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About the Leahy Law

FACT SHEET

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

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1. What is the Leahy law?

The term “Leahy law” refers to two statutory provisions prohibiting the U.S. Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights (GVHR). One statutory provision applies to the State Department and the other applies to the Department of Defense. The State Department Leahy law was made permanent under section 620M of the Foreign Assistance Act of 1961, 22 U.S.C. 2378d. The U.S. government considers torture, extrajudicial killing, enforced disappearance, and rape under color of law as GVHRs when implementing the Leahy law. Incidents are examined on a fact-specific basis. The State Department Leahy law includes an exception permitting resumption of assistance to a unit if the Secretary of State determines and reports to Congress that the government of the country is taking effective steps to bring the responsible members of the security forces unit to justice.

The DoD Leahy law is similar to the State Leahy law. Since 1999, Congress included the DoD Leahy law in its annual appropriations act. The DoD Leahy law is now permanent in Section 362 of Title 10 of the U.S. Code. It requires that DoD-appropriated funds may not be used for any training, equipment, or other assistance for a foreign security force unit if the Secretary of Defense has credible information that such unit has committed a GVHR. The law allows for two exceptions to this restriction. The first in cases where the Secretary of Defense (after consultation with the Secretary of State) determines that the government of that country has taken all necessary corrective steps. This first exception is also known as “remediation.” A second exception exists if U.S. equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

2. How is the law implemented?

In cases where an entire unit is designated to receive assistance, the Department of State vets the unit and the unit’s commander. When an individual security force member is nominated for U.S. assistance, the Department vets that individual as well as his or her

nominated for U.S. assistance, the Department vets that individual as well as his or her unit. Vetting begins in the unit's home country, where the U.S. embassy conducts consular, political, and other security and human rights checks. Most often, an additional review is conducted by analysts at the Department of State in Washington, D.C. The State Department evaluates and assesses available information about the human rights records of the unit and the individual, reviewing a full spectrum of open source and classified records.

When assessing whether information is credible, the following factors should be considered weighing both the credibility of a source and the veracity of an allegation:

- Past accuracy and reliability of the reporting source as well as original source, if known;
- How the source obtained the information (e.g., personal knowledge obtained by a witness, witness interviews collected by a non-governmental organization (NGO), descriptions collected from government records, etc.);
- Known political agenda of a source (both reporting source and/or original source, if known) which might lead to bias in reporting;
- Corroborative information to confirm part or all of the allegation;
- Information that contradicts part or all of the allegation;
- History of unit and known patterns of abuse/professional behavior;
- Level of detail of the GVHR allegation, including detail in identification of the GVHR, perpetrator (or link to an operational unit), and victim.

3. Can assistance be reinstated to units previously found ineligible for assistance?

Yes. Consistent with the exception under both Leahy laws, the Departments of State and Defense have adopted a joint policy on remediation that outlines a process for resuming DoD- and State-funded assistance to foreign security force units that are ineligible for assistance under the Leahy laws. This can occur when the Secretaries of Defense and State determine that the government of that country has taken, or is taking, effective measures to bring those responsible to justice. Such measures may include impartial and thorough investigations; credible judicial or administrative adjudications; and appropriate and proportional sentencing.



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