Colombia, Turkey, Afghanistan, Sri Lanka, Indonesia, Nigeria, Kenya and dozens of other countries, and I believe that these laws are among the most important human rights statutes on the books. The law has been poorly funded – less than two-hundredths of one percent of the cost of U.S. military assistance is spent on Leahy Law vetting. And it has often been misunderstood and misrepresented.

But with President Obama proposing a new $5 billion fund for military assistance to combat terrorism it is essential to help the public understand this vital law and to help insure that it is vigorously implemented.

A Common Sense Formula for Security Cooperation Consistent With U.S. Values

The Leahy Laws are common sense laws that prohibit the United States Government from arming or providing military training to security force and police units abroad who have been credibly alleged to have committed gross human rights violations. These laws (there is one for State Department assistance and one for Department of Defense assistance) do not prohibit the United States from providing assistance in violent, conflict-wracked countries like Nigeria and Colombia. On the contrary, because they involve a unit by unit examination, the Leahy Laws provide a formula for the United States to assist foreign military forces even in countries where some government forces are committing gross atrocities. They are a formula for success in such countries, not a prohibition on engagement.

Four Numbers

There are four important numbers to keep in mind about the impact of the Leahy Laws. (All these statistics have been provided by the State Department and cover 2011-2013.) The first number is 530,000. That's the approximate number of foreign military and police units which the United States government considered arming or training over the last three years and subjected to Leahy vetting.

The second number is 90 percent. That is the minimum percentage of prompt approvals given under the Leahy Law – generally within 10 days of a request. There is even a "fast track" approval process for countries with generally good human rights records. Some vetting requests require more information, investigation or discussion. But at least 90% are approved more or less immediately.

The third number is 1 percent. In every one of the last three years less than 1 percent of all units vetted under the Leahy Law were ultimately declared to be ineligible for assistance under the law. Of course it is true that the number will be higher in some specific countries, but taken as a whole the Leahy Law actually blocks aid in a miniscule percentage of cases.

The final number is 2,516. The Leahy Law blocks aid in a tiny percentage of cases, but that doesn't mean that it is unimportant. Because the U.S. now provides training to so many people, even 1 percent is a lot. And 2,516 is the number of vetted units that the U.S. Government found to be credibly linked to gross atrocities over the last three years when it took the time to examine their records because of the Leahy Law.

Those 2,516 units were not being asked to satisfy a high standard. In no way does the Leahy Law require pristine forces. In fact, the State Department defines "gross human rights violations" to include a very short list of only the most heinous offenses: murder, torture, rape, disappearances and other gross violations of life and liberty. That's it. So even though less than 1 percent of proposed units failed the standard, it is still pretty shocking that over the last three years the United States Government probably would have armed and trained 2,516 units (or individuals in those units) containing murders, rapists and torturers without the Leahy Law.

The Leahy Laws don't actually prohibit the U.S. from working with even these units – the ones that have committed murder and torture. It only says that the U.S. cannot arm or train them *until the foreign government takes steps to clean up the unit*.

Three Questions

So whenever anyone says that it is a problem for the United States that it cannot train or arm a particular foreign battalion or police unit, one should ask three questions:

(1) What did the unit do? If we can't work with them, it must mean that the United States has determined that this unit is one of the worst of the worst. It is in the 1percent of units where the U.S. government found credible information linking it to murder, rape, torture or another gross atrocity. So, when someone argues that we

should arm a Leahy-prohibited unit, one should ask, "What did the unit do to get on the list?"

(2) Why won't the government clean up the unit? Maybe the foreign government wants to make a point to the U.S. – it doesn't accept the U.S. commitment to human rights; it won't let the U.S. "tell it what to do." Maybe the government has no control over its own military and cannot do anything to clean up the unit even if it wanted to do so. But one should insist on knowing: "Why won't the government clean up the unit?"

(3) Finally, if the unit committed murder, rape or torture and the foreign government won't or can't clean it up, why should U.S. taxpayers give that specific unit guns anyway? Under what possible circumstances would it make sense for the United States to arm known killers who are either completely out of their government's control, or who work for a government that refuses to take any action against them?

Responses to Three Criticisms

Tempus Fugit: There are a number of arguments raised against the Leahy Law which might make some sense if the law covered lesser offenses. For instance, there is an argument that it makes no sense to keep a unit on the Leahy Law "pariah" list long after the atrocity occurred, especially if everyone who was in the unit has now moved on. But there are no other contexts in which we would accept a 4 year, or 8 year or even 15 year statute of limitations on murder, torture or rape. So why accept one here? And the law is intended to create an incentive for foreign governments to improve their human rights records and to hold people accountable. Letting a unit off the hook because the government rotated people out of the unit (and into other ones) or because the foreign government simply waited us out for a few years sends exactly the wrong message. Moreover, units have reputations and traditions that are regularly passed on to new members of the unit over many years and even decades. That is often true for units with gallant histories. But it is also true of death squads and praetorian guards.

Just as importantly, one needs to ask what it says about a foreign military "partner" if documented cases of murder, rape and torture go without redress after decades. The government always has the option of working with the United States to create new, carefully vetted units – something that has been done in a number of countries with gross human rights problems. If the government will not do that, it is probably trying to make a point. Is it appropriate to reward such behavior with assistance?

Pariah Forever: Critics of the law also sometimes argue that it is impossible for a tainted unit to be rehabilitated. This is, of course, completely false – unless the government in question refuses or is unable to take any meaningful action to address the problem. So what these critics are really saying is: It is almost never the case that America's military partners in these countries have the political will or commitment to human rights to take the kind of disciplinary action against killers and rapists that is absolutely routine in the U.S. military. And that is a very odd sort of argument for waiving or weakening the Leahy Law so that we can give more guns to these government's forces.

In fact, there are cases in which specific units have been rehabilitated. But it takes a willing partner. This is one area where critics of the law and its supporters should make common cause to support earmarked funding for remediation of tainted units. One percent of U.S. military assistance – just one penny out of every dollar – should be set aside for vetting and remediation. It should be used to help foreign militaries set up JAG officer corps, criminal investigation services and other elements of a professional disciplinary system. This should simply be considered a cost of doing business in some of the most violent places on earth. There is a precedent for applying a fixed surcharge as a "cost of doing business." Every time the United States Government sells weapons abroad it applies a surcharge – currently 3.5% – to administer the sale. The U.S. should apply a 1% surcharge to ensure that it knows what is being done with the other 99% and so that it can help move its partner forces in a positive direction on human rights.

Just a Few Bad Apples: Critics sometimes argue that it is wrong to hold whole units accountable for the acts of just a few, or perhaps even just one, member of the unit. They argue that we should vet specific individuals rather than units and only withhold information from those individuals who are linked to atrocities.

Here it is important to understand that the Leahy Law was a compromise. There was and is an important human rights law – Section 502B of the Foreign Assistance Act – which does not permit the United States to engage in a unit by unit assessment of foreign partner forces: "No security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." There is a very strong argument to be made under Section 502B that the United States *should be providing no assistance whatsoever to Nigerian forces, and many others around the world.*

But historically the United States has been extremely reluctant to invoke Section 502B even in the most extreme cases. So the Leahy Law was proposed as an intermediate step: If the U.S. will not completely cut off governments engaging in a consistent pattern of gross human rights violations, then *at least it should not arm the specific military units it believes are the ones actually committing the gross violations*. However, Senator Leahy also believed that it would be absurd and unreasonable to ask that human rights victims be able to identify the specific murder, torturer or rapist by name before the U.S. took any action. So, his law states that if credible information can be presented that links *an identifiable unit* to a specific atrocity the United States would be required to cut off that unit – at least until the foreign government identifies the specific individuals within it who are responsible and deals with them.

One Final Thought

The Bible tells us in the Book of Acts that before his conversion on the road to Damascus the Apostle Paul was a persecutor of the Christian Church. In fact, according to Acts (Chapter 7, Verse 59) he was present at the killing of St. Stephen and held the cloaks of those who stoned him. He cast no stones himself; but he was complicit. He gave aid to the killers. When we go to

places like Nigeria, shouldn't we at least ask, "Whose cloaks are we holding?" That's all the Leahy Law says.

The Leahy Law cannot guarantee that the U.S. will never arm bad people. It's not a panacea. It's just the least we can do.

Attachment:

The Leahy Law by the Numbers

Number of "gross human rights violations" that trigger the law 5

Approximate dollars the U.S. provides in security assistance each year 15 billion

Number of countries receiving U.S. military training in 2012 158

Dollars directed to DRL Bureau in 2014 to conduct Leahy vetting 2.75 million

Leahy vetting costs as a percentage of U.S. military aid .02

Number of Leahy vetters in DRL and regional bureaus 13

Approximate total number of Leahy vettings during 2011-13 530,000

Number of vetted units found to have probably committed gross atrocities 2011-13 2,516

Number of countries that had some aid withheld in 2011 46

Typical percentage of worldwide Leahy vettings that do not pass the vetting requirement <1

Number of Leahy vettings carried out by U.S. mission in Abuja in 2012 1,377

Number of Nigerian military personnel rejected in 2012 due to human rights 211

Number of Nigerian military units currently vetted/cleared for security assistance 187

Number of prosecutions of Nigerian military officers for scorched earth assaults on civilians 0

Percentage added to the cost of a U.S. arms sale as an administrative fee 3.5

Percentage of U.S. military aid earmarked to help clean up bad units under the Leahy Law 0

Sources of Statistics in The Leahy Law by the Numbers

"….violations that trigger the law" - Derived from definition provided in Sec. 116 of Foreign Assistance Act

"*Approximate dollars…..in security assistance each year*" - State and Defense budget documents

"*Number of countries…."* - 2012-2013 Foreign Military Training Report

"*Dollars directed to DRL…."* - Line-item in FY2014 Omnibus spending bill report

"*Number of Leahy vetters…."* - Private communication from DRL staff

"…..*Leahy vettings in 2011"* - State Department figure included in New York Times, June 21, 2013

"Number of units and individuals…." - Ibid.

"Number of countries…." - Ibid.

"Approximate number of Leahy vettings" - Senate testimony of Asst. Secretary of Defense Michael Lumpkin, March 11, 2014

"Typical percentage…." – Statistics provided by the Bureau of Democracy, Human Rights and Labor and provided in Senate testimony by Secretary Clinton in answer to a written question from a hearing before the SFRC, February 28, 2012. SOCOM Commander Adm. William McRaven gave a comparably small figure in Senate testimony on March 11, 2014 (about 2%)

"….US mission in Abuja…" - State Dept Inspector General Report of Embassy Abuja, February 2013

"….Nigerian military personnel rejected…." - Ibid.

"….Nigerian military units…" - Press release, Office of Senator Leahy, 28 May 2014

"….administrative fee" - Defense Security Cooperation Agency, Memorandum, September 17, 2012