

War on Terror: Is US Aid Limited by the Leahy Law?

Recently at an Awards ceremony to mark THISDAY's 20th anniversary, it had as its theme 'Conversations on Security' with two former United States Secretaries of Defence, Charles Hagel and Robert Gates, as part of a discussion panel moderated by Mr. Nduka Obaigbena the publisher of THISDAY newspaper. The Boko Haram menace was undoubtedly the hot topic of discussion and pertinent questions regarding the US government's lack of assistance in tackling the Boko Haram insurgency that continues to ravage the North Eastern part of Nigeria was a central issue. Broader international assistance has been largely fruitless to date and the United States in particular has cited human right violations as inhibiting military assistance in the war against insurgency. From the discussions one could clearly appreciate that the US is bound by certain legal constraints, principally the pro human rights Leahy Law.

Last week it was announced that President Muhammadu Buhari will be in New York along with other world leaders at the 70th Session of the United Nations General Assembly. Mr. President's agenda we gather will feature, amongst others, the relevant bilateral relations, war against terrorism, countering of violent extremism, enhancement of global security and peace-keeping operations.

Nigeria's relationship with the United States has recently been put under quite some scrutiny. In September 2014 a news story was published in THISDAY of a sale of helicopters of American origin to Nigeria from Israel that was scuppered because the United States opposed the sale to Nigeria. The condition of such a transfer of American made aircraft required a 'No Objection' letter from Washington which was refused, a seemingly major blow to the fight against the insurgents with America, whilst fighting the War Against Terror on a global scale, apparently lacking confidence in Nigeria's ability to fight insurgency in our own backyard. It seemed as great an indictment as one could imagine.

That frosty relationship looked to finally shatter when on-going efforts to provide training for a battalion of the Nigerian Army by US counterparts stalled in November 2014, some 7 months after news of the Chibok Girls' crisis broke out. Nigeria and the Jonathan Administration received an inflow of requests to assist in the face of the kidnapped girls and among these requests were offers from the United States to provide varying levels of assistance, some which (on the intelligence gathering side) were immediately accepted. However, shortly after the training of the Battalion had commenced the Nigerian Government cancelled the exercise and our soldiers were promptly returned to their base none the wiser because both governments could not reach an agreement on the scope of support to be given, especially with regards to the supply of weaponry.

The distinctly chilly relationship between the US and Nigeria may though be warming up as during President Buhari's state visit to the United States in July US President

Barack Obama reaffirmed his country's commitment to assisting Nigeria in the fight against the insurgents. However, on the question of the sale of arms to ensure that fight is concluded in favour of Nigeria, America seems to be unwilling to approve any such in the near future. At the heart of this matter is the stipulation of section 620(m) of the Foreign Assistance Act of 1961 as amended, also known as the 'Leahy Law'.

Background and History

The US Foreign Assistance Act of 1961 (FAA) reorganised and delineated the different forms of permissible US aid. It identified military and non-military aid, made clear distinctions between the two and created the conditions for qualification for such aid. The Department of Defence (DOD) Appropriations Act meanwhile is an annually recurring Act passed to fund the US Defence Department. It forms a part of the US budget but goes specifically to the funding of military operations and other related Defence Department activities.

In 1990 Senator Patrick Leahy sponsored an amendment that affects how the FAA and DOD Appropriations Act function in relation to the sale of US equipment and weapons and the training of foreign military personnel respectively. The amendments are popularly known as the 'Leahy Laws', after their sponsor. Section 620(m) of the FAA stipulates:

'No assistance shall be furnished ... to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.'

Similarly section 8057(a)(1) of the 2014 DOD Appropriations Act makes the following prohibition:

'None of the funds made available by this Act may be used for any training, equipment, or other assistance for the members of a unit of a foreign security force if the Secretary of Defence has credible information that the unit has committed a gross violation of human rights.'

In 2014 the Leahy Law amendment to the DOD Appropriations Act was expanded to include 'equipment or other assistance' to bring it in line with the FAA's more circumspect position on the US' policy on foreign aid.

The effect of the new expansion is that foreign nations seeking assistance from the US Government by way of access to military equipment and weaponry must satisfy the conditions of the expanded Leahy Laws, even where they are only seeking military training, equipment or other non-financial forms of assistance, which may immediately explain why despite the gradually improving relationship between Nigeria and the United States, we are yet to see any arms deals come to fruition and nor do we foresee any such in the near future.

Leahy Vetting Procedure

The United States vets countries it will give foreign assistance to under the Leahy Law as well as certain Department of State training programmes to ensure that recipients are not guilty of grave human right violations. When the vetting process shows that the recipient

is guilty of such, foreign assistance is withheld. The obligation to vet Department of State (DOS) assistance and Department of Defense (DOD) funded training programs for foreign security forces is contained in section 620(m) of the Foreign Assistance (FAA) Act of 1961 (the Leahy amendment). The DOS legislation covers all 'assistance' under the FAA and the Arms Export Control Act whilst the DOD law concerns itself with 'training programs' financed under Defense Department Appropriations Acts. Usually, foreign militaries, reserves, police, homeland security forces such as border guards or customs police, prison guards and other units authorised to use force are vetted under the Leahy Law.

According to the Department of State the human rights vetting or Leahy vetting process is as follows:

1. The appropriate U.S. embassy enters those individuals or units nominated for training or assistance into an internal DoS database called the International Vetting and Security Tracking (INVEST) system and initially vets the individuals or units on human rights abuses in the relevant country using resources such as the DoS Country Reports on Human Rights, U.S. government agency records, NGO human rights reports and information and media articles. Most embassies also undertake checks with local police and government for other derogatory information. In appropriate cases, embassies may interview individual victims where there are indications that government forces have been involved in gross human rights violation. Should any credible derogatory information be uncovered in local vetting, the embassy may deny or suspend the individual or unit from assistance, or seek guidance from Washington. INVEST creates a permanent record of any finding of derogatory information, human rights-related or otherwise.

2. In Washington, the Bureau of Democracy, Human Rights, and Labor (DRL) receives the results of home country vetting through the INVEST system and every individual or unit from a country of human rights concern who is not denied or suspended is further subject to vetting by the DRL through additional information sources in Washington. If any vetting in Washington finds credible derogatory unclassified information, such is entered into INVEST and reviewed. If those vetting then agree that the derogatory information is credible, and the violation or issue is of sufficient severity to prohibit training or assistance in accordance with the Leahy amendment or other U.S. laws and policies, the individual or unit is deemed ineligible and the decision is recorded in INVEST.

3. If there is need for further review of the negative information, DRL assembles a broader team of State Department representatives and may request further information from the home country embassy. Until a decision is reached, the assistance in question remains on hold. The State Department then makes a decision on the case and assistance is either denied or authorised; the result is recorded in INVEST. If agreement cannot be reached before the training is scheduled to start, the candidate will



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not be trained. Diplomatic posts are automatically notified of final Leahy vetting results through INVEST.

Nigeria Military and Human Rights Violation

Amnesty International, the prominent non-governmental organisation focused on the protection of Human Rights released its annual report for 2014/15 on 'The State of the World's Human Rights' and the account of Nigeria's current standings with regards to Human Rights was damning. Among the central points of the Human Rights tragedy in Nigeria, it alleged, were the use of torture and ill-treatment by the Nigerian Police, a justice system blighted by corruption, prevalent communal violence and the curtailment of freedom of expression. Of course with regards to the Leahy Laws the armed conflict between the Nigerian Military and Boko Haram saw the greatest allegations of Human Rights abuse. Amnesty International alleged that 7000 people had been killed by the Military 2011-2015. This and many other shocking observations are made in Amnesty International's campaign against extra-judicial killings in Nigeria.

With our country's track record on Human Rights violations compounded by Amnesty International's 2015 report Nigeria, it would appear, stands little or no chance of getting any tangible and direct assistance from the US based on the Leahy Laws.

To take East Timor as an example, in 1999 amidst bloody pro-Indonesian militia reprisals that attempted to destroy the independence movement, perpetrating murders and leveling towns, Indonesia faced international intervention from the United Nations that stopped the deadly reprisals and began the reconstruction of an independent East Timor. Indonesia's official security forces however, had long since been indicted for their covert extra-judicial killings, torture and violent oppressive interventions in East Timor before and up to the bloody campaign of 1999 and so in March 2010 with the advent of US President Obama's visit to Indonesia in the first attempts at repairing broken relations with the nation, Senator Leahy stated 'we know there are some who favour resuming aid to Kopassus (Indonesian military) but U.S. law requires the government of Indonesia to take effective measures to bring Kopassus members to justice.' The Leahy Laws clearly prevented the US military from providing training and assistance to Kopassus at that point. But in July 2010 Secretary of Defence Gates (as he then was) announced the resumption of US military engagement with Kopassus. He said 'as a result of Indonesian military reforms over the past decade,

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