



January 3, 2017

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

Introduction

The U.S. “Leahy Laws” prohibit U.S. security assistance to foreign security forces when there is credible information that a recipient unit has committed a “gross violation of human rights” (GVHR). The origins of these laws date back to appropriations provisions sponsored by Senator Patrick Leahy (D-VT) in the late 1990s; they were preceded by a series of provisions beginning in the 1970s that sought to constrain 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 restrict security assistance otherwise funded by the U.S. Departments of State and Defense, but do not apply to foreign military sales and direct commercial sales.

The State Department’s Leahy Law

The Leahy Law applicable to security 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 there is credible information that the unit has committed a gross violation of human rights. The State Department’s Leahy Law does not contain a waiver provision comparable to the DOD law, discussed below. Assistance to foreign security forces units may be *excepted*, however, if the Secretary of State determines that a foreign government “is taking effective steps to bring the responsible members of the security forces unit to justice.”

The Secretary of State is required to “promptly inform” a foreign government if aid is withheld due to 22 U.S.C. 2378d and the basis for such action. The Secretary is also required to “assist” the foreign government in “taking effective measures to bring the responsible members of the security forces to justice.” Pursuant to 22 U.S.C. 2378d, the Secretary is also required to establish and maintain procedures to collect, validate, and preserve vetting information. The provision clarifies that, when a foreign security forces member is designated to receive U.S. assistance (e.g., training, equipment), the individual’s service unit must also be vetted. In addition, the Secretary is required to publicly identify, “to the maximum extent practicable,” those foreign security forces units that have been barred from U.S. assistance under the law.

The Defense Department’s Leahy Law

The Leahy Law applicable to security assistance furnished by the U.S. Department of Defense (DOD) is codified at 10 U.S.C. 362. It prohibits the use of funds available to the Department for “any training, equipment, or other assistance” to a foreign security forces unit if there is credible information that the unit has committed a gross violation of human rights.

The Secretary of Defense may *waive* applicability of the Leahy Law on DOD assistance, following Secretary of State consultation, under “extraordinary circumstances.” Assistance to foreign security forces units may also be *excepted* from the DOD’s Leahy Law if the Secretary of Defense, after Secretary of State consultation, determines one of two scenarios: (1) the foreign government in question “has taken all necessary corrective steps” or (2) the equipment or other intended assistance is “necessary” in support of disaster relief operations or other humanitarian or national security emergencies.

Gross Violation of Human Rights (GVHR)

The Leahy Laws do not define GVHR. Drawing instead on the statutorily defined term “gross violations of internationally recognized human rights” (see Section 502B(d) of the FAA; 22 U.S.C. 2304(d)), the U.S. government 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).

Foreign Security Forces

The Leahy Laws also do not define “foreign security forces.” However, State Department guidance has described the term to include those authorized by a state or entity to use force, including, but not limited to, the powers to search, detain, and arrest (e.g., police and military units).

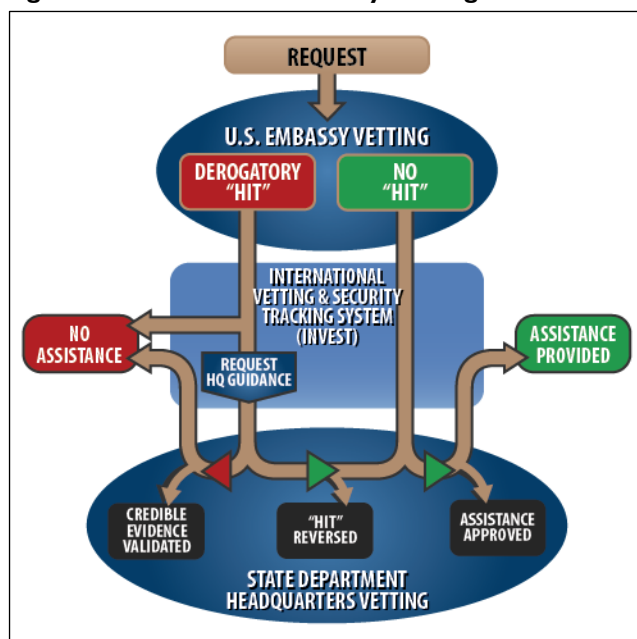
Leahy Laws Implementation

The State Department’s Bureau of Democracy, Human Rights, and Labor (DRL) oversees the implementation of Leahy Law vetting policy and processes. According to a 2013 report by the U.S. Government Accountability Office (GAO), the State-led vetting process begins at U.S. embassies overseas where a variety of consular, political, and other security and human rights checks are conducted—including checks on the credibility of derogatory information. In Washington, further vetting may also be conducted; disputed vetting results are also resolved in Washington. Since 2010, information is processed through an online database called the International Vetting and Security Tracking (INVEST) System.

U.S. policy and procedures for Leahy vetting have evolved over time, and their implementation has been criticized by some observers as uneven. DRL maintains a practitioners’ guide for vetting and provides additional training through briefings, courses, bulletins, and cables. In 2015, the State Department and DOD issued joint policy on “remediation and the resumption of assistance” to foreign security forces

units previously barred from U.S. support. Illustrative of the uneven application of vetting policy, the 2013 GAO report stated that U.S. missions overseas inconsistently applied or altogether ignored DRL guidance, requiring embassies to developed standard operating procedures for Leahy vetting.

Figure 1. Overview of the Leahy Vetting Process



Source: Adapted from GAO-13-866 (September 2013), p. 10.

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 incorporated human rights conditions concerning U.S. assistance to foreign governments. They are seen as one of several tools available to restrict U.S. security assistance and, in turn, safeguard the U.S. image abroad from association with objectionable security forces, while also potentially encouraging good behavior among governments wishing to access and benefit from U.S. security assistance.

Policymakers, including Members of Congress, have nonetheless debated the Leahy Laws’ desirability, particularly when derogatory information is perceived as constraining U.S. efforts to respond to national security needs. Implementation is another area of debate, including with respect to the reinstatement of assistance eligibility for previously tainted units.

In the 115th Congress, Members may consider changes to the Leahy Laws and/or conduct oversight on the Administration’s implementation of them. Key policy issues may include questions on the following topics:

Funding. Congress has supported Leahy vetting through directed Diplomacy and Consular Programs (D&CP) funds for DRL. Congressional appropriations for vetting by DRL averaged approximately \$2 million per year between FY2008 and FY2013. DRL received \$2.75 million for

vetting in FY2014, \$5 million in FY2015, and \$7 million in FY2016. The 115th Congress may evaluate whether a continuation of upward funding trends is warranted and the implications for DRL’s overall programming and priorities if funding allocations for Leahy vetting were to be modified.

Expansion of Vetting. In December 2016, the 114th Congress enacted the Department of State Authorities Act, Fiscal Year 2017 (P.L. 114-323). Section 303 established that U.S. security assistance may not be provided to foreign security forces units that have engaged in acts of sexual exploitation or abuse (SEA). Some may seek to evaluate the implications of implementing an expanded vetting process to include SEA beyond rape under color of law. Others may consider using this statutory provision as a model for expanding Leahy vetting to address other derogatory activity beyond GVHR, such as corruption.

Congressional Reporting. Section 7034(b)(8) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K of P.L. 114-113, as continued), requires that the Secretary of State submit a report to the appropriate congressional committees on the use and outcome of Leahy vetting pursuant to 22 U.S.C. 2378d. DOD also must report to Congress within 15 days of exercising its waiver and exception authorities. Some policymakers may seek to compare such reporting with the public information on Leahy vetting required by 22 U.S.C. 2378d, and with the information reported in the State Department’s annual *Country Reports on Human Rights Practices*.

Relationship to Other Laws. The Leahy Laws are just two among many permanent and temporary provisions that condition U.S. policy on assistance, debt relief, trade preference eligibility, immigration admissibility, and targeted economic sanctions on human rights grounds. The extent to which these disparate provisions are consistently or efficiently applied is a potential area for further research.

Moreover, the 115th Congress may be interested in the implementation of new provisions enacted late in the 114th Congress. For example, the FY2017 National Defense Authorization Act (NDAA; P.L. 114-328) enacted new security cooperation authorities that are explicitly subject to Leahy vetting. In addition, the FY2017 NDAA established a new targeted sanctions authority to address foreign human rights violations in Subsection F, the Global Magnitsky Human Rights Accountability Act.

Source material, legislative research, and further policy analysis are available upon request. For additional background, see CRS Report R43361, “*Leahy Law*” *Human Rights Provisions and Security Assistance: Issue Overview*.

Liana W. Rosen, Specialist in International Crime and Narcotics

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.