

July 1, 2020

Trumped Up Charges – Pompeo Makes Same Weak Case for Withholding UNFPA Contribution Again

Late last evening, the United Nations Population Fund (UNFPA) received a copy of Secretary of State Pompeo's written determination that UNFPA was in violation of the Kemp-Kasten amendment. Included in the annual State Department and foreign operations appropriations bill since 1985, the amendment prohibits foreign aid funding to any organization that "supports or participates in the management of a program of coercive abortion or involuntary sterilization." Secretary Pompeo relies on the same pretext — UNFPA's reputed cooperation with the Chinese government's health ministry — and uses virtually identical language to withhold all U.S. funds from UNFPA for its vital work in advancing reproductive health care globally for the fourth year in a row.

One might find a certain irony in the timing of the determination being formally communicated to Congress on the eve of the release of UNFPA's State of World Population Report 2020, titled "Against My Will: Defying the Practices That Harm Women and Girls and Undermine Equality," which focuses on the harmful practices of female genital mutilation, child marriage and son preference. Boldly and unabashedly, the UNFPA report pulls no punches on the persistence of son preference and missing girls due to female infanticide and neglect in China, one of only five permanent members of the United Nations (U.N.) Security Council.

Secretary Pompeo's decision to invoke the Kemp-Kasten amendment to withhold the \$32.5 million voluntary contribution that Congress appropriated for UNFPA in the fiscal year (FY) 2020 omnibus spending bill was inevitable. The only question was when a provision in the annual appropriations bill requires that a determination to withhold funds from an organization under the Kemp-Kasten amendment must be made within six months after enactment of the bill, a requirement that State Department lawyers take seriously so as to avoid providing any grounds for a legal challenge. Since the FY 2020 omnibus was signed into law on December 20, 2019, a determination was required on or about June 20th. Interestingly, this year's determination is dated June 16th but it was not hand-delivered to Congress until the last day or two, after the six-month deadline set in the legislation.

Further evidence that the Trump-Pence administration had no intention of releasing FY 2020 funds to UNFPA is the fact that the administration did not request a voluntary contribution for UNFPA in its FY 2021 budget proposal in February, the same practice it has followed for the prior three fiscal years. Of course, neither did the administration request funding for any other U.N. agency, demonstrating its consistent and growing animus toward multilateral solutions to global problems.

In a [statement](#) released this afternoon, UNFPA “notes with regret” the U.S. government’s decision to withhold its funding, noting that the decision is “especially devastating amid the COVID-19 pandemic, as no humanitarian exemption has been made to the ban on funding” and expresses that it “respectfully hopes that the USA will reconsider its position.”

Unlike those for the last two years, this year’s determination is stamped “unclassified” (and Secretary Pompeo even instructs that it should be posted in the Federal Register — a first), and the public can finally read the allegations being made against the work that UNFPA is supporting in China that triggered a negative determination.

Those who have seen the prior year’s determination report that the text of the most recent determination is a minimally edited, cut and paste job from past iterations. The rationale for cutting off UNFPA remains, basically, guilt by association. UNFPA’s alleged crime is that it “partners on family planning with the [National Health and Family Planning Commission (NHFPC)].” The NHFPC was renamed the National Health Commission (NHC) in March 2018 — removing the phrase “family planning” from the ministerial structure — at the same time the Chinese government continued to move to relax enforcement of its infamous “one-child” policy.

According to the approved [five-year country program document for China](#) (2016-2020), the Ministry of Commerce is the “coordinating entity” between the Chinese government and UNFPA — not the NHC. UNFPA’s work is principally focused on organizing “executive dialogues, multi-stakeholders’ consultative groups, seminars and platforms” for the purpose of supporting policy development in areas of sexual and reproductive health, adolescents and youth, gender equality and women’s empowerment and population dynamics. The country program document does not make reference to any financial or technical assistance for family planning activities being provided by UNFPA to the NHC or any other Chinese government institution.

Several other U.N. agencies “partner” with NHC on other health programs and continue to emerge unscathed as in past determinations. Up until recently, when the Trump-Pence administration launched its public relations campaign to pin responsibility for the COVID-19 pandemic on the Chinese government, even U.S. government departments and agencies such as the Centers for Disease Control and Prevention, the Food and Drug Administration and the National Institutes of Health had long-standing partnerships with Chinese government health authorities, many of which have now been terminated.

In its statement, UNFPA again expresses its desire to engage in an ongoing dialogue with the U.S. government and extends another invitation to visit its country office in China to see its programs firsthand. Unlike

previous administrations, no U.S. government delegation has traveled to China to conduct a more thorough investigation of the facts on the ground. It will never happen.

Senate Republican conferees and the White House bluntly rejected in the negotiations over the FY 2020 omnibus spending package a non-binding House proposal to direct the Secretary of State to include in the determination “the investigatory steps taken over the previous twelve months to determine that such organization directly supports the management of such program, the interviews conducted and evidence collected.” The final joint explanatory statement accompanying the omnibus bill categorically stated that the “Secretary of State shall not carry out the directive” in the House report. There is no desire or intention to pursue the truth.

The sad fact is that the State Department continues to rely on a nearly expired country program document that merely lists the NHFPC as a “partner” to justify invoking the Kemp-Kasten amendment and denying congressionally earmarked funds to UNFPA. In September, the UNFPA Executive Board, in which the U.S. government is represented, will consider the approval of a new five-year country program for China, as will UNICEF and UNDP’s governing bodies. Since it doesn’t, it would be wise for UNFPA to make sure to delete any references to “partnering” with the NHFPC or the NHC on family planning so as to remove the absurd pretext for the trumped up charges that the administration has relied upon for its entire first term, in the event that there is a second term.