



Updated August 5, 2022

# Global Human Rights: Security Forces Vetting (“Leahy Laws”)

## Introduction

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 relevant assistance, the U.S. government “vets”—that is, screens—potential 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 a series of provisions beginning in the 1970s that sought to restrict 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 be modified as Congress reacts to 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. Assistance to such foreign security forces 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.”

Congress amended 22 U.S.C. §2378d in March 2022 to address cases in which the specific unit(s) that will ultimately receive assistance cannot be identified prior to the transfer of assistance (such as may be the case for some equipment). 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 and, effective December 31, 2022, such assistance “shall only be made available subject to a written agreement that the recipient government will comply with such prohibition.” Moreover, if a recipient government withholds assistance from a unit pursuant to the law, DOS is “to the maximum extent practicable, assist the foreign government in bringing the responsible members of the unit to justice.” Previously, the law contained a more broadly applicable requirement for DOS to inform foreign governments in the event that any assistance is withheld from a unit pursuant to the law.

Pursuant to 22 U.S.C. 2378d, the Secretary of State is also 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. Assistance to foreign security forces units may also be *excepted* from the DOD Leahy Law 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)

The Leahy Laws do not define GVHR. Drawing instead 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 (in which a perpetrator abuses their official position to commit rape). Other acts may also be assessed as to whether they constitute GVHRs.

## Foreign Security Forces

The Leahy Laws do not define what constitutes a foreign security force. For purposes of Leahy vetting, the U.S. government generally considers the 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.

## 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 also conducted in Washington, DC.

U.S. policy and procedures for Leahy vetting have evolved over time, and observers have sometimes criticized their implementation as uneven. A 2013 Government Accountability Office (GAO) report found, for example, that U.S. missions overseas inconsistently applied DRL guidance for developing standard operating procedures (SOPs) for Leahy Law vetting. According to GAO, the State Department in subsequent years made efforts to ensure more consistent implementation of the laws, including through DRL reviews of embassy SOPs. An October 2018 DOS Office of Inspector General (OIG) report also found that DRL had improved the institutionalization of Leahy vetting processes, but lacked certain internal control procedures such as those to monitor embassy vetting performance. Some GAO and OIG reports issued since 2016 have raised issues of lapses in implementation in certain contexts or with regard to certain types of assistance, such as equipment transfers.

### Considerations for Congress

The Leahy Laws are a key element of U.S. human rights policy and one of several ways in which Congress has placed human rights conditions on U.S. foreign assistance. The laws are seen as a tool to disassociate the United States from objectionable security forces, while also incentivizing good behavior among governments wishing to access and benefit from U.S. security assistance. Policymakers have nonetheless debated whether the Leahy Laws risk inhibiting the United States’ capacity to pursue U.S. national security interests. Key policy issues for Congress may include the following:

**Scope of Prohibited Behavior.** The Leahy Laws do not require DOD or DOS 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 information about a human rights issue that does not constitute a GVHR, or about other activities such as terrorism or corruption. Some Members may consider the implications of expanding the statutory scope of Leahy vetting to address human rights violations beyond GVHR, or to address other activities 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 excessive force to repress peaceful expression or assembly (most recently, Section 7035(c)(3) of P.L. 117-103). How such provisions are applied and how, if at all, they are integrated with Leahy Law application is unclear.

**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. Some DOD authorities that entail forms of support to foreign military forces may also be interpreted as not subject to the DOD Leahy Law (see below paragraph). Additionally, assistance not authorized under the FAA or AECA or furnished by DOD is also not subject to the Leahy Laws; this fact was highlighted by allegations in recent years that foreign park rangers (which are generally considered part of a security force) supported by organizations receiving Department of the Interior international conservation funding had committed human rights violations.

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 (e.g., DOD “train and equip” authority authorized under 10 U.S.C. 333). More recently, 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 and Section 1202 of the NDAA for FY2018 (P.L. 115-91, as amended), while not specifying that this support is subject to the DOD Leahy Law. Some Members may wish to consider the potential benefits and drawbacks of expanding or further clarifying what types of support, and/or specific authorities, are subject to the Leahy Laws.

**Funding.** Congress has supported Leahy vetting through directed Diplomacy and Consular Programs funds for DRL. Congressional appropriations for vetting have trended upward over time, particularly in the years since FY2014, when \$2.75 million was appropriated for such purposes. Most recently, for FY2022, DRL received \$15 million for vetting, an increase from \$11 million in FY2021, and \$10 million in both FY2020 and FY2019. Expanded resources may help support a vetting workload that, according to the DOS OIG, increased by 42% between 2011 and 2017. Congress may consider evaluating how DRL is making use of the comparatively large increase for FY2022 relative to prior years and assess the implications if funding allocations were to be further modified.

**Congressional Reporting.** Department of State, Foreign Operations, and Related Programs Appropriations Acts in recent years have required that the Secretary of State submit a report to the appropriate congressional committees on the use and outcome of 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 effective December 31, 2021, in accordance with Section 1061 of the NDAA for FY2017 (P.L. 114-328). Congress may consider the desirability of requiring both departments to report on Leahy Law implementation and of permanently codifying such reporting requirements. In general, Members may weigh the additional resource burdens that reporting requirements place on the executive branch against the oversight value of the reports.

---

Michael A. Weber, Analyst in Foreign Affairs

IF10575

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.