



USAID
FROM THE AMERICAN PEOPLE

POLICE PROGRAMMING MYTHBUSTER:

WORKING WITH POLICE IS EASIER THAN YOU MAY THINK

MYTH:



USAID does not work with the police in partner countries.

FACT:



USAID possesses more than two decades of experience and technical leadership in policing assistance and security sector reform programs in many countries around the world, including in Guatemala, Mexico, and Honduras.

For too long, many DRG officers have labored under the impression that USAID can only work with law enforcement, including police, in very limited circumstances. This was certainly true at one time, but things have changed. There are a number of applicable notwithstanding authorities, including for community-based police assistance and democracy programs, that may be applied to assistance to law enforcement.

When the subject of working with police arises, many in USAID and the interagency immediately think of the prohibition. USAID remains bound by Section 660 of the Foreign Assistance Act of 1961, as amended, which generally prohibits the use of foreign assistance to provide assistance (e.g., training, advice, or financial support) to law enforcement. However, there are numerous exceptions in section 660 itself, as well as many notwithstanding authorities (NWA) that can be applied to the prohibition. One of these is for community-based police assistance, but there are numerous others. The law on assistance to law enforcement¹ has evolved over time, making it far easier to work with them.

Understanding the value of assistance to law enforcement in economic assistance programs, Congress over time eased the restrictions, many of which were rooted in the activities of the USAID Office of Public Safety from the early 1960s to the early 1970s, which involved controversial police assistance programs and human rights violations.

In general, there are two major notwithstanding authorities provided by Congress that USAID has relied upon over the years: 1) Democracy Programs and 2) Community-Based Police Assistance. However, before assistance may be provided to the security forces of a foreign government, including law enforcement, Leahy Vetting must be conducted to ensure that the recipients have not committed gross violations of human rights. As a matter of policy, USAID does not apply notwithstanding authority to Leahy Vetting requirements.

¹ Assistance to law enforcement may include assistance to groups who are authorized to do one or more of the following: carry weapons, make arrests, search private premises, interrogate in private, supervise confinement (e.g., prison officials), etc. Consult with the RLO or GC on whether a group is "law enforcement."



DEMOCRACY PROGRAMS:

Democracy programming as defined in the annual Appropriations Act may be provided notwithstanding any provision of law.² Usually USAID relies upon the rule of law aspect of the definition though other parts may also apply, depending upon the circumstances. The one major caveat on the use of this NWA is that the funds applied must be counted against the overall Democracy Programs earmark.

It is absolutely crucial that USAID staff consult with their Resident Legal Officer (RLO) when designing police assistance programs. Reliance upon the Democracy Programming NWA to assist law enforcement does not require a specific Congressional Notification. However, it should be documented by a memorandum for the record, usually a decision memorandum for the Assistant Administrator and cleared by the General Counsel if Washington-based or for the Mission Director and cleared by the RLO if Mission-based. Each Bureau will have its own formal/informal policy in this regard, and the processes may differ. Contact the DRG Rule of Law Team for an example of an approved memo.

COMMUNITY-BASED POLICE ASSISTANCE AUTHORITY:

The community policing authority first appeared in section 564(a) of the FY2005 Appropriations Act. It has been slightly updated to include anti-corruption and is now found in section 7035(a)(1) of the FY2020 Appropriations Act. It has remained available to USAID for 15 years.³

To make use of this exception, a Congressional Notification is required by statute. USAID Policy requires, among other things, RLO approval, Chief of Mission approval, and a determination of whether the law enforcement unit is democratically controlled or on the path to being democratically controlled.⁴ This policy applies only to funds used for community-based police assistance. Contact the DRG Rule of Law team for an example of a fully approved and executed memo.

None of the foregoing constitutes legal advice upon which employees may rely in planning law enforcement assistance. USAID employees must consult with their RLOs or GC, as appropriate, for the purpose of, among other legal issues, applying the Leahy Vetting requirement or determining the applicability of these notwithstanding authorities and statutory exceptions.

For additional information on how USAID works with the police see:

[Policy on Assistance to Civilian Policing](#) and [Field Guide to Assistance to Civilian Policing](#)

Please contact the DRG Bureau's Rule of Law Team at ruleoflaw@usaid.gov for guidance and examples.

² Democracy programs are defined by the FY2022 Appropriation Act as: "programs that support good governance, credible and competitive elections, freedom of expression, association, assembly, and religion, human rights, labor rights, independent media, and the rule of law, and that otherwise strengthen the capacity of democratic political parties, governments, nongovernmental organizations and institutions, and citizens to support the development of democratic states and institutions that are responsive and accountable to citizens" (emphasis added).

³ The FY2022 Act says notwithstanding section 660, USAID may work: "to enhance the effectiveness and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, anti-corruption, strategic planning, and through assistance to foster civilian police roles that support democratic governance, including assistance for programs to prevent conflict, respond to disasters, address gender-based violence, and foster improved police relations with the communities they serve."

⁴ To determine if the units are democratically controlled, the action memo must consider: 1) whether the police are controlled by democratic authorities; 2) the country's human rights situation; and 3) the level of corruption. See [ASSISTANCE FOR CIVILIAN POLICING USAID POLICY GUIDANCE, PD-ACG-022](#), December 2005.