



September 2013

HUMAN RIGHTS

Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws

GAO Highlights

Highlights of [GAO-13-866](#), a report to congressional requesters

Why GAO Did This Study

The Foreign Assistance Act of 1961, as amended, prohibits assistance to a unit of a foreign government's security forces if the Secretary of State has credible information that such unit has committed a gross violation of human rights. DOD's annual appropriation contains a similar provision that applies to DOD-funded training programs. State administers a vetting process to address these laws, commonly referred to as the Leahy laws. GAO was asked to review implementation of these laws. This report examines the extent to which (1) State and DOD provide guidance to their personnel to address the Leahy laws, (2) State monitors whether U.S. embassies have developed procedures to address the requirements of the Leahy laws, and (3) State provides training to personnel who conduct human rights vetting. This is a public version of a sensitive but unclassified GAO report. Information State deemed sensitive has been redacted. GAO reviewed agency guidance and training materials and interviewed officials in Washington, D.C., and at eight U.S. embassies selected in part based on whether they were in countries that State identified as countries of human rights concern.

What GAO Recommends

GAO recommends that State (1) provide clarifying guidance for implementing the duty-to-inform requirement, (2) ensure that all U.S. embassies have human rights vetting SOPs that address the requirements in the Leahy laws, and (3) update its web-based training for personnel who conduct human rights vetting to reflect the changes to the State Leahy law enacted in December 2011. State agreed with these recommendations.

View [GAO-13-866](#). For more information, contact Charles Michael Johnson, Jr. at (202) 512-7331 or johnsoncm@gao.gov.

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Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws

What GAO Found

The Department of State (State) and the Department of Defense (DOD) provide guidance to address the Leahy laws, but State's guidance for implementing one requirement of the State Leahy law is unclear. State has used a variety of mechanisms to provide guidance to address the Leahy laws, including guidance to address six of seven new procedural requirements added to the State Leahy law in December 2011. State officials anticipate issuing guidance to address the seventh requirement by October 2013. DOD has provided guidance to address the DOD Leahy law through a 2004 Joint Staff message, and DOD officials said DOD personnel also follow State guidance. While State has provided guidance to embassies to address the duty-to-inform requirement of the State Leahy law, officials at six of the eight embassies GAO visited said that they would like additional guidance that clarifies how to implement the requirement. The duty-to-inform requirement directs State to inform the foreign government if funds are withheld under the law and, to the maximum extent practicable, assist the foreign government in bringing those responsible to justice. With clarifying guidance, embassies will be better able to implement this requirement in accordance with the law, potentially increasing the effectiveness of the law as a tool for promoting human rights.

State's Bureau of Democracy, Human Rights, and Labor (DRL), which oversees human rights vetting policies and processes, does not monitor whether all U.S. embassies have developed standard operating procedures (SOPs) that address the Leahy laws' requirements. Since at least 2003, State guidance has required embassies to develop human rights vetting SOPs, although these SOPs are not required by law. State guidance also instructs embassies to submit their SOPs to DRL for review. As of July 2013, DRL had reviewed SOPs for 43 of the 159 embassies that conducted human rights vetting in fiscal year 2012. While the eight embassies GAO visited had developed SOPs to implement State guidance, two developed SOPs for the first time and six updated SOPs during the course of GAO's review. Further, GAO found that a majority of these SOPs, all of which DRL reviewed, did not address a requirement of the State Leahy law. Without more robust monitoring, it will be difficult for State to provide reasonable assurance that embassies have developed SOPs to help ensure the Leahy laws' requirements are being implemented in each country.

State provides training to human rights vetting personnel in Washington, D.C., and at U.S. embassies primarily through two web-based courses, but GAO found that both of these courses are outdated. DRL officials said that they also provide training on the Leahy laws and human rights vetting policies through other methods, such as briefings for State and DOD officials. State's web-based courses provide information on the Leahy laws and instructions for using State's vetting database. Twelve of the 15 personnel who conduct vetting in Washington, D.C., and 6 of the 8 human rights vetting coordinators at the eight embassies GAO visited stated that they had completed this training. However, neither web-based course has been updated to reflect new procedural requirements added to the State Leahy law in December 2011. Without up-to-date training that addresses these new procedural requirements, it will be difficult for U.S. personnel to be prepared to implement the law's requirements.

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Abbreviations

CIA	Central Intelligence Agency
DOD	Department of Defense
DRL	Bureau of Democracy, Human Rights, and Labor
FAA	Foreign Assistance Act of 1961
INVEST	International Vetting and Security Tracking system
State	Department of State

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September 25, 2013

The Honorable Patrick Leahy
Chairman
Subcommittee on State and Foreign Operations, and Related Programs
Committee on Appropriations
United States Senate

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Eliot L. Engel
Ranking Member
Committee on Foreign Affairs
House of Representatives

The United States provides billions of dollars in assistance annually to foreign countries to train and equip their security forces. This assistance helps to further U.S. foreign policy and security goals, such as supporting counterterrorism initiatives, promoting stronger bilateral relationships, and building foreign partner capability. To help ensure that U.S. assistance is not used to support human rights violators, Congress prohibits certain types of assistance from being provided to foreign security forces implicated in human rights abuses. Section 620M of the Foreign Assistance Act of 1961 (FAA), known colloquially as the State Leahy law, prohibits the United States from providing assistance under the FAA 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.¹ Furthermore, in

¹22 U.S.C. § 2378d. For the purposes of this report, we use the term “Leahy laws” to refer collectively to the prohibition on assistance to security forces in section 620M of the Foreign Assistance Act of 1961, as amended, and the similar recurring provision in the Department of Defense appropriations act prohibiting funding for training programs involving units of security forces or foreign police, most recently enacted in section 8057 of the Consolidated and Further Continuing Appropriations Act, 2013. We refer to the FAA provision as the “State Leahy law” and the DOD appropriations provision as the “DOD Leahy law,” respectively. State and DOD use the term “Leahy laws” for these requirements, introduced in legislation by Senator Leahy, in order to distinguish them from other human rights requirements.

December 2011, Congress amended the State Leahy law to include seven new procedural requirements, including a requirement that the Secretary of State develop and periodically update procedures to make public, to the maximum extent practicable, the identity of those units prohibited from receiving assistance. Some members of Congress have raised questions regarding the implementation of these new requirements as well as how the Department of State (State) is informing foreign governments when funds are being withheld pursuant to the State Leahy law. Assistance subject to the State Leahy law includes State's International Military Education and Training, Foreign Military Financing, and International Narcotics and Law Enforcement programs, among others. The Department of Defense's (DOD) annual appropriation contains a similar provision, known colloquially as the DOD Leahy law, that applies to DOD-funded training programs, such as the Combating Terrorism Fellowship Program and Joint Combined Exchange Training.² We have previously examined State's and DOD's implementation of the Leahy laws in the Persian Gulf and Pakistan and reported on these issues in 2011.³

You asked us to review the implementation of the State and DOD Leahy laws. This report examines the extent to which (1) State and DOD provide guidance to their personnel to address the Leahy laws, (2) State monitors whether U.S. embassies have developed procedures to address the requirements of the Leahy laws, and (3) State provides training to personnel who conduct human rights vetting.

This report is a public version of the sensitive but unclassified report that we are providing to you concurrently. State deemed some of the information in the corresponding report as sensitive but unclassified information, which must be protected from public disclosure. Therefore, this report omits sensitive background information about the human rights vetting process. This report addresses the same questions as the

²For the most recent version of the DOD Leahy law, see Section 8057 of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6 (Mar. 26, 2013).

³See GAO, *Persian Gulf: Implementation Gaps Limit the Effectiveness of End-Use Monitoring and Human Rights Vetting for U.S. Military Equipment*, [GAO-12-89](#) (Washington, D.C.: Nov. 17, 2011). In September 2011, GAO issued a sensitive but unclassified (SBU) report concerning the human rights vetting process associated with funding for Pakistan counterinsurgency efforts.

sensitive report, and the overall methodology used for both reports is the same.

To address these objectives, we reviewed the State and DOD Leahy laws, guidance provided by State and DOD to address these laws, and standard operating procedures developed by the eight embassies we visited to implement the requirements of the laws. We interviewed State and DOD officials in Washington, D.C., who are responsible for developing guidance to implement these laws. We also interviewed State officials in Washington, D.C., responsible for conducting human rights vetting on behalf of State's Bureau of Democracy, Human Rights, and Labor (DRL) and the geographic bureaus. We conducted audit work in Bangladesh, the Democratic Republic of the Congo, Guatemala, Honduras, Kenya, Malaysia, Mexico, and Thailand. We selected this nongeneralizable sample of countries based on several factors, including the amount and type of U.S. assistance each country received, whether a country received both State- and DOD-funded assistance, and whether State considers a country to be a country of human rights concern. We took into consideration whether the State Office of the Inspector General had recently conducted an inspection in each country and the findings of those inspections with respect to the implementation of the State Leahy law. We also selected these eight countries to provide broad geographic representation. In each country, we interviewed U.S. embassy officials who coordinate and conduct human rights vetting, as well as U.S. officials who manage U.S. assistance programs and request vetting for individuals and units in foreign security forces to determine their eligibility to receive assistance. Where possible, we interviewed foreign government officials to determine their understanding of the State and DOD Leahy laws and the extent to which State informs them when assistance is withheld on the basis of the State Leahy law. Finally, we reviewed materials developed by State to train its personnel who conduct human rights vetting in Washington, D.C., and at U.S. embassies.

We conducted this performance audit from October 2012 to September 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

State and DOD Leahy Laws The State Leahy law prohibits assistance to any unit of a foreign country's security forces if the Secretary of State has credible information that such unit has committed a gross violation of human rights. The DOD Leahy law prohibits funds from being used to support training programs for security forces or police of a foreign country if the Secretary of Defense has received credible information from State that the unit has committed a gross violation of human rights. (See table 1 for a comparison of these two laws.) DOD, in consultation with State, must give full consideration to any credible information available to State relating to human rights violations by foreign security forces before it conducts training. According to State, these laws and the corresponding policies developed to enforce and supplement these laws are intended to leverage U.S. assistance to encourage foreign governments to prevent their security forces from committing human rights violations and to hold their forces accountable when violations occur.

Table 1: Comparison of the State and DOD Leahy Laws

	Department of State (State) Leahy law	Department of Defense (DOD) Leahy law
Human rights prohibition	No assistance shall be furnished under the Foreign Assistance Act of 1961 or 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.	None of the funds made available by this Act may be used to support any training program involving a unit of the security forces or police of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights. The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in the human rights prohibition requirement, full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.
Exception	Prohibition does not apply if the Secretary of State determines and reports to specified committees that "the government of such country is taking effective steps to bring the responsible members of the security forces unit to justice."	Prohibition applies "unless all necessary corrective steps have been taken."

	Department of State (State) Leahy law	Department of Defense (DOD) Leahy law
Waiver	None	The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition if he determines that such a waiver is required by extraordinary circumstances. The law further requires DOD, no more than 15 days after it exercises any waiver, to submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the U.S. forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.
Duty-to-inform	In the event that funds are withheld from any unit pursuant to the law, 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.	None
Procedural requirements added in December 2011	<p>The Secretary of State shall establish, and periodically update, procedures to</p> <ul style="list-style-type: none"> • ensure that for each country State has a current list of all security force units receiving U.S. training, equipment, or other types of assistance; • facilitate receipt by State and U.S. embassies of information from individuals and organizations outside the U.S. government on gross violations of human rights by security force units; • routinely request and obtain such information from DOD, the CIA, and other U.S. government sources; • ensure that such information is evaluated and preserved; • ensure that when vetting an individual for eligibility to receive U.S. training, the individual's unit is also vetted; • seek to identify the unit involved when credible information of a gross violation exists but the identity of the unit is lacking; and • make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished pursuant to the law. 	None

Source: GAO analysis of the State and DOD Leahy laws.

Note: For the State Leahy law, see 22 U.S.C. § 2378d. For the most recent version of the DOD Leahy law, see Section 8057 of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6 (Mar. 26, 2013).

As shown in table 1, the State and DOD Leahy laws differ on several points, as follows:

- *Human rights prohibition.* The State Leahy law applies to all assistance—including training, equipment, and other activities—whereas the DOD Leahy law applies only to funds that support training programs. According to DOD, the DOD Leahy law applies only to training, but DOD may make a policy decision to withhold equipment from foreign security forces that are ineligible to receive training under the DOD Leahy law. Furthermore, although the State and DOD Leahy laws restrict assistance to foreign security force units, both agencies’ policies apply the law to individuals as well as to units.
- *Exception.* The State and DOD Leahy laws both include exceptions that allow assistance to security forces for which State has credible information of having committed a gross violation of human rights, if the foreign government takes steps to address the violations. However, the exact language of these exceptions differs. The State Leahy law specifies that the law’s prohibition on assistance does not apply if the Secretary of State determines and reports to Congress that the foreign government “is taking effective steps to bring the responsible members of the security forces unit to justice.” The DOD Leahy law states that its prohibition applies “unless all necessary corrective steps have been taken.” Accordingly, State’s and DOD’s interpretations of the steps needed to lift their respective prohibitions on assistance reflect the two different laws.

State’s guidance notes that in the context of the State Leahy law, “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. Furthermore, State’s guidance specifies that transferring the offending individual or individuals from a unit does not constitute effective steps to bring the offending individuals to justice, nor does the mere opening of a formal investigation. State officials told us they are unaware of any case in which the Secretary of State has made the determination necessary to invoke the exception and provide assistance to an otherwise ineligible unit.

According to DOD, evaluation of “necessary corrective steps” is inherently fact-specific and includes consideration of the facts related to the gross violation of human rights in question and an assessment

of steps that could and should be taken to correct the situation. These 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.⁴ According to DOD, the department has never proceeded with DOD-funded training to an otherwise ineligible unit on the basis that “all necessary corrective steps” have been taken by a foreign government.

- *Waiver.* The DOD Leahy law allows the Secretary of Defense, in consultation with the Secretary of State, to waive its restrictions if required by extraordinary circumstances, although it has never exercised this waiver. According to DOD, the department has generally interpreted “extraordinary circumstances” to mean important to the national security interests of the United States. The State Leahy law does not include a similar waiver.
- *Duty-to-inform.* The State Leahy law requires the Secretary of State to promptly inform the foreign government in the event that State withholds assistance pursuant to the State Leahy law, including informing the foreign government of the basis for such action. In addition, the law requires that State, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice. The DOD Leahy law does not contain a comparable requirement.
- *Procedural requirements added in December 2011.* As mentioned earlier, in December 2011, the State Leahy law was amended by the Consolidated Appropriations Act, 2012 to require State to establish, and periodically update, procedures for seven new areas. For example, the amendments require State to establish procedures to have a current list of all security force units receiving U.S. training, equipment, or other types of assistance for each country; and to make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be provided because of credible information of a gross human rights violation. Congress made

⁴According to DOD guidance provided in June 2004, if a geographic combatant command assesses that corrective actions have been taken, and that training should be approved on that basis, the case will be subject to a joint review by State and DOD.

no changes to the DOD Leahy law in the most recent DOD appropriation.

Criteria for the prohibitions on assistance in the State Leahy law were also amended in December 2011. “Credible evidence” was changed to “credible information” and “gross violations of human rights” (plural) was changed to “a gross violation of human rights” (singular). According to State, these changes did not affect its standard for evaluating alleged human rights violations for the purposes of implementing its law.⁵

U.S. Human Rights Vetting Process

To address both the State and DOD Leahy laws and determine whether there is credible information of a gross violation of human rights committed by foreign security forces, State has established a U.S. human rights vetting process. The State-led process, as illustrated in figure 1, consists of vetting by personnel representing selected agencies and State offices at U.S. embassies⁶ and at State headquarters in Washington, D.C.,⁷ by State’s Bureau of Democracy, Human Rights, and Labor (DRL) and the relevant geographic bureau.⁸ The personnel screen prospective recipients of assistance by searching relevant files, databases, and other sources of information for credible information about gross violations of human rights. Each embassy determines which agencies and State offices should participate in the embassy’s vetting process. State processes, documents, and tracks human rights vetting requests and results through its International Vetting and Security Tracking system

⁵See Section 7034(k) of the Consolidated Appropriations Act, 2012, Pub. L. No. 112-74 (Dec. 23, 2011).

⁶U.S. embassies are generally responsible for conducting human rights vetting overseas. However, according to State Department officials, in some cases, human rights vetting may be conducted at U.S. consulates. For the purposes of this report, we use the term “embassy” to refer to both U.S. embassies and consulates overseas that conduct human rights vetting.

⁷Countries that State determines are functional democracies with no significant human rights concerns are eligible for Fast Track status. Candidates from Fast Track countries are only required to undergo vetting at the embassy where the candidates’ assistance is being arranged.

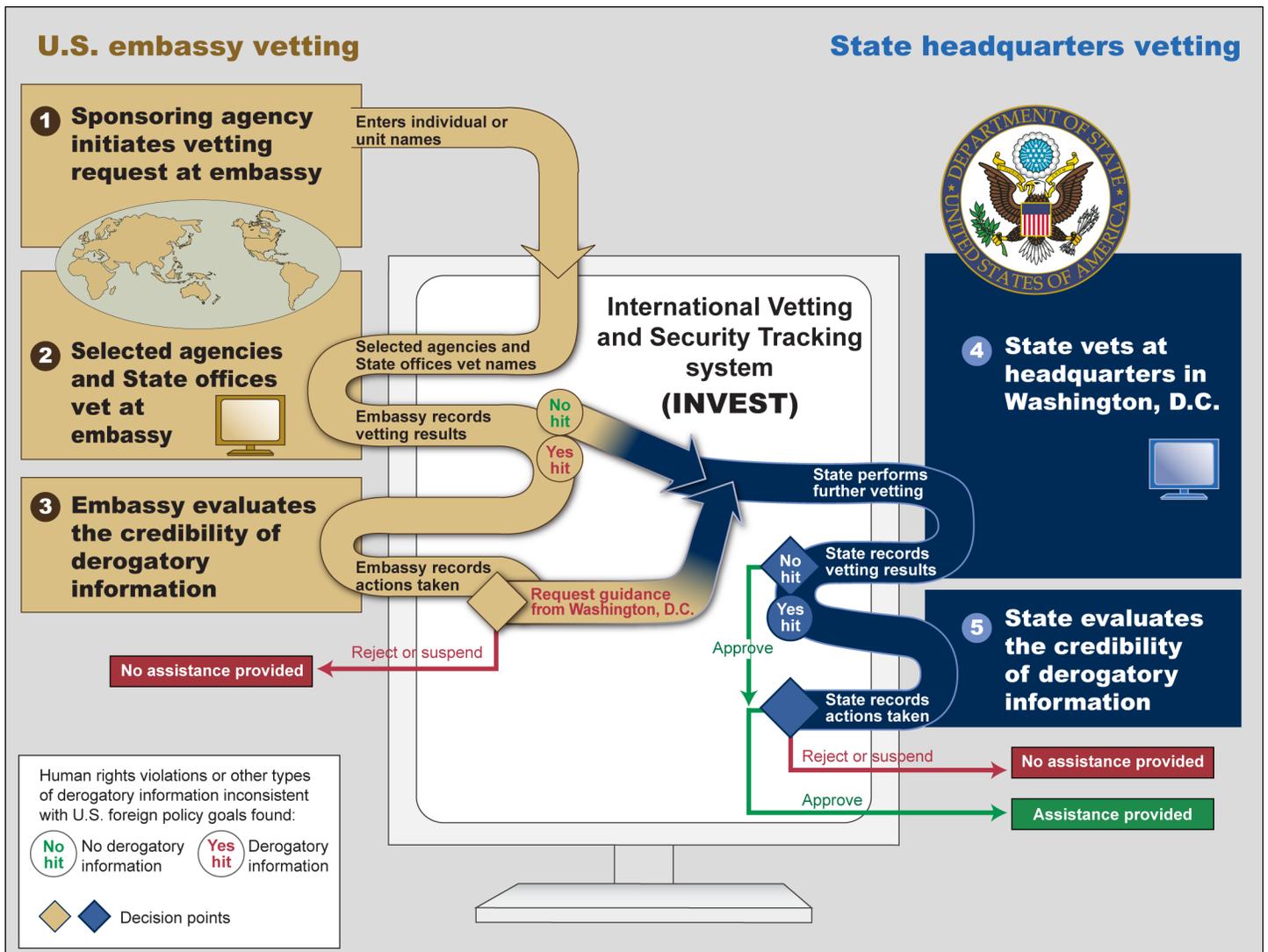
⁸State’s six geographic bureaus are the Bureaus of African Affairs, European and Eurasian Affairs, East Asian and Pacific Affairs, Near Eastern Affairs, South and Central Asian Affairs, and Western Hemisphere Affairs.

(INVEST), a web-based database.⁹ DRL is responsible for overseeing the vetting process and for developing human rights vetting policies, among other duties. According to data from INVEST, State conducted human rights vetting for more than 160,000 individuals and units across 159 embassies in fiscal year 2012.¹⁰

⁹State implemented INVEST worldwide in 2010 and 2011. Prior to the implementation of INVEST, State used cables to communicate vetting requests and results between State headquarters in Washington, D.C., and U.S. embassies around the world.

¹⁰State policy does not require individual- and unit-level human rights vetting through INVEST for recipients of equipment and other assistance. Instead, State uses an alternate process, in which the anticipated recipients of equipment and other assistance are cleared through memos at the time that funding is allocated for the countries that will receive the assistance. In November 2011, we recommended that State implement individual- and unit-level human rights vetting for recipients of equipment. State agreed with the recommendation. As of July 2013, DRL officials said that the vetting of equipment is increasing worldwide and that DRL is hoping to achieve State-wide concurrence on implementation of the recommendation. See [GAO-12-89](#).

Figure 1: U.S. Human Rights Vetting Process



Sources: GAO analysis of State documentation; Map Resources (map).

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 being provided.

State and DOD Have Provided Guidance to Address the Leahy Laws, but State's Guidance for Implementing the Preexisting Duty-to-Inform Requirement Is Unclear

State and DOD have used a variety of mechanisms to provide guidance for implementing the Leahy laws, including a guide to the human rights vetting process. In addition, State has provided guidance to address six of the seven new procedural requirements added to the State Leahy law in December 2011 and plans to issue guidance to address the seventh requirement by October 2013. However, State has provided unclear guidance on how to implement the preexisting duty-to-inform requirement of the State Leahy law, which requires State to promptly inform the foreign government in the event that assistance is withheld pursuant to the law and, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.¹¹ Moreover, embassy officials said they would like additional guidance to clarify how they should implement this requirement.

State and DOD Have Used a Variety of Mechanisms to Provide Guidance on Implementation of the Leahy Laws

As outlined in table 2, State and DOD have used multiple mechanisms to provide guidance to U.S. personnel responsible for implementing the Leahy laws.

¹¹22 U.S.C. § 2378d(c).

Table 2: Mechanisms through which State and DOD Provide Guidance to Address the State and DOD Leahy Laws

Agency	Mechanism used to provide guidance	Description of guidance
Department of State (State)	Leahy human rights vetting guide ^a	Serves as a primary source of guidance for U.S. personnel who implement the State and DOD Leahy laws. Provides information on human rights vetting policy and process. Issued in April 2007 and updated in September 2012.
	<i>International Vetting and Security Tracking (INVEST) User Guide</i>	Describes how U.S. personnel should record, process, and track human rights vetting requests using State’s web-based vetting system, INVEST. Issued in March 2010.
	INVEST bulletins	Provide operational updates and announcements to U.S. personnel on human rights vetting policies and procedures. Issued as needed. Most recent bulletin issued in July 2013.
	Cables	Communicate important directives regarding implementation of the State and DOD Leahy laws, such as how to implement a new requirement to vet an individual’s unit when vetting an individual. Issued as needed. Most recent cable on Leahy laws issued in January 2013.
Department of Defense (DOD)	Joint Staff message ^b	Provides information to DOD personnel on how to verify, communicate, and document human rights vetting for DOD-funded training programs, among other things. Issued in June 2004. ^c

Source: GAO analysis of State and DOD guidance.

^aThe guide’s full title is *Compliance with the State and DOD Leahy Laws: A Guide to Vetting Policy and Process*. For the purposes of this report, we refer to the guide as the Leahy human rights vetting guide.

^bThe Joint Staff assists the Chairman of the Joint Chiefs of Staff in accomplishing his responsibilities in providing strategic direction, operation, and integration of U.S. land, naval, and air forces. The Joint Staff is composed of approximately equal numbers of officers from the Army, Navy and Marine Corps, and Air Force. The Chairman of the Joint Chiefs of Staff is the principal military adviser to the President and is the senior ranking member of the Armed Forces.

^cAccording to DOD officials, DOD personnel also follow State’s human rights vetting guidance.

State has provided guidance to U.S. personnel using a variety of mechanisms, including a guide to the human rights vetting process, a user guide to the INVEST system, bulletins, and cables. State’s Leahy human rights vetting guide—a primary source of guidance for U.S. personnel responsible for implementing the Leahy laws—provides an overview of the human rights vetting policy and process and provides additional information on key terms in the State Leahy law including “security forces of a foreign country,” “credible information,” and “gross violation of human rights.” For information on how State guidance has addressed these key terms in the State Leahy law, see the textbox below.

Key Terms in the State Leahy Law

Security forces of a foreign country. Department of State (State) guidance defines a “security force” as any division or entity (including an individual) authorized by a state or political subdivision to use force (including but not limited to the power to search, detain, and arrest) to accomplish its mission. Therefore, the guidance states that “security forces” could be units of law enforcement or the military. According to the Department of Defense (DOD) Office of General Counsel, DOD also adheres to this definition. However, DOD may sometimes request vetting for individuals or groups that would not constitute foreign security forces, such as a government bureaucrat.

Credible information. State guidance provides latitude in evaluating the credibility of information and advises personnel conducting human rights vetting to exercise good judgment and common sense. It notes that major international nongovernmental organizations and most independent newspapers are considered to be relatively credible, whereas credibility among opposition groups and smaller nongovernmental organizations varies. According to DOD’s Office of General Counsel, while DOD retains legal authority for final decisions regarding specific cases, it relies on State’s judgment in assessing the credibility of available information. According to DOD, the department is working with State to ensure that it is able to play a more active role in State’s evaluation of the credibility of information on gross violations of human rights with regard to DOD-funded training events.

Gross violation of human rights. State guidance notes that the Leahy laws do not contain a definition of “gross violations of human rights.” State, therefore, uses the definition included in Section 502B(d) of the Foreign Assistance Act of 1961 as its working standard. It states that “gross violations of internationally recognized human rights include 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.” State guidance further clarifies that this definition includes extrajudicial killing and politically motivated rape.

Source: State guidance and DOD Office of General Counsel.

The guide also provides guidance on what does and does not constitute taking effective steps to bring the responsible members of the security forces unit to justice, which is the only method by which an otherwise prohibited unit may once again receive assistance under the State Leahy law.¹²

As also noted in table 2, DOD’s Joint Staff provided guidance to DOD personnel on how to implement the DOD Leahy law in a June 2004

¹²See table 1 in the background section for the exception to the restriction in the State Leahy law.

message. The guidance addressed the law by, among other things, advising DOD personnel to accept individual or unit human rights vetting conducted by State and U.S. embassies, defining the types of training that are subject to the law, and establishing procedures for verifying that units and individuals that receive DOD-funded training have been vetted. The guidance also established a process through which a geographic combatant command,¹³ which oversees training, may refer to the DOD Joint Staff a unit or individual it believes has completed or can complete the necessary corrective steps in order to receive U.S. assistance.¹⁴ According to DOD officials, DOD personnel also follow State's human rights vetting guidance.

In addition, State officials in DRL and the geographic bureaus responsible for conducting human rights vetting in Washington, D.C., said they answer questions from embassies related to vetting policy and technical questions related to the vetting process. DRL officials said they also provide information on vetting policies and procedures to interested DOD officials at the combatant commands. Furthermore, State guidance requires embassies to develop standard operating procedures (SOPs) for human rights vetting, which account for the particular needs and circumstances of the embassy. The SOPs provide additional guidance to embassy personnel responsible for implementing these laws.

State Has Provided Guidance to Address Almost All of the New Procedural Requirements Added to the State Leahy Law in December 2011

State has provided guidance to address six of the seven new procedural requirements added to the State Leahy law in December 2011 and plans to issue guidance to address the seventh requirement by October 2013. These procedural requirements direct State to establish and periodically update procedures to, among other things, ensure that it has a current list of all security force units receiving U.S. government training, equipment, or other types of assistance for each country, and, to the maximum extent practicable, to make publicly available the identity of units that are prohibited from receiving U.S. assistance. Table 3 provides information

¹³DOD has six geographic combatant commands that have defined areas of operation and provide unity of command over all United States forces in a specific region. DOD's six geographic commands are U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Northern Command, U.S. Pacific Command, and U.S. Southern Command.

¹⁴See table 1 in the background section for the "necessary corrective steps" exception in the DOD Leahy law.

on these seven new procedural requirements and our assessment of whether State has provided guidance to address them.

Table 3: Status of State Guidance to Address Seven New Procedural Requirements Added to the State Leahy Law in December 2011

Required procedures added to State Leahy law	State's effort to address new procedural requirement	GAO assessment: Has State provided guidance?
Ensure that for each country State has a current list of all security force units receiving U.S. training, equipment, or other types of assistance	State disseminated a November 2012 cable that provided guidance to embassies on how they should report this information, including the level of information needed about units that had received assistance. The cable required all embassies to provide this list by March 31, 2013. As of July 2013, 97 percent of embassies had submitted the information, according to DRL officials. DRL officials said that they plan to update this information annually.	Yes
Facilitate receipt by State and U.S. embassies of information from individuals and organizations outside the U.S. government about gross violations of human rights by security force units	State's Leahy human rights vetting guide advises embassy officials to use as many credible sources of information as are available for human rights vetting. These information sources include, among others, outreach to local human rights nongovernmental organizations, reporters, and on-the-ground contacts. State is in the process of developing a web portal where individuals and entities outside the U.S. government may submit information regarding human rights abuses. DRL officials said that they plan for this web portal to be operational by the end of December 2013.	Yes
Routinely request and obtain information related to gross violations of human rights by security force units from DOD, CIA, and other U.S. government sources	State's Leahy human rights vetting guide outlines the human rights vetting process, which includes searches of databases that draw upon other U.S. government sources.	Yes
Ensure that such information is evaluated and preserved	State's Leahy human rights vetting guide provides information to U.S. personnel responsible for conducting human rights vetting on how to evaluate derogatory information found through the vetting process. The guide also advises U.S. personnel to input or upload all appropriate vetting data and correspondence to INVEST.	Yes
Ensure that when vetting an individual for eligibility to receive U.S. training the individual's unit is also vetted	State disseminated an April 2012 cable that provided guidance to embassies on how to implement this requirement, including guidance on how to identify the relevant unit name for the purpose of vetting individuals nominated for training. The cable also provided talking points for embassies to use when informing foreign governments of the new requirement and established a 30-day transition period for implementation of the requirement. State subsequently incorporated this information into its updated Leahy human rights vetting guide, which State issued in September 2012.	Yes

Required procedures added to State Leahy law	State's effort to address new procedural requirement	GAO assessment: Has State provided guidance?
Seek to identify the unit involved when credible information of a gross violation exists but the identity of the unit is lacking.	State's Leahy human rights vetting guide advises embassies to use available resources to investigate derogatory information found through the human rights vetting process. The guide also states that DRL officials responsible for vetting in Washington, D.C., may seek to, among other things, determine whether the candidate for assistance is the same unit or individual that committed a gross violation of human rights. DRL officials said they plan to issue a cable by October 2013 with additional guidance on this requirement.	Yes
Make publicly available, to the maximum extent practicable, the identity of units that are prohibited from receiving U.S. assistance due to credible information regarding gross violations of human rights	DRL officials said they are in the process of developing guidance for this required procedure, including guidance on when it would not be practicable to make this information public, for example, when protecting embassy sources. DRL officials anticipate that this guidance will be completed by October 2013.	No

Source: GAO analysis of State guidance and interviews with DRL officials.

Legend: CIA = Central Intelligence Agency; DOD= Department of Defense; DRL = Bureau of Democracy, Human Rights, and Labor; INVEST = International Vetting and Security Tracking system; State = Department of State.

State Guidance to Embassies on How to Implement the Preexisting Duty-to-Inform Requirement Is Unclear

While State has provided guidance to embassies for addressing the duty-to-inform requirement—a legal requirement that existed prior to the December 2011 changes to the State Leahy law—the guidance is unclear. *Standards for Internal Control in the Federal Government* state that federal agencies should, among other things, design and document internal control activities, such as policies and procedures, to help ensure compliance with applicable laws and regulations.¹⁵ The duty-to-inform requirement of the State Leahy law directs the Secretary of State to (1) promptly inform the foreign government when funds are withheld because of credible information of gross violations of human rights and (2) to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.¹⁶ With regard to the first part of the requirement, State guidance directs embassies to notify foreign governments of units or individuals against whom there is credible information of having committed gross violations of human rights and to provide information on

¹⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

¹⁶22 U.S.C. § 2378d(c).

the offense. However, State guidance does not specify whether the requirement to inform foreign governments applies when a unit or individual is suspended from receiving assistance, rather than rejected, due to human rights vetting.¹⁷ With regard to the second part of the requirement, State guidance directs embassies to offer assistance to bring the responsible persons to justice, if appropriate, and advises embassies to encourage governments to prosecute those credibly believed to have committed a gross violation of human rights under local law through a legitimate and transparent judicial process. The guidance also notes that the type of assistance offered by the embassy depends on the circumstances. However, State guidance does not provide examples of the types of assistance that could be offered to the foreign government to help prosecute these violators or the circumstances under which the assistance might be provided.

State personnel at six of the eight embassies we visited said they would like additional guidance from State that clarifies how they should implement the duty-to-inform requirement, and foreign government officials in four of the eight countries we visited¹⁸ said they would like more information on why the United States withheld assistance from a unit or individual. For example, a State official at one of the embassies we visited stated that DRL needed to provide more detailed guidance on how to implement the duty-to-inform requirement, because his current embassy did not have a clear process for implementing it. A State official at one of the other embassies we visited stated that he would like more guidance from DRL on how to implement the second part of the duty-to-inform requirement, because he did not know to whom in the foreign government the embassy should offer assistance in bringing to justice the members of the security forces responsible for committing a gross violation of human rights. For example, he said he did not know whether the embassy should offer assistance to high-level or mid-level government officials in such instances. In addition, foreign government officials in four of the eight countries we visited told us that they would like to know if the embassy had credible information of a gross violation of

¹⁷State's guidance notes that a unit or individual should be suspended if the embassy cannot confirm or rule out the derogatory information found on a unit or individual in time to accommodate a training event.

¹⁸We met with foreign government officials in six of the eight countries we visited.

human rights about their security forces so that they could further investigate the allegations.

We found that the SOPs of the embassies we visited contained inconsistent information on how to address the first part of the duty-to-inform requirement, which directs State to inform the foreign government when funds are withheld due to credible information of a gross violation of human rights. Specifically, among the SOPs of the eight embassies we visited, five required the embassy to inform the foreign government in cases of rejections and suspensions, one required the embassy to inform the foreign government only in cases of rejections, and one restated the duty-to-inform requirement and did not specify whether the embassy should inform the foreign government in cases of rejections, suspensions, or both. The eighth embassy had not developed procedures addressing this requirement as of April 2013. Determining whether the eight embassies we visited had complied with the duty-to-inform requirement was outside the scope of our review.

In January 2013, State issued a 6-month action plan, in which it noted that it was developing talking points, case studies, and successful remediation examples to help embassies engage with foreign governments to implement the duty-to-inform requirement. As of August 2013, DRL had not yet issued this guidance. DRL officials did not provide an estimate of when this guidance would be completed and did not indicate whether the guidance would clarify whether embassies should inform the foreign government in the case of suspensions. Clearer guidance on the duty-to-inform requirement would better enable U.S. embassies to inform foreign governments of human rights vetting results in accordance with the law and might therefore increase the effectiveness of the State Leahy law as a tool for leveraging U.S. assistance to promote human rights with foreign partners.

State Does Not Monitor Whether All U.S. Embassies Have Standard Operating Procedures That Address Leahy Law Requirements

State does not monitor whether all U.S. embassies have required SOPs that address State and DOD Leahy law requirements. We found that all of the eight embassies we visited either created or updated their SOPs during the course of our review, and most of these SOPs did not address a particular requirement of the State Leahy law. Since at least 2003, State guidance has required embassies to develop written SOPs that describe each embassy's human rights vetting process, although these SOPs are not required by law. According to State guidance, the SOPs should be approved by the Deputy Chief of Mission and reviewed by DRL.¹⁹ State guidance notes that SOPs help to facilitate the transfer of responsibilities when embassy personnel rotate to new assignments and provide documentation of a well-established vetting process.²⁰ Furthermore, State guidance directs every government official involved in the human rights vetting process, including those who arrange training for foreign security forces, to read the embassy's SOPs. Officials at several embassies we visited told us that they rely on SOPs as an important source of information regarding human rights vetting policy and procedures. *Standards for Internal Control in the Federal Government* states that organizations should establish internal controls, such as monitoring systems, to provide reasonable assurance that the agency is complying with applicable laws and regulations, among other things.²¹

Although State's guidance instructs embassies to submit their SOPs to DRL for review, DRL officials told us that its office does not require embassies to submit their SOPs for review. Instead, DRL reviews the SOPs of embassies that voluntarily submit them. According to DRL officials, DRL does not have the authority to require embassies to submit their SOPs to DRL for review. However, the *State Foreign Affairs Manual* states that all embassies are responsible for maintaining systems of controls, which can include SOPs.²² In July 2013, in response to our request, DRL officials developed a list of embassies that had voluntarily submitted their human rights vetting SOPs to DRL for review. This list

¹⁹The Deputy Chief of Mission is the second highest ranking diplomat, after the Ambassador, assigned to an embassy or other diplomatic mission.

²⁰State Foreign Service Officers typically change assignments every 1 to 3 years.

²¹[GAO/AIMD-00-21.3.1](#).

²²U.S. Department of State, *Foreign Affairs Manual*, vol. 2, 2 FAM 020, Management Controls (Washington, D.C.: Jan. 25, 2013).

indicated that DRL had reviewed SOPs for 43 of the 159 embassies that conducted human rights vetting in fiscal year 2012. DRL does not proactively monitor, and therefore cannot readily determine, whether the remaining 116 embassies have written SOPs in place.

Furthermore, we found that while all eight of the embassies we visited had SOPs in place as of June 2013, two did not have SOPs in place at the start of our review. The remaining six embassies updated their SOPs during the course of our review. See table 4 for the status of the development of SOPs at the eight embassies we visited.

Table 4: Status of Standard Operating Procedures (SOPs) at the Eight U.S. Embassies We Visited during Our Review (October 2012 – September 2013)

U.S. embassy	Status of the embassy's SOP development	Date the SOP was created or last updated
Mexico City, Mexico	Embassy officials said that they updated the embassy's SOP in anticipation of our visit to ensure that the SOP addressed all of the requirements of the Departments of State (State) and Defense (DOD) Leahy laws.	Updated between October 2012 and February 2013
Guatemala City, Guatemala	Embassy officials said that they created the embassy's SOP in anticipation of our visit. Prior to creating the SOP, the embassy had not documented its human rights vetting process.	Created January 2013
Tegucigalpa, Honduras	An embassy official said that the embassy updated its SOP in anticipation of our visit. Each agency and section responsible for vetting at the embassy created an SOP.	Updated January 2013
Bangkok, Thailand	Embassy officials said that the embassy has been updating its SOP annually since a 2010 review of the embassy's human rights vetting process by the State Inspector General.	Updated March 2013
Kuala Lumpur, Malaysia	Embassy officials said that they created the embassy's SOP in January 2013.	Created January 2013
Dhaka, Bangladesh	An embassy official said that the embassy created its first SOP in the summer of 2012 and updated it in September 2012 and March 2013.	Updated March 2013
Kinshasa, Democratic Republic of the Congo	Embassy officials said that they updated the embassy's SOP in anticipation of our visit. Embassy officials said the previous version of the embassy's SOP was based on an outdated vetting process that the embassy no longer followed.	Updated June 2013
Nairobi, Kenya	Embassy officials said that they updated the embassy's SOP in October 2012. Embassy officials said that they first created the embassy's SOP in 2010.	Updated October 2012

Source: GAO interviews with embassy officials, embassy SOPs, and State documentation.

In addition, DRL officials told us that they review embassy SOPs to ensure that they address the Leahy laws' requirements and are consistent with State's overall human rights vetting policies and procedures. However, we found that a majority of the SOPs for the embassies we visited, all of which were reviewed by DRL, did not address

a requirement in the State Leahy law which directs State to assist the foreign government, to the maximum extent practicable, in taking effective measures to bring the responsible members of the security forces to justice. Specifically, among the SOPs for the eight embassies we visited, three addressed this requirement. Without more robust monitoring, it will be difficult for State to provide reasonable assurance that the embassies have developed SOPs to help ensure the laws' requirements are being implemented in each country.

State Offers Training to Personnel on Human Rights Vetting, but Its Web-Based Training Is Outdated

State provides training to human rights vetting personnel through two web-based courses: "INVEST: Leahy Vetting in Washington" (for vetting personnel in Washington, D.C.) and "INVEST: Leahy Vetting at Post" (for vetting personnel at U.S. embassies). However, we found that both of these web-based courses are outdated. According to the course descriptions, this training is designed to provide participants with the knowledge and skills necessary to complete the human rights vetting process for individuals and units nominated to receive U.S.-funded assistance. The courses provide an introduction to the laws and policies that serve as the basis for the human rights vetting process, as well as training on how to use INVEST to perform and document vetting. Although the courses are optional, DRL encourages vetting personnel to complete them. Both courses are offered as self-paced, web-based distance learning through State's Foreign Service Institute in Washington, D.C., to provide flexibility for vetting personnel posted at embassies around the world. Twelve of the 15 personnel responsible for human rights vetting in Washington, D.C.,²³ and six of the eight human rights vetting points of contact at the eight embassies we visited, told us that they had completed their respective courses. Training is free of charge for eligible State employees with vetting responsibilities, and other agency employees may take the training if they pay a fee to State's Foreign Service Institute. State's Office of the Inspector General has previously noted, and DRL officials acknowledged, that the cost of the course may serve as a deterrent for non-State vetting personnel who wish to take the course. DRL officials told us they have requested that the Foreign Service Institute make the course available free of charge, but the Foreign Service Institute has not agreed to do so.

²³These 12 personnel included 7 of 7 DRL vetting personnel and 5 of 8 vetting personnel in the geographic bureaus.

DRL officials said that they also provide training on the laws and policies related to human rights vetting through other means. For example, DRL officials told us they teach a 1-hour module that addresses the State Leahy law and the vetting process as part of a 1-week course on political-military affairs offered three times a year by the Foreign Service Institute. DRL officials noted that this course is primarily intended for supervisory staff, some of whom may play a role in the human rights vetting process during their careers. The political-military affairs course is not specifically designed to target individuals with human rights vetting responsibilities but focuses on the broad scope of political-military work and how it relates to national security policy. According to DRL officials, human rights classes offered through the Foreign Service Institute also include a module on the State Leahy law. According to DRL officials, they recently developed a briefing that also provides an overview of the State and DOD Leahy laws and explains State's policies and processes related to human rights vetting. DRL officials told us they had delivered the briefing to DOD officials from all six geographic combatant commands and U.S. officials from selected embassies, including those who had concerns or questions about the implementation of the State and DOD Leahy laws. On July 9, 2013, DRL officials made the information from the briefing publicly available by posting it on the official U.S. government website for human rights related information.²⁴ Finally, human rights vetting personnel in Washington, D.C., and at embassies we visited also said that they received on-the-job training to prepare them to fulfill their responsibilities. For example, one official who conducts human rights vetting in Washington, D.C., said that she learned how to conduct searches and process cases through INVEST from her predecessor.

We found that State's two web-based courses for human rights vetting personnel—one for officials based in Washington, D.C., and one for officials at overseas embassies—have not been updated to reflect changes to the State Leahy law enacted by Congress in December 2011, and corresponding changes to State's vetting policies. Training materials used in the web-based course for Washington-based vetting personnel were first completed in July 2010 and have not been updated since that time. Training materials used in the web-based course for embassy-based vetting personnel were completed in March 2010 and updated in

²⁴U.S. Department of State, *Leahy Vetting: Law, Policy, Process*, April 15, 2013, accessed August 28, 2013, <http://www.humanrights.gov/2013/07/09/an-overview-of-the-leahy-vetting-process/>.

March 2011. As a result, neither web-based course reflects changes to the language of the State Leahy law or includes information on the seven new procedural requirements added in December 2011, such as the requirement to establish procedures for ensuring that when vetting an individual for eligibility to receive assistance, that individual's unit is also vetted, or the requirement to establish procedures for making publicly available, to the maximum extent practicable, the identity of units for which no assistance shall be provided.

According to officials from DRL, they are aware that the course materials need to be updated. DRL officials said that changes to the training must be coordinated through the Foreign Service Institute and the contractor that helped develop the course. In November 2012, DRL provided the Foreign Service Institute updates to the web-based course for vetting personnel at overseas embassies that reflect the changes to the law in December 2011, but DRL officials do not know whether the Foreign Service Institute will make the changes. DRL, however, has not submitted updates to the web-based course for vetting personnel in Washington, D.C., that reflect the changes to the State Leahy law in December 2011. DRL officials said they would like to make more extensive updates to the training, but they currently lack the funding to do so. We acknowledge that State is operating in a constrained fiscal environment, but up-to-date training that addresses the new procedural requirements in the State Leahy law is critical for providing U.S. personnel with the skills and information necessary to implement the law. Without updated training, State runs the risk that U.S. security assistance might be used inappropriately because its personnel have not been adequately trained on the State Leahy law and State's corresponding policies.

In January 2013, DRL issued a 6-month action plan, which included the goal of increasing knowledge of the State Leahy law and its requirements across the agency. To this end, DRL stated that it would work with the Foreign Service Institute to integrate training on the State Leahy law into courses for political officers, regional security officers, deputy chiefs of mission, and ambassadors, in addition to existing segments in the human rights and political-military affairs courses. The action plan also noted that DRL would work with the Foreign Service Institute to update the existing web-based courses on human rights vetting. Finally, DRL stated that it would continue to conduct outreach to embassy leadership through regional planning conferences and consultations, including those involving DOD.

Conclusions

The State and DOD Leahy laws are intended to help ensure that billions of dollars in U.S. assistance provided annually to foreign security forces are not used to support human rights violators. According to State, the laws and corresponding policies for enforcing these laws also are intended to encourage accountability and professionalism in foreign security forces by leveraging U.S. assistance to encourage foreign governments to prevent human rights violations and hold violators accountable. However, a lack of clear guidance for addressing the duty-to-inform requirement of the State Leahy law, limited monitoring of embassy SOPs, and outdated training makes it difficult for State to fully meet the laws' objectives. For example, State's guidance to embassies on how they should implement the diplomatically sensitive duty-to-inform requirement is unclear. With clearer guidance, U.S. embassies would be better able to inform foreign governments of human rights vetting results in accordance with the law, potentially increasing the effectiveness of the State Leahy law as a tool for leveraging U.S. assistance to promote human rights with foreign partners.

Furthermore, although State guidance requires embassies to develop SOPs for implementing human rights vetting, the State office responsible for overseeing the vetting process, DRL, does not proactively monitor whether U.S. embassies worldwide have SOPs that address the requirements in the State and DOD Leahy laws. Therefore, it is difficult for State to provide reasonable assurance that each embassy has developed SOPs to help ensure the Leahy law requirements are being implemented. State officials at two of the eight embassies we visited said that they had developed their procedures for the first time during the course of our review, which suggests that other embassies—among the 159 embassies worldwide that conduct human rights vetting—may not currently have procedures in place.

Training helps to ensure that human rights vetting personnel have the information and skills necessary to carry out their responsibilities and is particularly critical given the frequent turnover in personnel responsible for conducting human rights vetting at U.S. embassies. However, the web-based courses that State uses to prepare its personnel at U.S. embassies overseas and in Washington, D.C., to conduct human rights vetting do not reflect new procedural requirements added to the State Leahy law in December 2011 and corresponding modifications to State's human rights vetting policies. Without up-to-date training, it will be difficult for human rights vetting personnel to be adequately prepared to implement these new requirements, thereby limiting the effect of the law.

Recommendations for Executive Action

To help ensure that State addresses the requirements of the Leahy laws, we recommend that the Secretary of State take the following three actions:

- provide clarifying guidance for implementing the duty-to-inform requirement of the State Leahy law, such as guidance on whether U.S. embassies should or should not notify a foreign government in cases of suspensions;
- ensure that all U.S. embassies have human rights vetting standard operating procedures that address the requirements in the Leahy laws; and
- update the web-based training for personnel who conduct human rights vetting to reflect the changes to the State Leahy law enacted in December 2011.

Agency Comments and Our Evaluation

We provided a draft of this report to State, DOD, the Department of Justice, and the U.S. Agency for International Development for their review and comment. State and DOD provided comments, which we have reproduced in appendixes II and III, respectively. State also provided technical comments, which we incorporated in this report, as appropriate. The Department of Justice and the U.S. Agency for International Development did not provide comments.

State agreed with our recommendation to provide clarifying guidance for implementing the duty-to-inform requirement. State noted that it has communicated the duty-to-inform requirement to embassies through multiple sources of guidance, and while it believes that embassies are in the best position to determine the level and form of notification that will address the requirement, it agreed that further guidance on the application of the requirement would be worthwhile. State said that it is working on instructions to address this need and enhance overall compliance with the requirement.

State also agreed with our recommendation to ensure that all U.S. embassies have human rights vetting standard operating procedures that address the requirements in the Leahy laws. However, the planned actions outlined by State do not directly address our recommendation. 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 embassy 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 requirements 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. As we note in this report, SOPs help to facilitate the transfer of responsibilities when embassy personnel rotate to new assignments and provide documentation of a well-established vetting process. SOPs also outline the role of the embassy in addressing legal requirements not addressed through the vetting process, such as the duty-to-inform requirement in the State Leahy law. Moreover, *Standards for Internal Control in the Federal Government* states that organizations should establish internal controls, such as monitoring systems, to provide reasonable assurance that the agency is complying with applicable laws and regulations. However, DRL does not proactively monitor, and therefore cannot readily determine, whether all embassies have SOPs in place. We therefore believe that State should take additional actions to fully address our recommendation for State to ensure that all embassies have SOPs.

State agreed with our recommendation to update its web-based training for personnel who conduct human rights vetting to reflect changes to the State Leahy law enacted in December 2011. State explained that it was finalizing updates to the two web-based courses and expected to complete them soon.

Although our report did not make any recommendations to DOD, DOD said that it supported our recommendations to State. In addition, DOD noted that it was working with State to implement the DOD Leahy law effectively, among other things.

We are sending copies of this report to relevant congressional committees, the Secretaries of State and Defense, the Attorney General of the United States, and the Administrator of the U.S. Agency for International Development. In addition, this report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7331 or johnsoncm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink, appearing to read "Charles M. Johnson, Jr.", with a large, stylized flourish at the end.

Charles Michael Johnson, Jr.
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

The objectives of this review were to examine the extent to which (1) the Department of State (State) and the Department of Defense (DOD) provide guidance to their personnel to address the Leahy laws, (2) State monitors whether U.S. embassies have developed procedures to address the requirements of the Leahy laws, and (3) State provides training to personnel who conduct human rights vetting.

To address all three objectives, we interviewed officials at State's Bureau of Democracy, Human Rights, and Labor (DRL); geographic bureaus; and the Office of the Legal Advisor. We also interviewed DOD officials at the Office of the Secretary of Defense, United States Southern Command, and United States Africa Command; and we obtained information on how DOD interprets its law from DOD's Office of General Counsel. We conducted fieldwork at the U.S. embassies in the following eight cities: Bangkok, Thailand; Dhaka, Bangladesh; Guatemala City, Guatemala; Kinshasa, Democratic Republic of the Congo; Kuala Lumpur, Malaysia; Mexico City, Mexico; Nairobi, Kenya; and Tegucigalpa, Honduras.

We selected a nongeneralizable sample of countries to visit by first identifying countries that received assistance subject to both the State and DOD Leahy laws, were classified by State as non-Fast-Track countries,¹ and were categorized by State as being countries of human rights concern. We then ranked these countries within their respective geographic regions according to the total number of different types of assistance subject to the Leahy laws they received in fiscal years 2010 and 2011. We looked for natural breaks in the data to identify the countries that had received the greatest number of different types of assistance within each region. Among these, we selected countries that provided a broad geographic representation based on multiple criteria, such as the amount of assistance the country received (i.e., both high and low where possible), the number of agencies or offices responsible for conducting human rights vetting for each country (i.e., both high and low where possible), and the number of vetting cases processed for each country (i.e., both high and low where possible). In general, we eliminated a country from consideration if the State Office of the Inspector General had conducted an inspection of the U.S. embassy in that country within

¹A Fast Track country is one that State has identified as having a favorable human rights record and no serious systematic problems, a human rights history such that it is not likely that there are gross violators of human rights in the country's security forces, and a functioning democracy.

the past 2 years. We made an exception for one country because the recent embassy inspection had raised concerns about the embassy's human rights vetting process, and we determined these findings warranted follow-up. In each country, we met with U.S. embassy officials from State, DOD, and, as relevant, the Departments of Homeland Security and Justice, and the U.S. Agency for International Development to understand these agencies' roles in the human rights vetting process. Where possible, we also met with representatives of each country's military and police forces to understand their familiarity with the Leahy laws and the U.S. human rights vetting process, as well as how the U.S. embassy communicates vetting results to them. We also met with representatives of human rights nongovernmental organizations in each of the countries we visited to understand the extent of their role in the U.S. embassy's human rights vetting process.

To examine the extent to which State and DOD provide guidance to their personnel to address the Leahy laws, we reviewed State guidance, including the Leahy human rights vetting guide; the *International Vetting and Security Tracking (INVEST) User Guide*; multiple cables from State communicating directives to embassies regarding the implementation of the State and DOD Leahy laws; and INVEST bulletins providing updates to human rights vetting policies, procedures, and tools. We reviewed *Standards for Internal Control in the Federal Government*.² We also reviewed a 6-month action plan issued by State in January 2013 to address challenges with the implementation of the State Leahy law. We reviewed a Joint Staff message issued by DOD in June 2004 that provided guidance on human rights verification for DOD-funded training of foreign security forces. Furthermore, we reviewed the State³ and DOD⁴ Leahy laws. We interviewed State officials at DRL responsible for overseeing the human rights vetting process as well as the 15 State officials from DRL and the State geographic bureaus responsible for vetting in Washington, D.C., and who serve as the primary contacts for questions from vetting personnel at U.S. embassies. In addition, we completed a content analysis to determine whether State had established

²GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

³22 U.S.C. § 2378d.

⁴For the most recent version of this provision, see Section 8057 of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6 (Mar. 26, 2013).

procedures that addressed or did not address the seven new procedural requirements of the State Leahy law. To complete the analysis, one analyst reviewed State guidance and determined whether the guidance contained procedures that addressed or did not address each of the procedural requirements. A second analyst then reviewed the first analyst's assessment and any disagreements in the determinations were resolved through discussion. We also conducted an analysis to determine how the standard operating procedures (SOPs) for each of the eight embassies we visited addressed the first part of the duty-to-inform requirement, which directs State to inform the foreign government when funds are withheld due to credible information of a gross violation of human rights.⁵ We completed this content analysis using the same content analysis procedures described above.

To examine the extent to which State monitors whether U.S. embassies have developed procedures to address the requirements of the Leahy laws, we interviewed State officials from DRL and the eight embassies we visited. We reviewed guidance provided by State that requires embassies to develop SOPs and the SOPs developed by each of the eight embassies we visited. We also reviewed *Standards for Internal Control in the Federal Government*.⁶ Furthermore, we reviewed State's *Foreign Affairs Manual* to determine State policies for maintaining systems of management controls.⁷ We also conducted an analysis to determine whether the SOPs for each of the eight embassies we visited contained procedures that addressed the second part of the duty-to-inform requirement in the State Leahy law, which directs State to assist the foreign government, to the maximum extent practicable, in taking effective measures to bring the responsible member of the security forces to justice. We completed this content analysis using the same content analysis procedures described above.

To examine the extent to which State provides training to personnel who conduct human rights vetting, we interviewed DRL officials who oversee human rights vetting policies and processes, as well as State officials in DRL and the geographic bureaus responsible for vetting in Washington,

⁵22 U.S.C. § 2378d(c).

⁶[GAO/AIMD-00-21.3.1](#).

⁷U.S. Department of State, *Foreign Affairs Manual*, vol. 2, 2 FAM 020, Management Controls (Washington, D.C.: Jan. 25, 2013).

D.C. We also interviewed U.S. officials responsible for vetting at the eight embassies we visited. We reviewed the training materials for the two web-based courses DRL offers U.S. personnel responsible for vetting in Washington, D.C., and at embassies. We reviewed the descriptions of these courses, which note that they were designed to provide participants with the knowledge and skills necessary to complete the human rights vetting process for individuals and units nominated to receive U.S.-funded assistance. In addition, we reviewed briefing materials developed by DRL that provide an overview of the State and DOD Leahy laws and explain State's policies and processes related to human rights vetting.

We conducted this performance audit from October 2012 to September 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



Dr. Loren Yager
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

United States Department of State
Comptroller
P.O. Box 150008
Charleston, SC 29415-5008

SEP 10 2013

Dear Dr. Yager:

We appreciate the opportunity to review your draft report, "HUMAN RIGHTS: Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws" GAO Job Code [REDACTED]

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Winston Mann, Leahy Team Leader, Bureau of Democracy, Human Rights and Labor at (202) 647-2292.

Sincerely,

A handwritten signature in blue ink that reads "James L. Millette".

James L. Millette

cc: GAO – Charles M. Johnson
DRL – Uzra Zeya
State/OIG – Evelyn Klemstine

Department of State Comments on GAO Draft Report

**HUMAN RIGHTS: Additional Guidance, Monitoring, and Training Could
Improve Implementation of the Leahy Laws**
(██████████ GAO Code ██████████)

Thank you for the opportunity to comment on your draft report entitled “*Human Rights: Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy laws.*” With respect to the three recommendations GAO made in the report, we accept all three and are already working to address each recommendation. We have provided detailed clarifying comments below, and ask that the report be revised to take these points into account.

With respect to the first recommendation, as the draft report notes, the duty to inform requirement has been communicated to posts (specifically in the 2003 Leahy ALDAC, the 2012 Leahy vetting guide and the 2013 ALDAC reiterating Leahy policy). The Department understands that the intent of the law is to advise the foreign government at such a level and in such a manner as to maximize the chances that the government will take corrective action. The Department believes that posts are generally in the best position to determine the level and form of notification that will best serve this purpose. Posts should not be delaying notification pending guidance from the Department on these local tactical issues. We will issue clarifying guidance to ensure that posts understand that it is their responsibility to fashion the most effective notification approach, but do not propose to create a one size fits all formula for notification. We agree that further guidance on the application of the notification requirement to cases where assistance is withheld pursuant to the law as well as the duty to provide assistance in such cases and sample talking points for use in such cases would be worthwhile. The Department is working on instructions to address these needs and enhance overall compliance with the requirement. In this context, we would note that as indicated in the report, many cases result in assistance not being provided before a formal determination is reached that there is credible information of a gross human rights violation.

With respect to the second recommendation, DRL will issue clarifying guidance that while posts must have Standard Operating Procedures (SOPs) in place, DRL review or approval of post SOPs is no longer mandatory. This is consistent with the Department’s general approach of empowering posts to develop SOPs implementing legal or policy mandates specific to their circumstances but

-2-

that do not require Departmental approval. Instead, DRL will continue its established practice of assisting posts on request to develop Leahy vetting SOPs, with particular emphasis on the SOPs in select countries DRL will identify in accordance with its January 2013 Leahy Action Plan. Now that INVEST is fully functional, DRL monitors posts' compliance with Leahy vetting requirements in the INVEST system, and recommends post address issues identified in these reviews in their post SOPs. DRL monitoring of the vetting process has in our view proven to be a better means of ensuring compliance than reviewing vetting SOPs, and so we will change our standing guidance accordingly. We ask that GAO note in its report that INVEST monitoring is an effective method the Department incorporates to ensure global Leahy compliance.

With respect to the third recommendation, the Department is finalizing updates to INVEST distance learning courses, PP410 and PP411, and expects to complete them soon. These will incorporate guidance that DRL has already posted as bulletins in the INVEST system to which all vetting participants have immediate access. We would also note that these courses are primarily designed to teach new INVEST users how to use the INVEST system (in addition to the INVEST User Guide) and introduce new users to the legal and historical background of the laws. The courses and INVEST bulletins, which are released with each INVEST update, give users up-to-date information on how to conduct Leahy vetting in the INVEST environment. We consistently invite new users to take advantage of both. They are not intended to educate the Department as a whole about the Leahy laws or related policies. The Department's training efforts on the new Leahy law have focused on providing instructions to the field, ensuring that senior officials are fully aware of the law's requirements and incorporating a Leahy component into courses for key Department personnel. We intend to continue with this emphasis in our overall approach.

Finally, with regard to footnote 10, we would like to further clarify that although it is not Department policy to use INVEST to vet individual or unit level recipients for material assistance, there is a Department procedure for reviewing and clearing material assistance via memorandum. We request GAO revise footnote 10 to reflect that we do not vet material assistance in INVEST, rather we comply with the Leahy laws regarding material assistance through a memo-based process.

See comment 1.

Following are GAO's comments on the Department of State's letter dated September 10, 2013.

GAO Comments

1. We revised footnote 10 to indicate that, although State policy does not require the use of INVEST to conduct individual- or unit-level human rights vetting for recipients of equipment, State uses an alternate memo-based process to review and clear these recipients.

Appendix III: Comments from the Department of Defense



OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

POLICY

SEP -3 2013

Mr. Charles Michael Johnson
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Thank you for the opportunity to review and provide comments on the GAO Draft Report [REDACTED] *Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws* (GAO Code [REDACTED]), September 2013.

Although the report does not list any recommendations for the Department of Defense (DoD), DoD supports GAO's recommendations for the Department of State (DOS) to (1) provide clarifying guidance for implementing Department of State's duty-to-inform requirement; (2) ensure that all U.S. embassies have human rights vetting standard operating procedures that address the requirements of the DOS and DoD Leahy laws; and (3) update its web-based training for personnel who conduct human rights vetting to reflect the changes to the DOS Leahy law enacted in December 2011.

In addition, DoD is working with DOS to (1) implement DoD's Leahy law effectively; (2) enhance consistent and thorough interagency training for all levels of the vetting staff; and (3) ensure the information used to determine the credibility of information or allegations of gross violations of human rights abuses reflects the best judgments of the country teams and other interagency partners.

If you have any questions concerning this response, please contact Ellen Klein, Rule of Law and Detainee Policy at (703) 692-3903.

A handwritten signature in blue ink, which appears to read "Peter F. Verga", is located below the typed name.

Peter F. Verga
Chief of Staff

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Charles Michael Johnson, Jr., (202) 512-7331 or johnsoncm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Hynek Kalkus (Assistant Director), Jon Fremont, Drew Lindsey, and Kira Self made key contributions to this report. Ashley Alley, Debbie Chung, Etana Finkler, and Michael Silver also provided assistance.

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