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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 assistance, the U.S. government vets 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 provisions beginning 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 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. 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.”

Congress in March 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. Consistent with a requirement originally enacted in the prior year appropriations bill, 22 U.S.C. §2378d(c)(1) now provides that, for such cases, the Secretary of State is to regularly provide to the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. 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.” If a recipient government withholds assistance from a unit pursuant to the 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)

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. Forces that typically fall under this definition include military and police units.

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. Congress has provided funding for human rights vetting through directives to DRL contained 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 amendments to the Leahy Laws arising from congressional oversight of their implementation. Some prior 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, such as 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 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 and to what extent the Leahy Laws constrain the United States’ ability to pursue other U.S. national security interests. Key policy and oversight issues for Congress may include the following:

Transfers When the Recipient Unit is Not Known.

Members may examine the executive branch’s implementation of the new 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 now reached bilateral agreements with over a dozen 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, and some media reporting has raised questions about unevenness in implementation of the requirement vis-à-vis different foreign government recipients.

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. Additionally, assistance not authorized under the FAA or AECA or furnished by DOD is not

subject to the Leahy Laws (a fact highlighted, for example, by allegations in recent years that foreign park rangers supported by organizations receiving Fish and Wildlife Service 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’s “train and equip” authority authorized under 10 U.S.C. §333). The William M. (Mac) Thornberry 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 proposed legislation would do.

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 human rights violations beyond GVHR or 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. Appropriations bills in recent years have required that the Secretary of State submit a report to Congress 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 FY2017 NDAA (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. Members may weigh the resource burdens that reporting requirements place on the executive branch against the oversight value of the reports.

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