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# **“Leahy Law” Human Rights Provisions and Security Assistance: Issue Overview**

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## Summary

Congressional interest in the laws and processes involved in conditioning U.S. assistance to foreign security forces on human rights grounds has grown in recent years, especially as U.S. Administrations have increased emphasis on expanding U.S. partnerships and building partnership capacity with foreign military and other security forces. Congress has played an especially prominent role in initiating, amending, supporting with resources, and overseeing implementation of long-standing laws on human rights provisions affecting U.S. security assistance.

First sponsored in the late 1990s by Senator Patrick Leahy (D-VT), the "Leahy laws" (sometimes referred to as the "Leahy amendments") are currently manifest in two places. One is Section 620M of the Foreign Assistance Act of 1961 (FAA), as amended, which prohibits the furnishing of assistance authorized by the FAA and the Arms Export Control Act to any foreign security force unit where there is credible information that the unit has committed a gross violation of human rights. The second is a recurring provision in annual defense appropriations, newly expanded by the FY2014 Department of Defense (DOD) appropriations bill as contained in the Consolidated Appropriations Act, 2014 (P.L. 113-76), to align its scope with that of the FAA provision. (Prior DOD appropriations measures had applied the prohibition to support for any training program, as defined by DOD, but not to other forms of DOD assistance.) As they currently stand, the FAA and DOD provisions are similar but not identical. Over the years, they have been subject to changes to more closely align their language, most recently with the expansion of scope enacted in the FY2014 DOD appropriations law. Nevertheless, some differences remain.

Implementation of Leahy vetting involves a complex process in the State Department and U.S. embassies overseas that determines which foreign security individuals and units are eligible to receive U.S. assistance or training. Beginning in 2010, the State Department has utilized a computerized system called the International Vetting and Security Tracking (INVEST) system, which has facilitated a major increase in the number of individuals and units vetted (some 160,000 in FY2012). Congress supports Leahy vetting operations through a directed allocation of funds in State Department appropriations.

The Leahy laws touch upon many issues of interest to Congress. These range from current vetting practices and implementation (involving human rights standards, relations and policy objectives with specific countries, remediation mechanisms, and inter-office and inter-agency coordination, among other issues), to legislative efforts to increase alignment between the Foreign Assistance Act and DOD restrictions, to levels and forms of resources dedicated to conduct vetting. More broadly, overarching policy questions persist about the utility and desirability of applying the Leahy laws, and whether there is sometimes a conflict between promoting respect for human rights and furthering other national interests.

## Contents

Introduction.....	1
Legislative Background .....	3
Comparison of Current Laws .....	5
Leahy Vetting in Practice.....	7
The Vetting Process .....	9
U.S. Embassy Procedures.....	9
Headquarters Level .....	10
Additional Review and Conclusion.....	10
Vetting Results and Their Use .....	12
Vetting Personnel.....	12
Vetting Funding .....	13
Vetting System Improvement Initiatives .....	14
Issues for Congress.....	16
Should the FAA and DOD Leahy Laws Be Made Consistent? .....	16
Should the FAA and DOD Remediation Standards Be the Same?.....	17
Should Other Differences Be Aligned? .....	19
What Level of Resources Are Adequate to Conduct Vetting? .....	19
Funding .....	19
Technology .....	20
Training and Oversight.....	20
Should Implementation Practices and Procedures Be Standardized?.....	21
What Challenges May the Expanded DOD Scope Present?.....	22
Conclusion.....	24

## Figures

Figure 1. Leahy Vetting Process for Training.....	11
---	----

## Tables

Table 1. Key Differences in FAA and DOD Leahy Provisions.....	6
---	---

## Contacts

Author Contact Information.....	25
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## Introduction

The increasing Department of Defense (DOD) emphasis on expanding U.S. partnerships and building partnership capacity with foreign military and other security forces has refocused congressional attention on two long-standing human rights provisions affecting U.S. security assistance policy. Sponsored in the late 1990s by Senator Patrick Leahy (D-VT), and often referred to as the “Leahy amendments” or the “Leahy laws,” one is Section 620M of the Foreign Assistance Act of 1961, as amended (FAA, P.L. 87-195, made permanent law by its codification at 22 U.S.C. 2378d) and the other is a recurring provision in annual defense appropriations. FAA Section 620M prohibits the furnishing of assistance authorized by the FAA and the Arms Export Control Act, as amended (AECA, P.L. 90-629), to any foreign security force unit<sup>1</sup> that is credibly believed to have committed a gross violation of human rights. The other provision, inserted annually in DOD appropriations legislation, for years prohibited the use of DOD funds to support any training program (as defined by DOD) involving members of a unit of foreign security or police force if the unit had committed a gross violation of human rights. For FY2014, the prohibition has been expanded to also include “equipment, or other assistance.”<sup>2</sup>

As two of the many laws that Congress has enacted in recent decades to promote respect for human rights, which has become widely recognized as a core U.S. national interest, the Leahy laws have been the subject of long-standing debate. Policy makers, practitioners, and advocacy groups continue to deliberate overarching questions regarding their utility and desirability, as well as specific questions regarding their appropriate scope and problems in implementation. For many, the Leahy laws are important U.S. foreign policy tools not only because of their potential to promote human rights but because they may help safeguard the U.S. image abroad by distancing the United States from corrupt or brutal security forces.<sup>3</sup> Some, however, raise concerns that these laws limit the Administration’s flexibility to balance competing national interests and may constrain the United States’ ability to respond to national security needs.<sup>4</sup>

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<sup>1</sup> There is no FAA definition for the term “security force.” The Department of Defense (DOD) defines the term as “duly constituted military, paramilitary, police, and constabulary forces of a state.” (DOD Dictionary of Military and Associated Terms, DOD Joint Publication 1-02, accessible online through <http://www.dtic.mil>.) Another DOD joint publication states that foreign security forces include but are not limited to: military forces; police forces; border police, coast guard, and customs officials; paramilitary forces; forces peculiar to specific nations, states, tribes, or ethnic groups; prison, correctional, and penal services; infrastructure protection forces; and governmental ministries or departments responsible for the above forces. (DOD Joint Publication 3-22, Foreign Internal Defense, July 12, 2010, p. VI-31.) Referred to hereafter as DOD JP 3-22.

<sup>2</sup> The Leahy laws apply only to security assistance funding authorized by the FAA and AECA or programs funded through DOD appropriations. They do not apply to other security assistance that may be provided by U.S. government agencies through other provisions of law.

<sup>3</sup> An Amnesty USA blog describes the Leahy laws as “a powerful yet often-overlooked tool to help prevent the U.S. government from directly arming human rights violators in the ranks of foreign security forces and to help the U.S. avoid complicity in the commission of human rights violations,” albeit one that needs strengthening. Kathryn R. Strifflino, *Deconstructing the Leahy Law: Fact vs. Fiction*, Amnesty USA, July 8, 2013, <http://blog.amnestyusa.org/africa/deconstructing-the-leahy-law-fact-vs-fiction/>.

<sup>4</sup> Although she did not specifically mention the Leahy laws in a December 2013 speech, National Security Advisor Susan E. Rice addressed the problem of balancing competing priorities. After asserting that advancing democracy and respect for human rights is central to U.S. foreign policy, she also stated that “advancing human rights is not and has never been our only interest.” Advancing other interests—countering weapons of mass destruction, aggression, terrorism, and catastrophic threats to the global economy—requires, she said, that the United States “sometimes face painful dilemmas ... [and] American foreign policy must sometimes strike a difficult balance ... between our short and long-term imperatives.” Remarks by National Security Advisor Susan E. Rice, “Human Rights: Advancing American (continued...)”

Central to this debate are overarching questions that are difficult to answer given the lack of systematic study of Leahy law results. Have these laws indeed been effective in promoting human rights? To what extent have these laws impeded or advanced other key U.S. objectives, such as countering terrorism, preventing violence, or stabilizing territory? Do the laws lead other nations to choose competitors for foreign influence as the source of military materiel and training? Will the United States be able to control down-range effects as it outsources military training through third-party nations? Competing perceptions of these overarching issues underlie perspectives on specific proposals for congressional action.

In the 113<sup>th</sup> Congress, an illustration of the enduring debate surrounding the Leahy laws is deliberation on a provision in the Senate Appropriations Committee (SAC) version of the FY2014 DOD Appropriations bill (Section 8057 of S. 1429), a modified version of which is now contained in the Consolidated Appropriations Act, 2014 (Division C, Section 8057, P.L. 113-76, signed into law January 17). This provision expanded the scope of the DOD Leahy law by extending the FY2013 (and prior fiscal year) prohibition on training to all DOD assistance. Further action in the 113<sup>th</sup> Congress may occur during consideration of FY2015 foreign aid appropriations, which may include proposals to fund implementation of the laws.

This report provides background on the Leahy laws, including a brief history of their legislative development; an overview guide to the standards and processes used to “vet”—that is, review and clear—foreign military and other security forces for gross violations of human rights; and a brief review of salient issues regarding the provisions of the laws and their implementation. Two of these issues concern debate over the consistency of the language of the two laws: whether the scope of the DOD provision should be expanded or altered to bring it closer to the FAA version, and whether the FAA and DOD “remediation standards” (the conditions for clearing units found guilty of a gross violations of human rights in order to provide aid) should be made consistent. Two others concern debate over implementation: whether the resources to conduct vetting are adequate, and whether implementation practices and procedures should be standardized. Several text boxes provide information on security assistance subject to the Leahy laws, the types of acts defined as gross violations of human rights, the language of the FAA and DOD Leahy laws and key differences between them, a discussion of the “credible information” standard for denying assistance, and a case study on Colombia.<sup>5</sup> A concluding section offers further observations for Congress.

### **Acts Defined as Gross Violations of Human Rights**

FAA Section 502B(d)(1) (22 U.S.C. 2340(d)(1)) states, “the term ‘gross violations of internationally recognized human rights’ includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.” According to the State Department, extrajudicial killings are encompassed by this definition, and Leahy vetting also screens for politically motivated rape.

(...continued)

Interests and Values,” at the Human Rights First Annual Summit, Washington, D.C., December 4, 2013.

<sup>5</sup> Colombia was chosen as a case study because U.S. Embassy Bogotá’s Leahy vetting operation is considered by some observers to be “the gold standard.” The U.S. embassy in Colombia has been tapped to share its best practices with other embassies seeking to bring their operations into compliance or improve their performance. U.S. Department of State, Embassy Bogotá, “Bogota’s Leahy Human Rights Vetting: Best Practices Shared,” Unclassified Cable. February 26, 2013.

## Legislative Background

Since Congress first enacted the two “Leahy laws” in the late 1990s, these laws have been regarded as a key element of U.S. human rights policy. Beginning in the 1970s, Congress passed many conditions on U.S. assistance to foreign governments seeking to promote respect for human rights. Most were—and continue to be—attached to legislation for an individual country or region.<sup>6</sup>

A major precursor to the Leahy laws was the broad legislative provision passed in 1974, known as “Section 502B,” which prohibits security assistance to any country found to engage in a “consistent pattern of gross violations of internationally recognized human rights.”<sup>7</sup> This legislation provides the basis for the standard definition of human rights used for U.S. government purposes, including for Leahy law vetting, but has been rarely if ever invoked.<sup>8</sup> In 1997, Congress enacted a condition on counternarcotics (CN) assistance similar to the current Leahy laws, prohibiting the use of FY1998 State Department CN appropriations for foreign security forces where there was credible evidence that a unit had committed gross violations of human rights.<sup>9</sup>

In 1998, Congress passed the first of what are now known as the Leahy laws, extending the scope of the CN condition to all assistance provided by foreign operations appropriations.<sup>10</sup> The expanded provision was thereafter included in annual foreign operations appropriations acts until 2008, when that condition was codified in permanent law first as FAA Section 620J, now FAA Section 620M (22 U.S.C. 2378d), applying to all assistance authorized by the FAA and AECA, unless exempted by a notwithstanding provision.<sup>11</sup>

In 1998, for FY1999, Congress placed a similar condition in the DOD appropriations bill.<sup>12</sup> This condition prohibited the use of DOD funds to train units of foreign military and other security forces if there was credible information that a member of a unit had committed a gross violation of human rights. (Unlike the FAA version, the DOD Leahy law, as contained in DOD FY2013 and prior DOD appropriations, pertained only to training, but not to any other form of assistance and activities—such as equipment, support services, grants, loans and cash transfers, and exercises—that might be provided under a variety of DOD authorities.) DOD defines military

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<sup>6</sup> For recent examples, see Sections 7043, 7044, and 7045 in Division I, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Consolidated Appropriations Act, 2012, P.L. 112-74), which contains country-specific conditions on security assistance to Ethiopia, the Philippines, Colombia, Honduras, and Mexico.

<sup>7</sup> Section 502B of the FAA (22 U.S.C. 2304), originally added by P.L. 93-559.

<sup>8</sup> In response to CRS requests, the State Department did not report any instances in which Section 502B was invoked. State Department officials stated that this provision has not been used because it is “overly broad.”

<sup>9</sup> Title II, “International Narcotics Control,” of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as enacted into law by Section 101(a) of Division A of the Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208).

<sup>10</sup> Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (P.L. 105-118).

<sup>11</sup> Section 651 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008. (Division J of the Consolidated Appropriations Act, 2008, P.L. 110-161, added the new FAA section, designating it as Section 620J, later renumbered.)

<sup>12</sup> Section 8130 of the Department of Defense Appropriations Act, 1999 (P.L. 105-262).

training of foreign personnel as the “instruction of foreign security force personnel that may result in the improvement of their capabilities.”<sup>13</sup> This condition has been retained in all subsequent DOD appropriations legislation, with two changes. In 2000, the reference to a “member” of a unit was deleted, and in 2013 the words “or police” were added.<sup>14</sup>

In 2011, Congress amended the FAA provision (and renumbered it as Section 620M of the FAA) with three word changes to align it more closely with the DOD language.<sup>15</sup> First, the requirement invoking “gross violations” of human rights was changed from the plural to the singular “a gross violation” of human rights. Second, Congress modified the standard to resume aid to require that the government take “effective steps” (rather than “effective measures”) to bring responsible members of the foreign security unit to justice. Finally, the standard of proof was changed from “credible evidence” to “credible information,” a term that expresses Congress’s intent that the standard not require a level of substantiation that would be admissible in a U.S. court.<sup>16</sup> Congress also added seven procedural requirements to the provision.

In January 2014, Congress expanded the scope of the DOD provision, making it equivalent in scope to the FAA provision. The Consolidated Appropriations Act, 2014 (P.L. 113-76), contains a provision extending the FY2013 (and earlier) prohibition on any support for training where a gross violation of human rights occurred to “any training, equipment, or other assistance for the members of a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.” An exception is made for disaster and humanitarian assistance.<sup>17</sup>

Depending on the legal interpretation, this provision applies to many of the DOD programs and activities conducted with foreign military and other security forces under a wide variety of DOD authorities.<sup>18</sup> These may include counternarcotics, coalition, and logistics support and assistance, including equipment; services such as transportation and logistics, maintenance and operation of equipment; and grants and loans to procure goods and services in support of security forces, as well as cash transfers of funds. They may also include some types of military-to-military contacts,

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<sup>13</sup> For a discussion of the FAA and DOD definitions of training, see Aaron Prince, “What is Military Training?” *The DISAM Journal of International Security Cooperation Management*, Annual Volume 2, August 2013, accessible through [http://www.disamjournal.org/documents/pubs/journals/Volume\\_2%20\(Annual\).pdf](http://www.disamjournal.org/documents/pubs/journals/Volume_2%20(Annual).pdf). For DOD, training does not include exercises, individual or subject matter expert exchanges (including military to military contacts, seminars and conferences, small unit exchanges where the primary focus is interoperability or mutually beneficial exchanges, and familiarization and orientation visits).

<sup>14</sup> Section 8098 of the Department of Defense Appropriations Act, 2000 (P.L. 106-79) deleted the reference to a member of the unit. The words “or police” were added by Section 8057 of the Department of Defense Appropriations Act, 2013 (Division C of the Consolidated and Further Continuing Appropriations Act, 2013 [P.L. 113-6]).

<sup>15</sup> Consolidated Appropriations Act, 2012 (P.L. 112-74), Division I, Department of State, Foreign Operations, and Related Programs Act, 2012, Section 7034(k).

<sup>16</sup> Regarding the standard for “credible evidence,” the conference report for the Omnibus Consolidated Emergency Supplemental, 1999 (P.L. 105-277; H.Rept. 105-825) stated: “By ‘credible evidence’ the conferees do not intend that the evidence must be admissible in a court of law.” Later, the conference report for Consolidated Appropriations Act, 2012 (P.L. 112-74; H.Rept. 112-331) explained that it substituted “‘credible information’ for ‘credible evidence’ in order to clarify that the information need not be admissible in a court of law to be credible and to conform to similar wording in a comparable provision in the Defense Appropriations Act.

<sup>17</sup> This provision, minus the exception, was originally contained in the Senate Appropriations Committee (SAC) version of the FY2014 Defense Appropriations bill, S. 1429, Section 8057.

<sup>18</sup> See *DISAM Security Cooperation Handbook*.



including advising and mentoring. Not all military activities with foreign forces would necessarily constitute assistance, however.

As contained in P.L. 113-76, the expanded provision would not apply to DOD-funded foreign disaster assistance<sup>20</sup> and other humanitarian assistance, where the ultimate beneficiaries are foreign populations but where U.S. military personnel often work with or support foreign military or other security forces in delivering assistance.<sup>21</sup>

## Comparison of Current Laws

The FAA and DOD appropriations Leahy laws both prohibit assistance to foreign military and other security units credibly believed to be involved in a gross violation of human rights. After the FY2014 change, three differences remain. First, in the FAA language, the prohibition does not apply if the Secretary of State “determines and reports” to specified congressional committees “that the government of such country is taking effective steps to bring the responsible members of the security forces unit to justice.” The DOD appropriations language states that the prohibition applies “unless all necessary corrective steps have been taken.” These provisions establish the basis for “remediating” units, making them eligible for assistance, but neither remediation standard is defined. Second, the DOD version provides for a waiver by the Secretary of Defense in consultation with the Secretary of State in extraordinary circumstances; the FAA contains no corresponding provision. Third, the FAA legislation includes a “duty to inform” provision requiring the Secretary of State to promptly inform a foreign government of the basis for withholding assistance and to help that

### Security Assistance Subject to the Leahy Laws

**(1) Assistance to foreign security forces authorized by any provision of the FAA and the AECA absent a notwithstanding provision. This includes, but is not limited to:**

- Foreign Military Sales (FMS) and Foreign Military Financing (FMF);
- International Military Education and Training (IMET); and
- Peacekeeping Operation (PKO).

International Narcotics and Law Enforcement (INCLE) funds and Nonproliferation, Antiterrorism, Demining, and Related Programs (NADR) funds are exempt under notwithstanding provisions, but the State Department generally applies the Leahy Law as a matter of policy.

**(2) Assistance, excluding humanitarian and disaster aid, funded through annual DOD appropriations, absent a notwithstanding provision. Pending a DOD legal definition of such assistance, the following includes only training events covered under the FY2013 and prior year DOD Leahy law:<sup>19</sup>**

- Counter-drug, counter-terrorist, and humanitarian demining training, and Joint Combined Exchange Training (JCET);
- Assistance funded by the Combatant Commander’s Initiative Fund; and

**(3) Assistance provided by “Section 1206” Building Partnership Capacity legislation (P.L. 109-163, as amended) and the joint State-DOD Global Security Contingency Fund (P.L. 112-81, as amended).**

<sup>19</sup> For a catalogue of DOD security cooperation authorities, some of which may constitute assistance, see a Defense Institute for Security Assistance Management (DISAM) publication. Defense Institute for Security Assistance Management, *Security Cooperation Programs Handbook*, Revision 14, September 2013, [http://www.disam.dsca.mil/documents/pubs/security\\_cooperation%20\\_programs\\_16Sept2013/.pdf](http://www.disam.dsca.mil/documents/pubs/security_cooperation%20_programs_16Sept2013/.pdf). This handbook provides a comprehensive list of DOD security cooperation authorities. Hereafter cited as *DISAM Security Cooperation Handbook*.

<sup>20</sup> DOD supports the U.S. Agency for International Development (USAID) in providing disaster relief to foreign nations. While USAID is the lead agency for disaster relief, military personnel may be the first U.S. personnel on the ground in response to a disaster.

<sup>21</sup> For instance, in humanitarian relief operations, the U.S. military may supply fuel for the transport vehicles of foreign military forces that are distributing aid. The units receiving fuel would not have to be vetted.



government, to the extent practicable, take effective measures to bring the responsible members of the security forces to justice.

(See **Table 1**, below, which summarizes these key differences.)

**Table 1. Key Differences in FAA and DOD Leahy Provisions**

Subject	FAA	DOD Appropriations FY2014
Exception/Standard for Remediation	If a government is "taking effective steps to bring the responsible members of the security forces unit to justice."	If "all necessary corrective steps have been taken."
Waiver	No	Yes, in "extraordinary circumstances."
"Duty to inform"	Yes	No

**Leahy Law in the Foreign Assistance Act of 1961, as Amended  
SEC. 620M [22 U.S.C. 2378d]. LIMITATION ON ASSISTANCE TO SECURITY FORCES.**

- (a) IN GENERAL.—No assistance shall be furnished under this Act or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.
- (b) EXCEPTION.—The prohibition in subsection (a) shall not apply if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations that the government of such country is taking effective steps to bring the responsible members of the security forces unit to justice.
- (c) DUTY TO INFORM.—In the event that funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.
- (d) CREDIBLE INFORMATION.—The Secretary shall establish, and periodically update, procedures to—
- (1) ensure that for each country the Department of State has a current list of all security force units receiving United States training, equipment, or other types of assistance;
  - (2) facilitate receipt by the Department of State and United States embassies of information from individuals and organizations outside the United States Government about gross violations of human rights by security force units;
  - (3) routinely request and obtain such information from the Department of Defense, the Central Intelligence Agency, and other United States Government sources;
  - (4) ensure that such information is evaluated and preserved;
  - (5) ensure that when vetting an individual for eligibility to receive United States training the individual's unit is also vetted;
  - (6) seek to identify the unit involved when credible information of a gross violation exists but the identity of the unit is lacking; and
  - (7) make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished pursuant to subsection (a).

**Leahy Law in the Department of Defense Appropriations Act, 2014  
(Division C, Consolidated Appropriations Act, P.L. 113-76)**

Sec. 8057. (a) In General-

(1) None of the funds made available by this Act may be used for any training, equipment, or other assistance for the members of a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.

(2) The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.

(b) Exception- The prohibition in subsection (a)(1) shall not apply if the Secretary of Defense, after consultation with the Secretary of State, determines that the government of such country has taken all necessary corrective steps, or if the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

(c) Waiver- The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a)(1) if the Secretary of Defense determines that such waiver is required by extraordinary circumstances.

(d) Procedures- The Secretary of Defense shall establish, and periodically update, procedures to ensure that any information in the possession of the Department of Defense about gross violations of human rights by units of foreign security forces is shared on a timely basis with the Department of State.

(e) Report- Not more than 15 days after the application of any exception under subsection (b) or the exercise of any waiver under subsection (c), the Secretary of Defense shall submit to the appropriate congressional committees a report--

(1) in the case of an exception under subsection (b), providing notice of the use of the exception and stating the grounds for the exception; and

(2) in the case of a waiver under subsection (c), describing the information relating to the gross violation of human rights; the extraordinary or other circumstances that necessitate the waiver; the purpose and duration of the training, equipment, or other assistance; and the United States forces and the foreign security force unit involved.

(f) Definition- For purposes of this section the term 'appropriate congressional committees' means the congressional defense committees and the Committees on Appropriations.

## Leahy Vetting in Practice<sup>22</sup>

The State Department and U.S. embassies worldwide have developed a system that seeks to ensure that no applicable State Department assistance or DOD-funded training is provided to units or individuals in foreign security forces who have committed any gross violations of human rights. This procedure, designed to comply with the Leahy laws, is known as “vetting” or “Leahy vetting.” Primarily a State Department responsibility with input from other agencies, Leahy vetting is a multi-step process that involves staff at U.S. embassies abroad; the State Department Bureau for Democracy, Human Rights, and Labor (DRL) in Washington, DC, which is the lead State Department bureau for vetting; State Department regional bureaus; and other government agencies as required. The State Department policy provides for two separate processes, one for training and one for equipment and other non-training assistance.

For DOD and State Department-funded training (and in some cases the provision of equipment related to training), the process has evolved from a “cable-based” system when the State

<sup>22</sup> This section is based on interviews conducted with State Department and DOD officials from March to December 2013, information posted on a U.S. government website, <http://www.humanrights.gov>, and other sources as indicated.

Department began to vet foreign security forces in 1997 to a computerized process through the International Vetting and Security Tracking (INVEST) system. Gradually put in place between April 2010 and February 2011, INVEST is the current official system for Leahy vetting for training. At some posts INVEST is also used for equipment provided in conjunction with training, but this is not mandatory.

For State Department-funded equipment and other non-training assistance, the State Department generally approves potential recipients through a memorandum and clearance process generated by the Bureau of Political-Military Affairs at the time funding is allocated to beneficiary countries. (The GAO recommended in November 2011 that the State Department vet individuals and units receiving equipment through the INVEST system, but the State Department has not developed such a policy. In some cases, however, equipment and non-training assistance is vetted through INVEST even though this is not mandatory.)

### "Individual" vs. "Unit" Vetting

Both Leahy laws state that assistance (in the case of the FAA provision) or training (in the case of the DOD provision) should be denied to *units* credibly believed guilty of a gross violation of human rights. In practice, the relevant unit to be vetted—that is, reviewed and cleared—is identified case-by-case. In general, the State Department has considered the relevant unit to be “the lowest organizational element of a security force capable of exercising command and discipline over its members.”<sup>23</sup> Before 2011, when training was provided on an individual basis, individuals were sometimes regarded as a “unit” for vetting purposes. A Senate Appropriations Committee report concerning the 2011 changes in the FAA legislation clarifies that when an individual is vetted, his/her unit must be vetted as well.<sup>24</sup> Practices have varied depending on the type of assistance and the U.S. embassy conducting the vetting. The Consolidated Appropriations Act, 2014 (Division F, Section 7034(l), P.L. 113-76) further clarifies the language of this vetting requirement by amending FAA Section 620M(d)(5) to read that to “ensure that when an individual is designated to receive United States training, equipment, or other types of assistance, the individual’s unit is vetted as well as the individual.”<sup>25</sup>

Under the INVEST system, the State Department to date has vetted approximately 400,000 “candidates” for training, a figure that includes both individuals and units. Since its adoption, INVEST has averaged about 130,000 discrete new vettings a year, and the pace seems to be increasing. In FY2012, the State Department reported vetting nearly 165,000 individuals and units.<sup>26</sup> According to some vetters, the 2011 amendments to the FAA Leahy law requiring that, in

<sup>23</sup> DOD Joint Staff policy message, *Human Rights Verification for DOD-Funded Training of Foreign Personnel*, DTG071300Z, June 2004. Last accessed December 13, 2013 at [http://www.disam.dsca.mil/documents/itm/functional\\_areas\\_human\\_rights/dod\\_memo\\_human\\_rights\\_verification.pdf](http://www.disam.dsca.mil/documents/itm/functional_areas_human_rights/dod_memo_human_rights_verification.pdf). Hereafter referred to as DOD Joint Staff policy message, June 2004.

<sup>24</sup> The Senate Appropriations Committee report for the Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2012 (S. 1601, S.Rept. 112-85, explained the following: “The vetting process has been widely applied to individuals who are candidates for U.S. training, but it has more often not been applied to those individuals’ units, or to units that may receive U.S. equipment. This is contrary to the letter and intent of the law and has limited its effectiveness. The Committee expects the Department to implement the law faithfully and effectively.” This statement was endorsed in the conference report for accompanying the Consolidated Appropriations Act, 2012 (P.L. 112-74, H.Rept. 112-331), through a blanket provision stating that departments and agencies were to comply with language in S.Rept. 112-85 “as though stated in this joint explanatory statement unless specifically directed to the contrary.”

<sup>25</sup> The joint explanatory statement to the bill states that this modification is “for purposes of consistency, and is not intended to modify the current vetting procedures of the Department of State.” It also would require the Secretary of State to submit a report to the appropriations committees describing such vetting procedures not later than 30 days after enactment.

<sup>26</sup> The State Department’s FY2014 Congressional Budget Justification states that 164,603 Leahy vettings were conducted in FY2012, well over the target of 135,000. The number conducted in FY2011 was cited as 131,810, also reported as above target although the target number was not stated. Targets for FY2013 and FY2014 were listed as (continued...)

the case of individual training candidates, the candidate's unit as well as the individual candidate be vetted each time the candidate is named as a potential recipient of assistance have increased their work load. In some embassies, however, veters had already interpreted the vetting requirements to cover both individuals and their units.

## The Vetting Process

Leahy vetting is a multi-stage process that begins in U.S. embassies abroad and concludes with action at State Department headquarters in Washington, D.C. Vetting procedures generally utilize a dedicated online tracking system for vetting candidates—both units and individuals—for training and the exchange of memoranda for other forms of assistance.

## U.S. Embassy Procedures

U.S. embassy staff initiates each vetting request. (For a diagram of the process see **Figure 1**, below.) The State Department recommends that each embassy have its own Standard Operating Procedures (SOPs) that define country-specific requirements for initiating and completing vetting requests such as the lead time needed for turning around a request.<sup>27</sup> Representatives of relevant U.S. departments and agencies at U.S. embassies submit vetting requests to staff conducting the vetting.<sup>28</sup> The subjects of these vetting requests typically are members of the country's military or civilian police, but they may also include prison guards, armed game wardens, and coast guards, as well as customs, border, and tax enforcement personnel. Civilian government officials, including those representing foreign defense ministries, are typically not required to be vetted.<sup>29</sup> Exceptions to this general rule do exist. For example, the DOD Regional Counterterrorism Fellowship Program (CTFP) vets all participants as a matter of policy.

As part of the vetting process under INVEST, individuals proposed for receiving U.S. assistance as part of a single event, equipment issuance, or training are grouped together in a "batch." Input of the initial data is just one of the functions that are completed at the embassy. Once a batch of

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(...continued)

160,000. The Secretary of State, *Congressional Budget Justification Fiscal Year 2014*, Volume 1: Department of State Operations, 2013, p. 261. Accessible through <http://www.state.gov>.

<sup>27</sup> According to the Government Accountability Office (GAO), the State Department has required U.S. embassies to prepare an SOP outlining how to comply with the Leahy Law provisions since 2003. However, the SOPs are not legally mandated. DRL reviews the SOPs prepared by the embassies although, according to GAO, the bureau has not monitored embassy SOPs consistently. For example, DRL reviewed SOPs for 43 of the 159 embassies that conducted human rights vetting in FY2012. In its report, GAO recommends more consistent and global monitoring of embassy SOPs. U.S. Government Accountability Office, *Human Rights: Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws*, GAO-13-866, September 2013, <http://www.gao.gov> (hereafter cited as *GAO-13-866*), pp. 24-25.

<sup>28</sup> These include vetting nominations submitted by units within the State Department, such as the Bureau for International Narcotics and Law Enforcement Affairs (represented at post by the Narcotics Affairs Section) and the Bureau for Diplomatic Security (represented by the Regional Security Office). Military sources of vetting requests include several DOD entities, variously represented by Offices of Defense Cooperation, Security Cooperation, and Security Assistance. Other common sources of vetting may also originate from embassy representatives of the U.S. Departments of Justice and Homeland Security, as well as the U.S. Agency for International Development.

<sup>29</sup> DOD JP 3-22 includes under its definition of foreign security forces the government ministries or departments responsible for the named military, police, and other security forces, but the use of this definition does not extend to State Department vetting.

candidates has been identified, embassy personnel check their names as well their units against a variety of sources for derogatory information. (See the textbox below regarding the standard for judging derogatory information to be credible enough to disqualify candidates for U.S. assistance.) Sources include local and U.S. government databases and reports, as well as a range of civil society and non-governmental organizations (NGOs).

The vetting at the embassy stage is completed with one of four determinations: to approve, reject, or suspend candidates, or to request further guidance from State Department headquarters. Once the suspended or rejected cases are removed from an INVEST batch, the remaining candidates are sent on to State Department headquarters for further vetting.

### **The "Credible Information" Standard**

The State Department explains that vetters determine if derogatory information is credible on a case-by-case basis. It states that for information to be found credible, "it is not required to meet the same standard as would apply to admit evidence in a U.S. court of law, but consideration is given to the source, the details available, the applicability of the individual or unit, the circumstances in the relevant country, the availability of corroborating information, and other factors."<sup>30</sup> The department further states that the information should "be deserving of confidence as a basis for decision-making"; that "NGO [non-governmental organization] information or press reports can be sufficient (assuming sources have [a] reputation for accurate and impartial reporting and reported information has indicia of reliability)"; and that the information "should be corroborated by multiple sources (i.e., more than one source preferred although not necessary; [it] depends on [the] quality of source/information)."<sup>31</sup>

## **Headquarters Level**

In Washington, DRL and the State Department regional bureaus further vet approved individuals in the batch. DRL and the relevant regional bureau work independently, although the two offices stay in communication as the vetting process proceeds. If the regional bureau and the DRL vetters agree that no derogatory information was found, then the individual is deemed approved and the embassy vetting staff is notified of the positive determination. One exception to this process involves vetting candidates from "Fast Track" countries, determined by the State Department to be functional democracies without a record of human rights abuse. Candidates from Fast Track countries are vetted only at the embassy and not in Washington.

## **Additional Review and Conclusion**

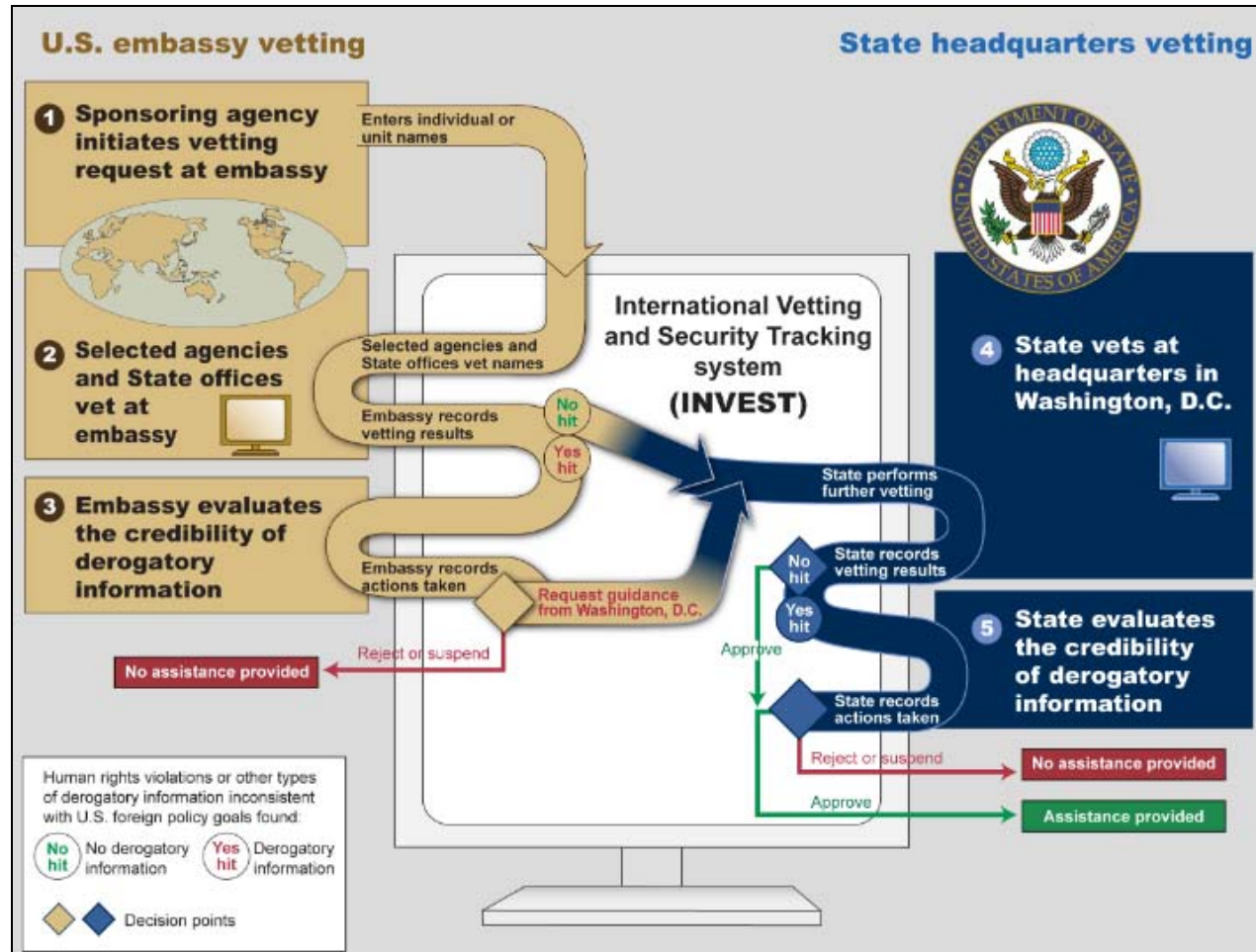
If further review is deemed required, DRL convenes a "broader team of State Department representatives" who may request further information from the relevant embassy to evaluate the credibility of derogatory information.<sup>32</sup> Until the team reaches consensus, the assistance or training is kept on hold. Except for Fast Track countries, Leahy vetting is complete when the final determination is recorded in INVEST.

<sup>30</sup> Available at <http://www.humanrights.gov/2013/07/09/an-overview-of-the-leahy-vetting-process/>.

<sup>31</sup> "Leahy Vetting: Law, Policy, Process," briefing slides of April 15, 2013, available through <http://www.humanrights.gov>.

<sup>32</sup> U.S. Department of State, *An Overview of the Leahy Vetting Process*, July 10, 2013, <http://www.humanright.gov/2013/07/09/an-overview-of-the-leahy-vetting-process/>.

Figure I. Leahy Vetting Process for Training



Source: Government Accountability Office (GAO), *Human Rights: Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws*, GAO-13-866, September 2013, p. 10.

Notes: The process depicted here applies to non-Fast-Track countries. Recipients of assistance in Fast Track countries only are required to be vetted at the U.S. embassy in the country where the assistance is provided.



## Vetting Results and Their Use

By and large, most vettings filed through the INVEST system conclude with an approval. Vettings recently have ended in denial around 1% or less of the time, and a suspension about 9% of the time, according to figures provided in news reports.<sup>33</sup> *CQ Weekly* reports that training was withheld "for a variety of reasons, including the possibility that there was credible information that the person or unit involved had committed a gross violation of human rights," and for administrative difficulties.<sup>34</sup> In some cases, training was suspended if derogatory information other than a human rights violation was found, as candidates may be excluded for other undesirable behavior. In the many cases where training was suspended for administrative reasons, it was subsequently rescheduled once the problem was resolved, according to that source.

In general, vetting results are used to determine who will receive U.S. assistance or training. They also form the basis for reporting to foreign governments under the FAA "duty-to-inform" provision when members and units of their security forces fail vetting and assistance is denied. According to some U.S. policy makers, even though only the FAA contains the "duty-to-inform" requirement, in practice the provision should extend also to DOD-funded cases. The logic of this requirement is to garner cooperation with the law, encourage improved compliance by host governments with human rights standards, and make clear that U.S. assistance will not be provided to human rights violators. In addition, the FAA provides that the State Department should offer assistance to a foreign "host" government to investigate and prosecute suspected human rights violators who have been identified through the vetting process.

## Vetting Personnel

The number of embassy staff involved in Leahy vetting may differ based on work flows, request volumes, funding levels, and other conditions that vary across U.S. embassies. Some embassy operations are quite limited, according to embassy inspection reports by the State Department's Office of the Inspector General (OIG).<sup>35</sup> Some advocates for strengthening implementation of the

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<sup>33</sup> A *CQ Weekly* article of December 2013 cites State Department figures showing that it vetted 162,639 individuals and units in 2012, of which 563 cases were denied because of credible information that the individuals or their units had committed a gross violation of human rights, and training was withheld in an additional 14,627 cases. (Emily Cadei, "Foreign Militaries, Domestic Tension," *CQ Weekly*, December 16, 2013, p. 2075. Hereafter referred to as "Foreign Militaries, Domestic Tension." The author cited the State Department as the source for this information.) An earlier *New York Times* article states that in 2011, "1,766 individuals and units from 46 countries ... were denied assistance" due to human rights concerns. It also cited the State Department as the source for the figures. (Eric Schmitt, "Military Says Law Barring U.S. Aid to Rights Violators Hurts Training Mission," *The New York Times*, June 21, 2013, p. A11.) The State Department has not provided CRS with information on denials and suspensions to include in this report.

<sup>34</sup> "Foreign Militaries, Domestic Tension."

<sup>35</sup> In several of its embassy inspection reports, the State Department's OIG identified weaknesses in staffing and other aspects of Leahy vetting operations at post. For example, a 2012 OIG report on Haiti (Embassy Port-au-Prince) noted that despite a growing case load, there was no secondary or backup Leahy vetting coordinator at the embassy. To be in compliance with DRL-recommended good management practices, OIG recommends a secondary coordinator should be identified and trained in the INVEST system. A 2012 study of Embassy Singapore recommended that the embassy adopt Standard Operating Procedures in coordination with DRL "for storing the results of Leahy vetting checks done at the embassy for candidates nominated for foreign assistance-funded training ... " In a 2012 report on Embassy Nairobi in Kenya, the inspectors found that candidate names were only being checked against a dated human rights report and not against other sources, and that there was no reporting mechanism to ensure that candidates who are vetted and cleared are the same persons who received the training. See U.S. Department of State and the Broadcasting Board of (continued...)

Leahy law conditions maintain that some vetting operations are underfunded and this has resulted in "thin" to nonexistent efforts at some embassies.<sup>36</sup>

## Vetting Funding

In recent years, Congress has supported Leahy vetting operations through a directed allocation of funds to DRL in the Diplomacy and Consular Programs (D&CP) account. In FY2008, for example, DRL received \$2.65 million in appropriations for Leahy vetting.<sup>37</sup> Much of this funding was used to develop and establish the INVEST system, an online tool to track and process vetting requests. Subsequently, Congress directed DRL to allocate approximately \$2 million for Leahy vetting, which the State Department has made a regular practice. (The joint explanatory statement to the Consolidated Appropriations bill for FY2014 [H.R. 3547, Division K] states that State Department Diplomatic and Consular Affairs funding in the bill contains \$2.75 million to implement the FAA Leahy law.) According to State Department officials, the \$2 million in recent years has supported several regional bureau vetting positions, and a few contract positions to carry out vetting and support running the INVEST system.<sup>38</sup> The number of completed vettings has become a performance indicator for the DRL bureau. In its annual congressional budget justification, the DRL bureau reports completed vettings and sets targets for the future.

In the field, vetting-related activities, including personnel costs, are typically funded out of embassy administrative budgets. The State Department generally gives the embassies wide latitude in staffing and financing their operations. There does not appear to be formal guidance on how U.S. embassies should allocate resources and funds for Leahy vetting. As a result, each embassy plans and budgets for Leahy vetting operations differently. Some embassies, for example, receive assistance from the State Department's International Narcotics and Law Enforcement (INL) bureau, through its International Narcotics Control and Law Enforcement (INCLE) account. U.S. Embassy Mexico City, which conducts the second-largest number of vettings worldwide, reportedly draws funds from the Mérida Initiative, a multi-year counternarcotics and anticrime assistance program that is funded largely through the State Department's Foreign Military Financing (FMF) and INCLE accounts.

Some embassies with large volumes of vetting requests have one or more full-time positions dedicated to the vetting process. Many embassies, however, are very lightly staffed and the data entry into the INVEST system is frequently a part-time duty. Increased workloads resulting from the 2011 amendments to the Leahy law in the FAA have raised concerns at some embassies, among them those that are small and understaffed or those with the heaviest Leahy vetting

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Governors, Office of Inspector General, Inspection of Embassy Port-au-Price, Haiti, Report Number ISP-I-12-24A, May 2012; U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, Inspection of Embassy Singapore, Singapore, Report Number ISP-I-12-36A, June 2012; U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, Inspection of Embassy Nairobi, Kenya, Report Number ISP-I-12-38A, August 2012. All the reports are accessible through <http://www.oig.state.gov>.

<sup>36</sup> CRS communication with Open Society Foundations, June 10, 2013.

<sup>37</sup> The Consolidated Appropriations Act, 2008 (P.L. 110-161), Division J, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 provided \$4 million, and the Supplemental Appropriations Act, 2008 (P.L. 110-252) reduced this amount by \$1.35 million.

<sup>38</sup> Currently, four regional bureau vetting positions are funded through DRL while two others are self-supported by the regional bureaus. The remaining funding from the \$2 million goes toward INVEST software licenses, software upgrades, and hardware.

demands. In the absence of dedicated Leahy vetting funding, such embassies maintain they have inadequate staff to handle the increased demand on their operations.<sup>39</sup>

## **Vetting System Improvement Initiatives**

The State Department and DOD are discussing ways to improve the vetting process by increasing DOD participation. (After DOD personnel in each embassy's security assistance organization<sup>40</sup> forward nominees for security assistance to embassy Leahy vetters, DOD generally has no further role in the Leahy vetting process.) One step would be to improve the lines of communication between the State Department and DOD, and creating greater communication within DOD, when the INVEST system identifies potential human rights violations or other obstacles to approving assistance. A related step would be to lengthen the timeline between the embassy's submission of a vetting request to State Department headquarters and the conclusion of the vetting process. This change would allow time for DOD headquarters officials to coordinate a response with the geographic Combatant Commands<sup>41</sup> that might avert the suspension of activities for non-substantive reasons. A third step would be to improve training on how to conduct vetting. DOD is also looking into updating its own guidance on Leahy vetting as last articulated in the DOD 2004 Joint Staff policy message.<sup>42</sup>

DRL recently broadened its outreach to human rights organizations, increasing dialogue through meetings and developing an Internet-based "portal." DRL has received Leahy-relevant information from NGOs through face-to-face meetings and email, and encouraged U.S.-based NGOs to communicate with the relevant country desk officers in DRL and NGOs outside the United States to communicate with the designated human rights officer in each U.S. embassy. The portal is an online website designed to facilitate the anonymous and confidential reporting of accusations and evidence of human rights abuses. The State Department hopes the portal, scheduled to go online in early 2014, will encourage human rights and other NGOs to post credible information about violations of human rights without fear they are further endangering victims. The portal will augment the current processes by which NGOs can report information through written correspondence, meetings, or briefings with State Department personnel. (Additionally, all written communication to the State Department and embassies is reviewed by desk officers.) Some practitioners and analysts warn that an anonymous reporting system has to be carefully designed or it has the potential to be manipulated or "gamed" by those who might seek to discredit units and block their receipt of U.S. assistance by submitting false reports.

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<sup>39</sup> DOD Joint Staff policy message, June 2004.

<sup>40</sup> Security Cooperation Organization (SCOs) is the generic term for the DOD components of each embassy, operating under Chief of Mission authority, which handle planning, organization, and implementation of military assistance. They are known by a different name at some embassies.

<sup>41</sup> There are six U.S. geographic combatant commands (COCOMs), which use assigned air, land, sea, and amphibious forces to plan, organize, and conduct military activities and operations in their areas of responsibility. These COCOMs are U.S. Africa Command (AFRICOM); U.S. Central Command (CENTCOM); U.S. European Command (EUCOM); U.S. Northern Command (NORTHCOM); U.S. Pacific Command (PACOM); and U.S. Southern Command (SOUTHCOM). For more on the GCCs and COCOMs, see CRS Report R42077, *The Unified Command Plan and Combatant Commands: Background and Issues for Congress*, by Andrew Feickert.

<sup>42</sup> DOD Joint Staff policy message, June 2004.

### Colombia Case Study<sup>43</sup>

Preventing U.S. assistance from benefiting perpetrators of human rights violations in the Colombian security forces was a major impetus for the introduction of the Leahy provisions in the late 1990s.<sup>44</sup> When Senator Leahy first introduced the Leahy conditions in 1997 (applying only to State Department's counternarcotics aid), the United States had begun to ramp up its assistance to Colombia's National Police and its military in order to battle drug trafficking, although the military at the time had an extremely poor human rights record. U.S. assistance expanded under Plan Colombia beginning in FY2000 as Congress appropriated funds to support the multi-year program. Between FY2000 and FY2013, U.S. assistance to Colombia was part of a more than \$9 billion effort, including funding to train, equip, and professionalize the Colombian armed forces. Security cooperation with Colombia continues today as the country has been identified as an "exporter" of its security expertise and provides training to countries in Latin America and around the globe that are under threat from organized crime.<sup>45</sup>

U.S. Embassy Bogotá reportedly conducts more vettings annually than any other country, averaging between 30,000 and 35,000 individuals and 1,400 security force units a year.<sup>46</sup> In an unclassified cable sharing its best practices, the Embassy notes it is fortunate to have two full-time staff positions dedicated to Leahy vetting. Furthermore, over the past several years, Embassy staff have innovated technologically by devising locally maintained databases and systems to manage their high work load. The Embassy cites the lack of staff turnover among personnel assigned to Leahy vetting as an important factor. A requirement at Embassy Bogotá is that requests for vetting from various offices be made well in advance to provide the lead time for a thorough investigation prior to sending requests on to Washington through the INVEST system. In addition, Bogotá's vetters, since the implementation of the 2011 changes to the FAA Leahy law, have required that, if an individual is vetted, so is the individual's unit, and vice versa. Under current State Department guidance, if all individuals to be trained are from the same unit and the commander and the unit are vetted and cleared for assistance, then the individuals in the unit do not need to be individually vetted. However, due to the history of human rights violations in Colombia, the vetting staff in Bogotá continue to vet each individual as well as the unit and commander.

Staff responsible for vetting in Bogotá and in the geographic bureau (the Bureau of Western Hemisphere Affairs, Office of Andean Affairs in this case) maintain that resistance to vetting has declined both from the Colombian government and from Embassy units such as the security cooperation organization, known as the Military Group. With the passage of time, they maintain that vetting has become accepted and even welcomed. Over the years, according to some vetting staff, Leahy vetting has reportedly motivated improvements in human rights observance by the Colombian military and police, making the Colombian authorities more accountable and disciplined. For example, in the early years, few Colombian military units could pass vetting due to their poor human rights record. Today many units of Colombia's military are eligible for U.S. support. While human rights problems persist, the State Department contends that the vetting requirements have made a clear contribution to improving the human rights record of the Colombian military. Advocates of the vetting process in Bogotá and Washington noted in interviews with CRS, however, that it is not a "perfect system," and that the process only works well when there is adequate, well-documented information.

Nevertheless, the efficacy of the Leahy vetting process in Colombia has been criticized by some human rights groups and NGOs. For example, the Fellowship of Reconciliation (FOR) and the non-governmental U.S. Office on Colombia published a report (hereafter, the FOR report) in July 2010 that questioned the application of Leahy vetting in Colombia. The FOR report points to a rash of reported extrajudicial executions allegedly committed by the Colombian military, which had been publically denounced by the U.N. Special Rapporteur on Extrajudicial Executions in 2009. The so-called "False Positives" scandal identified a practice of killing impoverished civilians and presenting them as guerrillas to inflate combat body counts.<sup>47</sup> The FOR report, which examined data for U.S. assistance

<sup>43</sup> For this case study, CRS communicated with officials at the U.S. Embassy in Bogotá and at State Department headquarters, May 2013.

<sup>44</sup> "Statement of Senator Patrick Leahy," undated, provided to CRS by the Senator's staff. Another focal point for Senator Leahy was U.S. funding to support Indonesia's military.

<sup>45</sup> "Colombia has evolved into a regional exporter of security expertise...." The White House, "Fact Sheet: The United States and Colombia—Strategic Partners," December 3, 2013.

<sup>46</sup> The U.S. Embassy in Mexico ranks second worldwide in the number of vettings conducted, according to the State Department. In 2009, Mexico City vetted approximately 16,800 individuals and this climbed to more than 26,400 in 2012. CRS communication with U.S. officials involved in embassy vetting in Mexico City (May 17, 2013).

<sup>47</sup> United Nations, Press Release, "Statement by Professor Philip Alston, "UN Special Rapporteur on Extrajudicial (continued...)

provided in 2005 and 2006,<sup>48</sup> charges that U.S. support went to vetted units (brigades and battalions) which operated in areas where large numbers of False Positive murders had been reported. (The FOR report assumes that if a reported extrajudicial execution occurred where a unit operated, that unit was likely to have been responsible for the violation without any other evidence. U.S. officials state that the mere location does not meet the credibility criteria. For example, multiple units may have been operating in the area at the same time.) Reflecting on the report, FOR staff have conceded that information that NGOs had gathered concerning False Positive murders was not available to Bogotá and State Department vetters at the time. According to the primary author of the FOR report, once FOR and other human rights groups shared information with the State Department on "600 extrajudicial executions for which a military unit has been identified," a number of units nominated for U.S. assistance were subsequently disqualified.<sup>49</sup> In recent years, DRL has broadened its outreach to human rights organizations in order to improve the lines of communication with personnel possessing field knowledge. (See "Vetting System Improvement Initiatives.")

## Issues for Congress

The Leahy laws raise many potential policy questions. At the broadest level, questions remain about the extent to which the promotion of human rights abroad and the pursuit of other U.S. national security objectives are mutually reinforcing and the circumstances in which they might diverge. More narrowly, some in Congress question whether the Leahy laws should be further modified and how implementation of those laws might be improved. The following discussion first addresses questions of law: specifically, should the FAA and DOD remediation standards and other remaining differences be made consistent, and should implementation practices be standardized? It then discusses questions of implementation, specifically resource availability and standardization. It concludes with a discussion of the possible challenges presented by Congress's recent expansion of the scope of the DOD law.

### Should the FAA and DOD Leahy Laws Be Made Consistent?

Over time, Congress has aligned the State Department and DOD Leahy language for greater consistency, most recently by extending the scope of the DOD law in the Consolidated Appropriations Act, 2014. Three differences remain—the difference in remediation standards between the laws, DOD the waiver provision, and the FAA requirement to report the reasons for the denial of assistance to the foreign government. Policymakers and those in the human rights and international security communities debate whether U.S. interests are best served by maintaining, modifying, or eliminating these differences. Some view these differences as inconsistencies that undermine U.S. policy goals related to the promotion of human rights; others

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Executions- Mission to Colombia," 8-18 June 2009." Many of the roughly 3,400 cases of alleged extrajudicial executions that were being investigated by the Colombian judiciary as of early 2013 (involving more than 4,000 victims) are "False Positive" cases attributed to the Colombian Army. Data drawn from Michael Reed-Hurtado, "Accountability for Extrajudicial Executions Committed by the Army in Colombia," Office of the High Commissioner for Human Rights, Powerpoint presentation, October 21, 2013, and U.S. Department of State, *Memorandum of Justification concerning Human Rights Conditions with Respect to Assistance for the Colombian Armed Forces*, September 11, 2013.

<sup>48</sup> Of the alleged murders by Colombian security forces, most occurred after 2000, and particularly between 2004 and 2008, when U.S. assistance levels peaked.

<sup>49</sup> Fellowship of Reconciliation Research Director John Lindsay-Poland, Blogpost, "Lessons From Researching Human Rights Law Application in Colombia," December 20, 2012, at <http://forusa.org/blogs/john-lindsay-poland/lessons-researching-human-rights-law-application-colombia/11562>.



view them as providing the United States with flexibility to balance potentially competing interests, or to respond to an emerging threat or disaster in a timely manner. The following explores these perspectives.

### **Should the FAA and DOD Remediation Standards Be the Same?**

The differing FAA and DOD language on remediation standards—the criteria that a foreign government must meet before aid can be provided or resumed to units that have been denied funding due to human rights abuses—leaves much open to interpretation. Questions have been raised as to whether these remediation standards are appropriate, given that few if any units appear to have been cleared for aid after they have been denied assistance. The “taint” remains even years later after membership in a unit may have substantially or even entirely changed. Questions are also raised about the degree to which these standards actually differ in practice, given that the State Department makes the decision to deny assistance, and whether they should be aligned.

- If FAA or AECA assistance is withheld, a foreign government must “take effective steps to bring responsible members of the security forces unit to justice” before assistance can be provided to that unit. Congressional intent regarding the FAA language was expressed in the conference report on the original (1998) legislation, where the conferees stated that “effective steps” required the government to “carry out a credible investigation and that the individuals involved face appropriate disciplinary action or impartial prosecution in accordance with local law.”<sup>50</sup> This was echoed in the conference report for subsequent legislation.<sup>51</sup> It is similar to State Department guidance which, according to GAO, states that effective steps “means that the foreign government must carry out a credible investigation and take steps so that individuals who are credibly alleged to have committed gross violations of human rights face impartial prosecution or appropriate disciplinary action.”<sup>52</sup>
- The DOD remediation provision requires that “all necessary corrective steps” be taken before aid can be resumed. There has been no statement of intent in documents accompanying annual DOD appropriations measures. In 1999, Senator Leahy wrote to then Secretary of Defense William Cohen that the FAA and DOD standards were intended to be the same.<sup>53</sup> Secretary Cohen differed, and since then DOD has held that, in the words of the 2013 GAO report, necessary corrective steps “could include removing the identified violator or violators from the unit to be trained, providing human rights training and law-of-war training, or some other combination of steps.”<sup>54</sup> Despite this position, according to DOD officials, DOD has never proceeded with DOD-funded

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<sup>50</sup> Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (P.L. 105-118; H.Rept. 105-401).

<sup>51</sup> Omnibus Consolidated Emergency Supplemental, 1999 (P.L. 105-277; H.Rept. 105-825).

<sup>52</sup> *GAO-13-866*, p. 6.

<sup>53</sup> Letter from Senator Patrick Leahy to Secretary of Defense William Cohen, January 14, 1999, provided to CRS by the Senator’s staff.

<sup>54</sup> *GAO-13-866*, p. 7



training to an otherwise ineligible unit on the basis that “all necessary corrective steps” have been taken by a foreign government.<sup>55</sup>

In practice, according to State and DOD officials, the same remediation standards have been applied to potential recipients of DOD and State Department assistance. Some Members would favor incorporating that practice into law as a means of increasing the consistency of U.S. human rights policy and the message sent to foreign governments. Standardization of remediation steps is necessary, they affirm, because the purpose of DOD and FAA Leahy provisions is the same—to promote human rights and protect the U.S. government against the stigma of supporting human rights violators. In addition to expanding the scope of the DOD Leahy law, the SAC version of the FY2014 DOD appropriations bill, S. 1429, would have made the DOD language on remediation the same as that of the FAA. This provision was not retained in action on the final DOD appropriations measure included in the Consolidated Appropriations Act, 2014 (P.L. 113-76).

On the other hand, given that few, if any, units have been cleared once aid has been denied, some practitioners argue that the State Department standard may set too high a bar and may be perceived as unattainable by a host government. In addition, some analysts argue that the FAA’s standard for remediation—punishing all members of a unit for the transgressions of some members of a unit—is inequitable. Some critics view the remediation measures set forth by DOD—removing individuals who have committed abuses from units rather than making all in the unit guilty of their transgressions—as a more realistic standard. In addition, some perceive as an internal contradiction of the Leahy laws that they block even human rights training to “tainted” units whose members, they argue, would potentially most benefit from such training. Some point to the Senate floor colloquy between Senators Graham and Leahy in 1997, regarding the Leahy human rights provision affecting counternarcotics assistance, as evidence that the legislative intent was not meant to permanently bar assistance to “tainted” units after offending individuals were removed, although others caveat that the meaning of the colloquy would depend on the circumstances of the removal.<sup>56</sup>

In contrast, those who believe that holding a unit responsible is an appropriate standard point out that it often is difficult to ascertain actions of individuals, and that sanctioning the entire unit may be the only way of ascertaining that U.S. assistance is not provided to human rights violators. In

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<sup>55</sup> Ibid.

<sup>56</sup> The colloquy took place during consideration of the provision making FY1998 International Narcotics Control funds subject to human rights conditions. This provision states: “None of the funds made available under this heading [Department of State, International Narcotics Control] may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence to believe such unit has committed gross violations of human rights unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking steps to bring the responsible members of the security forces unit to justice.” Senator Graham asks, “Would the Chairman agree that this provision only applies to units of the security forces of a foreign country that currently have members against whom we have credible evidence of gross violations of human rights?” Senator Leahy replies, “That is correct.” Senator Graham responds, “So if a unit was believed to have had, at some time in the past, a person against whom we have credible evidence of human rights abuses, but that no such person currently is a member of such a unit, that unit would be eligible to receive assistance under this act?” Senator Leahy replies, “That is correct.” [Senate, 105<sup>th</sup> Cong. 1<sup>st</sup> Sess., Vol. 143, No. 101, July 16, 1997, S7544-S7593 (Senate consideration of Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998).] Some analysts state that the intent of the exchange is open to interpretation, and the appropriate steps to be taken by a government to satisfy the requirement of the provision would depend on the circumstances: in some cases it might have meant removing the individual from the armed forces, in others it might have meant criminal prosecution and imprisonment. A similar point is made regarding the interpretation of the “corrective steps” term later used in DOD appropriations language.

addition, holding units responsible for the actions of their members may serve as a means to promote a "self-cleansing" mechanism, where individuals who feel they are being unfairly denied training will cooperate with or put pressure on authorities to cleanse the unit, promoting an ethos among members of a unit that does not tolerate human rights abuse.

### **Should Other Differences Be Aligned?**

In addition to the differences in remediation standards, discussed above, two other differences between the FAA and the DOD Leahy provisions remain: the DOD waiver and the FAA "duty to inform."<sup>57</sup> Neither has a corresponding provision in the other legislation. To some analysts, the DOD waiver seems dispensable, given its historic lack of use. According to DOD officials, the waiver has never been exercised. Others would argue the waiver provides DOD with needed flexibility to act in urgent circumstances where important U.S. security interests are at stake; alternatively, notwithstanding language might be added to authorities that are used in such circumstances.<sup>58</sup> The FAA "duty to inform" requirement for the Secretary of State to "promptly inform the foreign government of the basis" for withholding aid is a precursor to assisting the government in bringing responsible members of the security forces to justice. Some who view this provision as central to promoting reform among foreign security forces would include it in the DOD law.

### **What Level of Resources Are Adequate to Conduct Vetting?**

The level of funding available to implement Leahy vetting is determined by Congress (through appropriations measures) and by the State Department (through its internal allocation of resources and personnel positions at embassies). Financial and personnel resources can directly affect the Leahy vetting process. Resource-related questions concerning Leahy implementation include the following and are discussed below. Are Leahy vetting operations adequately funded? Do vetting activities at State Department headquarters and U.S. embassies worldwide receive enough technological support to be successful, and if not, where are the biggest resource deficits? Are those who conduct the vetting adequately trained, and is there sufficient oversight by State Department headquarters of vetting operations at the embassies?

The recent expansion of the scope of the DOD Leahy law to cover all DOD assistance, not just training, may present extensive challenges for the current vetting system. Some practitioners have voiced concern that the number of additional vettings required each year could overload the State Department's arguably already overstretched vetting system.

### **Funding**

Some advocates for strengthening implementation of the Leahy conditions maintain that some vetting operations are underfunded. Indeed, some practitioners consider the vetting requirements

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<sup>57</sup> The Senate appropriations committee version of the FY2014 Defense Appropriations bill, S. 1429, which proposed making the DOD and FAA scope and remediation language equivalent, did not propose to eliminate the DOD waiver or add a "duty to report" provision to the DOD appropriations measure.

<sup>58</sup> "Notwithstanding" clauses in certain State Department authorities exempt some types of assistance from the FAA Leahy law, providing the State Department with flexibility. However, the State Department sometimes chooses to apply the Leahy law despite the notwithstanding provision.

an “unfunded mandate” placed on the State Department and its embassies by Congress. Several advocates who promote more vigorous enforcement of the Leahy conditions suggest that leadership from State Department’s DRL bureau has improved headquarters vetting operations and they commend DRL for strengthening its outreach to in-country and international human rights organizations. Nevertheless, the quality and capacity of U.S. embassies abroad to carry out Leahy vetting requirements remain mixed; some advocates suggest that this is in part due to the lack of consistent and dedicated funding for vetting operations at post.

Some have proposed that vetting be paid for with a dedicated funding source that is proportional to the size of U.S. security assistance expenditures on a global basis. In the 113<sup>th</sup> Congress, a variation of this idea was put forth by the Senate Appropriations Committee in its version of the FY2014 Department of State and Foreign Operations appropriations measure (S. 1372, S.Rept. 113-81) to fund DRL to carry out the amended FAA prohibition, Section 620M. Acknowledging “the technological challenges and staff time involved in the vetting process” in its report, the Committee would provide not less than 0.1% of funds appropriated in the FMF account “for assistance for the security forces of foreign countries” to fund DRL to carry out Section 620M. This would amount to over \$5 million in FY2014, depending on the final level of appropriation for FMF, which would be a significant increase over the roughly \$2 million that DRL has received for Leahy vetting in recent appropriations. Neither the House version of the FY2014 Department of State and Foreign Operations appropriations bill (H.R. 2855, H.Rept. 113-185), nor the Consolidated Appropriations Act, FY2014 (P.L. 113-76) makes reference to funding for Leahy vetting.

## **Technology**

Another resource challenge for carrying out the Leahy conditions concerns developing adequate databases and applying technology to better implement vetting. Some observers maintain that information about the Leahy vetting requirements provided on embassy websites remains limited.<sup>59</sup> One potential consequence of this limitation is that local NGOs that might report alleged human rights abuse are unaware of U.S. requirements and their opportunities to assist the vetting process.<sup>60</sup> Some advocates maintain that many embassy databases are inadequate, and that many do not take advantage of technological tools to gather data and documentation about human rights abuses. Such tools could include those that compile and analyze video images and aerial photography, and that have audio capabilities to facilitate voice and facial recognition of alleged abusers.

## **Training and Oversight**

Concern about the adequacy of resources extends to whether personnel and time are made available to train and oversee those at U.S. embassies who conduct the vetting. The State Department provides training at its Foreign Service Institute and DOD provides training through the Defense Institute for Security Assistance Management (DISAM).

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<sup>59</sup> The State Department has posted a good deal of information about Leahy Vetting on a department-run website: <http://www.humanrights.gov>.

<sup>60</sup> An advocate at the non-governmental Open Society Foundations proposes that information about vetting be posted on embassy web pages, ideally in English and the dominant host country language. CRS communication on June 10, 2013.

- In its September 2013 report, GAO found that the State Department offers training to human rights vetting personnel by various means. These include two web-based training courses; modules in Foreign Service Institute (FSI) courses;<sup>61</sup> a specially developed briefing that provides an overview of State and DOD Leahy laws and explains State's policies and processes (now available online through <http://www.humanrights.gov>); and other outreach efforts. Vetting personnel also receive on-the-job training. At the time, GAO found that the web-based courses were out-of-date, lacking changes mandated in the 2011 law, but DRL officials report that the courses were subsequently updated and are now available to everyone in the State Department through the FSI online learning website.
- DOD personnel assigned to work on security assistance at U.S. embassies and at the geographic combatant commands receive an instructional module on human rights training at DISAM that includes instruction on Leahy vetting.<sup>62</sup> DISAM statistics indicate, however, that while most military personnel destined for security assistance organization posts at U.S. embassies take the three-week training course, some 15% do not.<sup>63</sup>

## Should Implementation Practices and Procedures Be Standardized?

Although there are not many studies of how the Leahy laws are implemented worldwide, a few reports point to an inconsistent application of the laws. For example, a September 2013 non-government publication on trends in security assistance in Latin America and the Caribbean found that the Leahy provisions have been "applied with varying degrees of rigor by U.S. embassies around the world." This report noted, for example, that "while the U.S. Embassy in Colombia had [in 2012] a substantial system in place, the U.S. Embassy in Honduras's system was far less developed."<sup>64</sup> Recently, GAO has identified other implementation inconsistencies across countries.

In its September 2013 report, GAO found after examining implementation practices in eight countries that the Standard Operating Procedure (SOP) guides of those embassies "contained inconsistent information on how to address" the part of the duty-to-inform requirement that directs State to inform foreign governments when funds are withheld because of human rights violations.<sup>65</sup> GAO's three recommendations were for the State Department to (1) "provide clarifying guidance for implementing the duty-to-inform requirement of the State Leahy law"

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<sup>61</sup> These modules include a one-hour module offered on State Department vetting as part of a one-week course on political-military affairs offered at FSI three times primarily for supervisory staff, and modules offered in FSI human rights courses.

<sup>62</sup> See Chapter 16, Human Rights and Related Concerns, of Defense Institute for Security Assistance Management, *The Management of Security Cooperation (Green Book)*, 32<sup>nd</sup> edition, January 2013, <http://www.disam/dsca.mil/pages/pubs/greenbook.aspx>. This publication provides the foundation for DISAM instruction. Hereafter cited as *DISAM Green Book*.

<sup>63</sup> CRS interview with DISAM officials, October 25, 2013.

<sup>64</sup> Adam Isacson, Lisa Haugaard, and Abigail Poe, et al., *Time to Listen: Trends in U.S. Security Assistance to Latin America and the Caribbean*, A joint publication of the Center for International Policy, the Latin America Working Group Education Fund, and the Washington Office on Latin America, September 2013, p. 17, available through <http://www.ciponline.org>, <http://www.lawg.org>, or <http://www.wola.org>. Hereafter referred to as *Time to Listen*.

<sup>65</sup> *GAO-13-866*, p. 18.

added in December 2011; (2) ensure that all U.S. embassies have human rights vetting standard operating procedures that address the requirements in the Leahy law;” and (3) update the web-based training for personnel who conduct human rights vetting to reflect December 2011 changes.<sup>66</sup> According to GAO, State agreed with all three of its recommendations, but said that the steps State planned regarding the need for standard operating procedures “do not directly address our recommendation.” The GAO recommended that the State Department take further steps to implement its recommendations on SOP guides.<sup>67</sup>

To many analysts, standardizing practices and procedures seems a self-evident means to ensure a more rigorous compliance with the Leahy laws. However, others might argue that given the divergent circumstances under which the laws are applied from country to country—including levels and types of training and equipment provided, whether a country’s human rights practices are a matter of concern, and whether the United States regards other matters as more pressing than human rights practices in a given country—a certain degree of flexibility in the application of the laws may be desirable.

## What Challenges May the Expanded DOD Scope Present?

The recent expansion of the scope of the DOD Leahy law in the Consolidated Appropriations Act, 2014 (P.L. 113-76), to include not only training but also DOD “equipment and other assistance” is a step toward institutionalizing human rights promotion in U.S. law, according to some analysts. From this perspective, the lack of consistency in scope between the DOD and FAA Leahy laws muddled the intended message regarding the importance of U.S. human rights policy, a problem intensified by the perception that DOD is increasingly providing security assistance and directing security assistance programs under an expanding array of DOD authorities.<sup>68</sup>

Nevertheless, the expansion of scope of the DOD prohibition presents the State Department and DOD with a number of challenges. These challenges include the following:

- Defining what constitutes DOD “assistance” as intended by the law may be one challenge.<sup>69</sup> DOD conducts a wide range of activities that it categorizes as

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<sup>66</sup> *GAO-13-866*, p. 25.

<sup>67</sup> Regarding the recommendation to clarify guidance for implementing the duty-to-inform requirement, the State Department noted it had provided embassies with multiple sources of guidance but “agreed that further guidance on the application of the requirement would be worthwhile” and “is working on instructions to address this need and enhance overall compliance with the requirement.” The State Department further noted, however, that it “believes that embassies are in the best position to determine the level and form of notification that will address the requirement. Regarding standard operating procedures, GAO explained: “For example, rather than take steps to determine whether all embassies have required SOPs in place, State said that it would instead modify its guidance and no longer require DRL to review SOPs. State added that it would continue advising embassies that request assistance in developing SOPs, with a particular emphasis on the SOPs for embassies in select, high-priority countries. State also noted that it would continue to monitor embassies’ compliance with vetting requirement by monitoring vetting activity that is recorded in INVEST, which it deems a better means of ensuring compliance than reviewing SOPs. While monitoring INVEST may provide useful information on embassies’ vetting activities, INVEST does not serve as a repository for embassies’ SOPs and monitoring INVEST is not a substitute for ensuring that embassies have SOPs that address the requirements in the Leahy laws.” *GAO-13-866*, pp. 25-26.

<sup>68</sup> For a discussion of this perception, see CRS Report RS22855, *Security Assistance Reform: “Section 1206” Background and Issues for Congress*, by Nina M. Serafino.

<sup>69</sup> There is no overarching FAA definition of “assistance,” but categories of FAA aid which are provided to foreign military and other security forces are specifically labeled “assistance” and the AECA (Section 47) defines in detail the (continued...)



"security cooperation" with no agreement which among them constitute "assistance."<sup>70</sup> The FY2014 expansion in scope seems to require a specific definition of assistance for the purposes of the DOD Leahy law.

- Determining whether additional resources are needed to implement Leahy vetting may be another challenge. A lack of resources may hinder the United States' ability to thoroughly vet prospective participants in a timely manner and may result in a failure to disqualify ineligible participants or lead to withholding aid from eligible participants.<sup>71</sup>
- Determining whether DOD vetting will be conducted through a system compatible with the State Department's current two-track system using the INVEST database and memos, or a new, unique DOD-specific system. Whatever the choice, DOD and the State Department may find it necessary to proactively collect information on foreign military units and individuals who may be potential recipients of DOD assistance to expedite the vetting process.<sup>72</sup>
- Implementing the broadened scope of DOD Leahy vetting may present possible diplomatic challenges. Some practitioners already note that explaining to foreign military and political leaders why U.S. assistance is being withheld can be difficult and disrupt other aspects of a bilateral relationship. Some express concern that the new scope of the DOD Leahy law, even without the express "duty to inform" found in the FAA law, may further complicate diplomatic and military-to-military relations. In some cases, some analysts suggest that the new DOD provision may put at risk U.S. efforts to advance bilateral relations or to achieve other national security priorities.

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(...continued)

types of support that may be provided, obviating the need for a specific definition for Leahy law purposes.

<sup>70</sup> By one DOD definition, "security assistance" applies only to State Department funded programs administered by DOD, but another DOD source catalogues a wide variety of DOD-funded support and activities as "foreign assistance." According to the definitions in the *Security Assistance Management Manual* (SAMM), a policy document issued by the Defense Security Cooperation Agency, security assistance (SA) consists of "a group of programs, authorized under Title 22 authorities, by which the United States provides defense articles, military education and training, and other defense-related services by grant, loan, credit, cash sales, or lease, in furtherance of national policies and objectives. All SA programs are subject to the continuous supervision and general direction of the Secretary of State to best serve U.S. foreign policy interests; however, programs are variously administered by DoD or Department of State (DoS). Those SA programs that are administered by DoD are a subset" of security cooperation. Defense Security Cooperation Agency, *Security Assistance Management Manual*, Section C1.1.2.2., accessible online through [www.samm.dsca.mil](http://www.samm.dsca.mil), continuously updated. On the other hand, many SAMM security cooperation authorities are cited as "foreign assistance" in the *U.S. Army Operational Law Handbook, 2013*. Major William Johnson, editor, *U.S. Army Operational Law Handbook, 2013*, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, VA, 2013. [www.loc.gov/rr/frd/Military\\_Law/pdf/operational-law-handbook\\_2013.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2013.pdf). See pp. 229-240.

<sup>71</sup> While some observers have expressed concern that DOD has on occasion provided assistance in dubious cases where available evidence does not meet the standard of "credible information" linking a unit to a gross violations of human rights, others note that in some cases DOD training can be withheld from many units pending an investigation and determination of the responsible unit or units.

<sup>72</sup> U.S. military personnel have a responsibility to report human rights violations through their chain of command. *DISAM Green Book*, p. 16-15.



## Conclusion

More than a decade after the passage of the Leahy laws, their implementation remains a work in progress, and overarching questions on their utility and desirability persist. Congress continues to deliberate whether and how to strengthen their application, as represented by recent debate over expanding the scope of the DOD law through the omnibus FY2014 appropriations bill (P.L. 113-76), and by proposals to increase available resources, such as the one contained in the Senate Appropriations Committee version of State Department and foreign operations appropriations bill (S. 1372) but not in P.L. 113-76. Many may judge that an expansion of the scope of the DOD law, which may require extensive additional vetting, could also require substantial new resources.

Given that foreign aid appropriations have declined in recent years, an important issue for consideration of FY2015 foreign operations appropriations may be whether existing Leahy vetting requirements receive sufficient funds to be carried out effectively. In hearings and other consideration of the FY2015 budget, Congress may wish to question the quality and effectiveness of Leahy law vetting, and request information about current State Department and DOD efforts to improve procedures, practices, and standards. Congress may wish to be informed of new technologies and methodologies that may require additional resources but could improve data collection as well as the monitoring and assessment of the activities of foreign units. A related question is whether and how to establish metrics or compile standardized narratives; although such measures could involve extra costs, they might provide greater insight to the Leahy laws' utility in advancing foreign policy goals and national security interests.

Evolving global conditions and circumstances may warrant ongoing consideration of when and how the Leahy law provisions should be applied. One national security trend raising questions about the utility of the Leahy provisions is the "outsourcing" of U.S. military training—with the United States funding other military forces to train third parties.<sup>73</sup> And, as the United States faces competition in the international security arena in developing relationships with foreign militaries, Congress may wish to stay apprised of whether the Leahy laws are a significant factor leading some foreign militaries to choose other countries as providers of military training and equipment. In addressing the overarching issues of utility and desirability, Congress may wish to question the Obama Administration about the laws' effectiveness.

- Some questions may target potential indicators of success. For example: Where has the application of the Leahy laws resulted in the United States withholding assistance from units and individuals credibly believed to have committed gross violations of human rights? How have the human rights practices of partner nation security forces improved as a result of the application of the Leahy laws? Do foreign governments and populations view the United States more favorably as a result of the Leahy laws?
- Other questions may target possible instances of negative effects: Where has application of the Leahy vetting process precluded or significantly delayed a U.S. engagement that in retrospect would have been important for U.S. national security? To what extent might such engagement have been possible if different standards or procedures were in place?

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<sup>73</sup> For example, for a critique of Colombian training of third country security forces with regard to the Leahy Laws, see *Time to Listen*, pp. 22-26.

Congress may wish to address such questions to the State Department and DOD in hearings, or request that they be examined in the context of the Obama Administration's ongoing review mandated by its April 5, 2013, Presidential Policy Decision (PPD) 23, *U.S. Security Assistance Policy*, which identifies promoting universal values, including respect for human rights, as a goal.

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