

Different rules keep US supplying weapons to Israel



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PERSPECTIVE

Top US officials quietly reviewed more than a dozen incidents of alleged gross violations of human rights by Israeli security forces since 2020 but have gone to great lengths to preserve continued access to US weapons for the units responsible for the alleged violations, contributing — former US officials say — to the sense of impunity with which Israel has approached its war in Gaza. An estimated 28,000 Palestinians, mostly women, and children, have been killed by Israeli forces since Hamas's October 7 attack on Israel, a death toll that has spurred condemnation of Israeli Prime Minister Benjamin Netanyahu and US President Joe Biden, who has been criticized for failing to rein in Israel's "indiscriminate" bombing of Gaza. An investigation by the Guardian, which was based on a review of internal State Department documents and interviews with people familiar with sensitive internal deliberations, reveals how special mechanisms have been used over the last few years to shield Israel from US human rights laws, even as other allies' military units who receive US support — including, sources say, Ukraine — have privately been sanctioned and faced consequences for committing human rights violations. State Department officials have in effect been able to circumvent the US law that is meant to prevent US complicity in human rights violations by foreign military units — the 1990s era Leahy law, named after the now-retired Vermont senator Patrick Leahy — because, former officials say, extraordinary internal State Department policies have been put in place that show extreme deference to the Israeli cabinet. No such special arrangements exist for any other US ally.



US Air Force personnel unload a KC-135 Stratotanker at an undisclosed location, designated by the military as within the US Central Command "area of responsibility," on October 23, 2023.
US AIR FORCE

The lack of enforcement of the Leahy law in Israel appears especially troubling to its namesake. In a statement to the Guardian, the former Vermont senator said the purpose of the Leahy law was to shield the US from culpability for gross violations of human rights by foreign security forces that receive US aid and deter future violations. "But the law has not been applied consistently, and what we have seen in the West Bank and Gaza is a stark example of that. Over many years, I urged successive US administrations to apply the law there, but it has not happened," Leahy said. Among the incidents that have been reviewed since 2020 were the killing of Shireen Abu Akleh, the Palestinian-American journalist who was shot by Israeli forces in May 2022; the death of Omar Assad, a 78-year-old Palestinian-American, who died in January 2022 after being held in Israeli custody; and the alleged extrajudicial killing of Ahmad Abdu, a 25-year-old who was shot at dawn by Israeli forces in May 2021 while sitting in his car. Internal State Department documents show that the incidents were reviewed under a little-known process established by the State Department in 2020 known as the Israel Leahy Vetting Forum (ILVF), in which representatives from relevant State Department bureaus examine reports of alleged human rights violations by Israeli forces. Under the Leahy law, for most countries and in most cases, a foreign military unit is granted US military assistance or training after it is vetted by the State Department for any reported human rights violations. The law prohibits the Department of State and the Department of Defense from providing funds, assistance, or training to foreign security force units where there is "credible information" that the forces have committed a gross violation of human rights. But people familiar with the process who spoke on the condition of anonymity said Israel has benefitted from extraordinary policies inside the ILVF, details of which have not previously been reported. "Nobody said it, but everyone knew the rules were different for Israel. No one

will ever admit that, but it's the truth," said one former State Department official. First, under the Israel process, all of the parties involved in an ILVF review must reach a consensus that a potential violation has occurred, and must then be approved by the Deputy Secretary of State, according to three people familiar with internal deliberations. In theory, a single bureau could raise a potential violation to the Deputy Secretary of State level as part of a "split memo", in which other bureaus would air their disagreement, but no such thing has occurred.



Former US secretary of state John Kerry (3rd-R) walks with then-senator Patrick Leahy (2nd-R) of Vermont outside the US Senate Chamber in Washington D.C. on September 9, 2015.
US STATE DEPARTMENT

Among the groups that are involved in the process are the Bureau of Near Eastern Affairs, the Bureau of Democracy, Human Rights, and Labor, the Bureau of Political-Military Affairs, and the US embassy in Jerusalem. For other countries, former officials said, such a Leahy law determination is made by State Department staff, does not require the consensus of all parties, and would not require notification of and approval by the Secretary of State or deputy. Second, Israel must be consulted about alleged human rights violations that are under review and has 90 days to respond

to claims, creating what some former officials said were significant delays. No other country must be consulted under State Department procedures, former officials said. "Part of the reason why the ILVF has never worked is that the process is so gummed up with delay mechanisms that exist for no other country," the former State Department official said.

'A broad impunity'

Some experts see a connection between the US's hands-off approach to Israel on human rights violations and Israel's con-

maysay that Israel should abide by international humanitarian law. We may say that it should not expand settlements. But when it comes to actual consequences, there aren't any." Paul also sees the lack of Leahy law enforcement having an effect on how Israeli units are conducting themselves. By not pressing Israel on Leahy violations and not designating individual Israeli units as gross violators of human rights, Paul said the US has enabled a culture of impunity at the unit level, which he said "we see on the ground in Gaza today" in the actions of some Israeli soldiers, including videos that have circulated showing Israeli soldiers ransacking private homes in Gaza, destroying civilian property, and using racist language. Nowhere is the US's double standard on Israel more apparent than in a 2021 agreement that was signed by a senior State Department official, Jessica Lewis, who serves as assistant secretary for political affairs, and the Israel ambassador to the US, Michael Herzog. The two-page 2021 agreement, which has received little media attention, formalized changes in the Leahy law and included a statement about how Israel has a "robust, independent, and effective legal system, including its military justice system". The US signed more than two dozen similar agreements with other countries at that time — including Greece, Jordan, Georgia, Ukraine, and Latvia — but none contained language endorsing the other countries' military justice systems. Former officials who spoke to the Guardian said they did not know how the language came to be included in the US-Israel agreement, but speculated it was likely added by Israel. Tim Rieser, a longtime senior adviser to Leahy, who helped write the Leahy law in the 1990s, said the inclusion of the language was likely intended to help Israel avoid scrutiny under the Leahy law because it suggests as a matter of fact that Israel's military justice system is independent enough to address any alleged human rights violations. "The language added to the US-Israel agreement, without any consultation with Congress, is factually inaccurate and