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Global Human Rights: Security Forces Vetting ("Leahy Laws")

The "Leahy Laws" prohibit U.S. assistance to foreign security force units when there is credible information that the unit has committed a "gross violation of human rights" (GVHR). Pursuant to the laws, before providing assistance, the U.S. government vets potential assistance recipients for information about GVHR involvement. The origins of the laws date back to appropriations provisions sponsored by Senator Patrick Leahy (D-VT) in the 1990s; they were preceded by provisions originally enacted in the 1970s that sought to prohibit U.S. security assistance to governments with poor human rights records. Today's "Leahy Laws" are permanent law and located in both Title 22 (Foreign Relations) and Title 10 (Armed Forces) of the *U.S. Code*. They generally restrict security assistance otherwise funded by the Departments of State (DOS) and Defense (DOD). The laws remain of ongoing interest to Congress and continue to face modification as Congress conducts oversight of their implementation.

The State Department's Leahy Law

The Leahy Law applicable to assistance authorized by the Foreign Assistance Act (FAA) of 1961, as amended, or the Arms Export Control Act (AECA), as amended, is codified at 22 U.S.C. §2378d (Section 620M of the FAA). It prohibits "assistance" to a foreign security forces unit if the Secretary of State has credible information that the unit has committed a GVHR. The prohibition of assistance to such units may be *excepted*, however, if the Secretary of State determines and reports to Congress that the foreign government "is taking effective steps to bring the responsible members of the security forces unit to justice." (See text box regarding the interpretation of selected terms.)

Building on and consistent with provisions contained in FY2020 and FY2021 appropriations bills, Congress in 2022 amended the DOS Leahy Law to address cases in which the specific unit(s) that will ultimately receive assistance cannot be identified prior to the transfer of assistance. For such cases, the Secretary of State is to regularly provide to the recipient government a list of units that are prohibited from receiving assistance. Such assistance "shall only be made available subject to a written agreement that the recipient government will comply with such prohibition." If a recipient government withholds assistance from a unit pursuant to the DOS Leahy Law, DOS is to inform the appropriate congressional committees and "to the maximum extent practicable, assist the foreign government in bringing the responsible members of the unit to justice."

Pursuant to 22 U.S.C. §2378d(d), the Secretary of State is required to establish and maintain certain procedures for collecting, validating, and preserving security assistance recipient and vetting information. The provision clarifies that, when a foreign security forces member is designated to receive U.S. assistance, the individual's service unit must also be vetted. The Secretary is also required to publicly identify those foreign security forces units that the department barred from U.S. assistance under the law unless the Secretary, "on a case-by-case basis, determines and reports" to the appropriate committees that public disclosure is not in the U.S. national security interest, and "provides a detailed justification for such determination."

The Defense Department's Leahy Law

The Leahy Law applicable to assistance furnished by DOD is codified at 10 U.S.C. §362. Pursuant to the law, DOD funds are prohibited from being used for "any training, equipment, or other assistance" to a foreign security force unit if the Secretary of Defense has credible information that the unit has committed a GVHR; DOD is to fully consider any credible information that is available to DOS. The Secretary of Defense may *waive* applicability of the Leahy Law on DOD assistance (a provision not found in the DOS Leahy Law) under "extraordinary circumstances" and following Secretary of State consultation. The prohibition of assistance to units that have committed a GVHR may also be *excepted* if the Secretary of Defense, after Secretary of State consultation, determines (1) the foreign government in question "has taken all necessary corrective steps" or (2) the DOD equipment or other intended assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies. DOD must report to Congress within 15 days of exercising its waiver or exception authorities.

Gross Violation of Human Rights (GVHR). Drawing on the term "gross violations of internationally recognized human rights," as defined and articulated elsewhere in the FAA (see 22 U.S.C. §2304(d) and 22 U.S.C. §2151n(a)), the U.S. government primarily vets foreign security forces for credible information indicating (1) torture, (2) extrajudicial killing, (3) enforced disappearance, or (4) rape under color of law. Other acts may also be assessed as to whether they constitute GVHRs.

(Foreign) Security Forces. The executive branch generally considers this term to include any organization or entity authorized by a state to use force, including, but not limited to, the powers to search, detain, and arrest. Forces that typically fall under this definition include military and police units.

Credible Information. The executive branch has generally taken this term to mean information that can be relied upon as a basis for decision making—a low evidentiary standard. Through FY2024 appropriations (Section 7035(d)(3) of P.L. 118-47), Congress specified that for the DOS Leahy Law the term refers to information that "supports a reasonable belief that a violation has occurred," and stipulated that it shall not be determined solely based on certain factors such as whether the information source has been critical of U.S. policy or U.S. security partner policy.

Leahy Laws Implementation

DOS's Bureau of Democracy, Human Rights, and Labor (DRL) oversees the implementation of Leahy Law vetting policy and processes. Within DOD, the Office of the Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs (SHA) leads on policy matters pertaining to the DOD Leahy Law. The DOS-led vetting process begins at U.S. embassies overseas where a variety of consular, political, and other security and human rights checks are conducted, as well as assessments of the credibility of any derogatory information identified. In most cases, further vetting is conducted in Washington, DC. In 2022, DOS established a Human Rights Reporting Gateway consistent with a DOS Leahy Law requirement to facilitate the receipt of information about GVHR from non-U.S. government sources. Congress has provided funding for human rights vetting through directives to DRL in annual appropriations (most recently, $20 million for FY2024).

U.S. policy and procedures for Leahy vetting have evolved over time, in part due to congressional oversight and amendments to the Leahy Laws. Some Government Accountability Office (GAO) and DOS and DOD Office of Inspector General (OIG) reports have raised issues such as lapses in implementation in certain contexts or with regard to certain types of assistance, for example concerning forms of assistance in which the final recipient unit is not known at the time of a transfer.

Issues for Congress

The Leahy Laws are seen by proponents as a tool to disassociate the United States from objectionable security forces, while also incentivizing good behavior among governments wishing to benefit from U.S. security assistance. Policymakers have nonetheless debated whether and to what extent the laws constrain the United States' ability to pursue other U.S. national security interests. Selected policy and oversight issues for Congress include:

Transfers When the Recipient Unit is Not Known. Members may examine the executive branch's implementation of the requirement under the DOS Leahy Law that seeks to address the challenge of applying the law when the ultimate recipient unit of assistance is not known at the time of the transfer. Pursuant to the requirement, the United States has reached bilateral agreements with numerous foreign governments through which these governments agree not to provide assistance to security force units identified by the United States as barred under the DOS Leahy Law. The Secretary of State is to "regularly provide" a list of such units to applicable foreign governments. This requirement has implications for recipients of Foreign Military Financing (FMF) assistance such as Egypt, Israel, and Ukraine. Some media reports have raised questions about unevenness in implementation of the requirement, with some former DOS officials stating for instance that processes concerning assistance to Israel differ from those applied to other countries.

Scope of Prohibited Assistance or Support. The Leahy Laws do not apply to all forms of U.S. support to foreign security forces. They are not applied to foreign military sales (FMS) or direct commercial sales (DCS), as the executive branch interprets "assistance" under the Leahy Laws as that provided with U.S-appropriated funds (under this interpretation, the DOS Leahy Law does apply to FMF, however). Some DOD authorities that entail forms of support to foreign security forces may also be interpreted as not subject to the DOD Leahy Law. Additionally, assistance authorized under laws other than the FAA or AECA and not furnished by DOD is not subject to the Leahy Laws.

Congress in some cases has narrowed the executive branch's interpretive discretion by explicitly specifying that certain authorities are subject to the relevant Leahy Law, such as DOD's "train and equip" authority authorized under 10 U.S.C. §333. The National Defense Authorization Act (NDAA) for FY2021 (P.L. 116-283) introduced some relevant human rights requirements for DOD support authorized under 10 U.S.C. §127e (a counterterrorism operations authority) and Section 1202 of the FY2018 NDAA (P.L. 115-91, as amended; an irregular warfare operations authority), while not specifying that this support is subject to the DOD Leahy Law. In general, Members may consider the implications—such as in terms of consistency of U.S. human rights policy, impacts on support to and relations with foreign partners, and vetting burdens—of imposing Leahy Law or Leahy Law-like requirements to additional authorities, as some prior legislation would have done.

Scope of Prohibited Behavior. The Leahy Laws do not require DOS or DOD to withhold assistance due to activities that are not related to a GVHR. In practice, the executive branch may—as a matter of policy—choose to bar assistance in cases when there is credible information about a human rights issue that does not constitute a GVHR, or about other activities such as corruption. Members may consider the implications of modifying the statutory scope of Leahy vetting, such as to address other behavior of concern. Some additional existing provisions seek to prohibit certain U.S. security assistance to individual units on the basis of other human rights issues, such as sexual exploitation or abuse (Section 303 of P.L. 114-323 and, most recently, Section 7048(f) of P.L. 118-47) and excessive force to repress peaceful expression or assembly (most recently, Section 7035(c)(3) of P.L. 118-47). How such provisions are applied and how, if at all, they are integrated with Leahy Law application is unclear.

Congressional Reporting. Reports accompanying appropriations bills in recent years have directed DOS to report to Congress on Leahy vetting pursuant to the DOS Leahy Law during the prior fiscal year. A similar annual report requirement for the DOD Leahy Law was terminated in 2021 pursuant to Section 1061 of P.L. 114-328; Congress later mandated some pertinent DOD reporting through Section 1209 of P.L. 117-263. Congress may consider the desirability of requiring similar reporting from both departments on Leahy Law implementation and of permanently codifying such requirements. Members may weigh the resource burdens that requirements place on the executive branch against the oversight value of the reports.

Michael A. Weber, Analyst in Foreign Affairs

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