

ASSISTANCE FOR CIVILIAN POLICING

USAID POLICY GUIDANCE



Cover photo: The Jamaica Constabulary Force Grants Pen bike patrol, comprising five male and one female officer, was formed as a result of USAID/Jamaica's financial assistance under its bilateral Democracy and Governance program. The Police Executive Research Forum is implementing the community policing program in the inner-city community of Grants Pen, Kingston, greatly enhancing the capability of the police to traverse the community's narrow lanes and strengthen relationships with its citizens. William Foster, CARA Ltd.

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Abbreviations

CSH	Child Survival and Health Programs
DA	Development Assistance
DCHA	Bureau for Democracy, Conflict, and Humanitarian Assistance
DG	Office of Democracy and Governance
ESF	Economic Support Fund
FAA	Foreign Assistance Act of 1961, as amended
FOAA	Foreign Operations, Export Financing, and Related Programs Appropriations Act (2005)
FSA	Freedom Support Act
FY	fiscal year
GC	Office of the General Counsel
INCLE	International Narcotics Control and Law Enforcement Assistance
LPA	Bureau for Legislative and Public Affairs
SEED	Support for East European Democracy
RLA	Regional Legal Advisor

Executive Summary

This policy guidance relates to legislation that has expanded USAID’s mandate to work with civilian policing authorities. Section 564(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, expands “community-based police assistance” authority on a worldwide basis.

This guidance anticipates increased demand for civilian policing assistance.

The guidance elaborates key points and provides the legislative background, along with program goals, policy and notification guidance, program guidelines, advice on implementation, and illustrative activities.

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Definitions

Civilian police authority means a public safety or constabulary force that has the authority to carry out certain functions normally exercised by a law enforce-

ment force. This includes the authority to carry weapons, make arrests, search private premises, interrogate in private, supervise confinement, and initiate prosecutions.

Community-based policing is an approach to policing based on the concept that crime can most effectively be addressed through a partnership between the police and the community they serve. When put into practice, this approach to policing is generally characterized by consultation by the police with communities; adaptation of police policies and strategies to the requirements of particular communities or localities; mobilization of the public to work with the police to prevent crime; and adoption of a mutual problem-solving methodology as the fundamental strategy of policing.

Goals

In January 2004, USAID issued a white paper that identifies five operational goals for the Agency, in line with strategic priorities. The country goals include promoting transformational development, strengthening fragile states, and supporting strategic states. USAID’s goals in the area of civilian policing are to *establish the rule of law*, with security and human rights protections as an inherent component of a democratic political order, and to *establish a positive enabling environment for economic growth*, including commercial activity, investment, and trade.

Core Policy Guidelines

Under this policy, no assistance can be contemplated for civilian police forces that are not under control of democratic authorities or, in transition situations, for civilian police that are not demonstrably moving toward being under the control of democratic authorities.

In deciding whether to provide assistance, USAID must consider the country's human rights situation. If it is poor, assistance to civilian police authorities should be approached with careful consideration of the potential benefits and risks. USAID decisions on assistance also require consideration of the level of corruption within the civilian police authority.

Notification

In addition to normal procedures, specific steps must be taken when proposals are being developed for work in the area of police assistance:

- USAID staff must seek the input of the USAID regional legal advisor or cognizant Office of the General Counsel.
- All USAID proposals relating to work in this area must have the concurrence of the ambassador or chief of mission.
- Congressional notification and consultation will be required, regardless of prior notification in the Congressional Budget Justification.

The regional bureau, with assistance from the Bureau for Democracy, Conflict, and Humanitarian Assistance's Office of Democracy and Governance, is responsible for coordinating with other USAID offices. These include USAID's Office of the General Counsel, Bureau for Policy and Program Coordination, and Bureau for Legislative and Public Affairs, as well as State Department regional bureaus and its Bureau for International Narcotics and Law Enforcement Affairs.

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Background

In recent years, an increasing number of countries in which donors operate have suffered from insecurity and lawlessness. Compounding the problem is endemic state incapacity to protect citizens, sometimes with the complicity of government officials. Because this has a direct impact on a country's political and economic development, donors increasingly focus on the relationship between security and development, along with the need to address weaknesses and advance reform in the security sector.

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Civilian police are a central security sector institution, given their primary responsibility for establishing and maintaining order and security.

Since 1975, USAID support for foreign law enforcement entities has been strictly limited by Section 660 of the Foreign Assistance Act of 1961, as amended (the FAA). However, Section 564(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (the FOAA) recently ex-

panded the authority first enacted in FY 2002 for “community-based police assistance.” On a worldwide basis, Section 564(a) now provides authority

to enhance the effectiveness and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, 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.

Section 564(b) requires prior consultation with, and compliance with the regular notification procedures of, congressional appropriations committees.

This policy guidance addresses training, technical assistance, and limited commodity support to be provided to civilian police authorities, under the authority of Section 564(a) of the FY 2005 FOAA. This authority is retained in FY 2006. Such support is applicable to the Development Assistance (DA) account, the Child Survival and Health (CSH) Programs Fund, and Economic Support Fund (ESF) accounts. To the extent this authority is extended into future fiscal years, this policy guidance applies to

assistance provided under future-year funding.

This guidance does not apply to activities carried out under the “notwithstanding” authorities of the Support for East European Democracy (SEED) Act, the Freedom Support Act (FSA), International Narcotics Control and Law Enforcement Assistance (INCLE), or other sources of funding to which Section 564(a) does not apply. This guidance does not constrain the use of “notwithstanding” authorities inherent in these sources of funding. At the same time, implementers of civilian policing programs under such accounts and authorities should take into consideration approaches detailed in this guidance.

Any program planning, development, or implementation under this policy is subject to all provisions of the FAA and other applicable laws and regulations. Within this context, FAA Section 660(a) prohibits the use of FAA funds to provide training, advice, or financial support for police, prisons, or other law enforcement forces for any foreign government. However, several legislative exceptions to this prohibition have been enacted, particularly in the area of administration of justice, using ESF accounts. In addition, USAID has programs that provide assistance to civilian police that make use of Transition Initiatives, SEED, FSA, INCLE, HIV/AIDS, and Trafficking in Persons funding and authorities.

In the FY 2002 FOAA, Congress for the first time authorized “community-based police assistance,” but only for Jamaica. The FY 2003 FOAA added

El Salvador for purposes of this exception. The FY 2004 FOAA continued the exception to FAA Section 660 for community-based police activities in Jamaica and El Salvador.

Section 564(a) of the FY 2005 FOAA does not overturn Section 660, but expands on circumstances—otherwise prohibited by Section 660(a) of the FAA—under which USAID may provide training, advice, and commodity or financial support for the police.

Definitions

For the purposes of this policy guidance, *civilian police authority* means a public safety or constabulary force, under civilian control, that has the authority to carry out certain functions normally exercised by a law enforcement force. This includes the authority to carry weapons, make arrests, search private premises, interrogate in private, supervise confinement, and initiate prosecutions. Specifically excluded from this definition are police under the control of a country’s defense forces (such as military police) and prison officials. Prohibitions of FAA Section 660 continue to apply to these groups.

Community-based policing is an approach to policing based on the concept that crime can most effectively be addressed through a partnership between the police and the community they serve. This approach is generally characterized by consultation by the police with communities; adaptation of police policies and strategies to the requirements of particular communities or localities; mobilization of the public to work with the

police to prevent crime; and adoption of a mutual problem-solving methodology as the fundamental strategy of policing.

Goals

In January 2004, USAID issued a white paper that identifies five operational goals for the Agency, in line with strategic priorities.¹ The country goals include promoting transformational development, strengthening fragile states, and supporting strategic states.

One of the primary goals of USAID efforts in the area of civilian policing is to establish the rule of law, with security and human rights protections as an inherent component of a democratic political order. Another primary goal is to establish a positive enabling environment for economic growth, including commercial activity, investment, and trade. Therefore, establishing a democratic, accountable civilian police force is fundamental to strengthening fragile states and to promoting transformational development. USAID assistance will thus be guided by the following norms:

- Police should be accountable to the law, rather than to individual political leaders or others with power.
- Police activities should be transparent and subject to civilian oversight.
- Police should protect human rights, including the freedom to engage in political activity that is the hallmark of democracy.

¹ USAID, *U.S. Foreign Aid: Meeting the Challenges of the Twenty-first Century*. White Paper (Washington, D.C.: USAID, 2004) <<http://usaid.gov/policy/pdabz3221.pdf>>.

- Police should give high priority to serving the public.

Policy Guidelines

Control of the police by democratic authorities must be a major consideration for USAID support or assistance. No assistance can be provided under this policy for civilian police authorities that are not under the control of democratic authorities or, in transition situations, for police that are not demonstrably moving toward being under this control. Missions should annually revisit any decision to assist police forces not yet under the control of democratic authorities to ensure they are continuing to move toward being under this control.

In deciding whether to provide assistance, USAID must take into consideration the country's human rights situation. If the human rights situation is poor, assistance to civilian police authorities must be approached with careful consideration of potential benefits and risks. There may be exceptional cases: for example, where important opportunities arise to work with civilian police—either directly or indirectly—to advance reform, and there is a role for limited assistance, such as opportunities for dialogue and training in legal standards that promote respect for human rights. Even then, this assistance should be approached with careful consideration of the potential benefits and risks. Under no circumstances may assistance be provided to police units that have been implicated in systematic human rights abuses, unless justified under procedures

set forth in the Leahy Amendment.²

In deciding whether to provide assistance, USAID must take into consideration the level of corruption within the civilian police authority. USAID missions should avoid situations where the level of corruption is so pervasive as to bring the attainment of assistance objectives into serious doubt.

Consideration of the above-noted policies must be appropriately documented prior to obligation of funds for any activity undertaken under the authority of Section 564(a).

Among other types of prohibited assistance, civilian police assistance excludes the following activities for the purpose of this policy guidance:

- commodity support for lethal technology and weapons, as well as supplies or training for their use
- commodity support for, or assistance in the carrying out of, internal intelligence or surveillance operations
- involvement in specific investigations, police actions, and prosecutions

² The provision commonly referred to as the Leahy Amendment appears in Section 551 of the FY 2005 FOAA. USAID's annual appropriations acts have prohibited assistance to any unit of the security forces of a foreign country if the secretary of state has credible evidence that such unit has committed gross violations of human rights. The Leahy Amendment permits such assistance if the secretary determines and reports to the committees on appropriations that the foreign government in question is taking effective measures to bring the responsible members of the unit to justice. The term "security forces" includes police, and "unit" means "the smallest operational group in the field that has been implicated in the reported violation."

USAID has issued strategy and policy documents regarding trafficking in persons, aid to internally displaced persons, and anticorruption efforts.³ The provision of police assistance for these purposes may be considered.

Notification

In addition to normal procedures, specific steps must be taken as proposals for work in the area of police assistance are developed:

- USAID staff must seek the input of the USAID regional legal advisor (RLA) or cognizant Office of the General Counsel (GC). Questions on interpretation of the FAA and FOAA must be referred to the RLA or cognizant GC office.
- All USAID proposals for work in this area must have the concurrence of the ambassador or chief of mission.
- Congressional notification and consultation will be required, regardless of prior notification in Congressional Budget Justification. Responsibility will rest with the Bureau for Legislative and Public Affairs (LPA), in addition to the concerned regional bureau and the Bureau for Democracy, Conflict, and Humanitarian Assistance's Office of Democracy and Governance (DCHA/DG).

³ See USAID, *Trafficking in Persons: The USAID Strategy for Response* (Washington, D.C.: USAID, 2003) <www.dec.org/pdf_docs/PDABX358.pdf>; USAID, *Assistance to Internally Displaced Persons Policy* (Washington, D.C.: USAID, 2004) <www.dec.org/pdf_docs/PDACA558.pdf>; USAID, *USAID Anticorruption Strategy* (Washington, D.C.: USAID, 2004) <www.dec.org/pdf_docs/PDACA557.pdf>.

- The regional bureau, with assistance from DCHA/DG, will be responsible for coordinating with other USAID offices including GC, the Bureau for Policy and Program Coordination, and LPA, as well as State Department regional bureaus and its Bureau for International Narcotics and Law Enforcement Affairs. USAID's regional bureaus will be responsible for advising the mission when all consultations are complete and whether the mission can begin to implement a police assistance activity.

Program Guidelines and Recommendations

USAID missions may consider civilian police assistance activities when crime, domestic insecurity, and police ineffectiveness are shown to have a clearly negative impact on a country's economic and political development. When the achievement of USAID development objectives—political, economic, transition, and humanitarian—depends on assistance to civilian police authorities, USAID missions and operating units may consider programs directed to this end.

Assistance must be considered only within the context of USAID's priorities and programs in any given country. It must be aligned with Agency core goals, especially promoting transformational development or strengthening fragile states. The assistance can be in support of democracy, humanitarian, economic, or other development objectives; however, civilian police assistance is not to be standalone assistance, divorced from other USAID objectives.

USAID consideration of assistance in the field of civilian policing shall be weighed against the possible negative impact such activity might have on other USAID programs. One such negative impact would be the linking of USAID with historical perceptions of the role of police as abusers.

Good practice suggests that assistance to civilian police is best undertaken in the context of a holistic approach to the justice sector. It is recommended that relationships among judges, prosecutors, and police within the overall justice system should be carefully considered.

It is recommended that USAID survey the activities of other donors and U.S. Government agencies before pursuing specific police programming. To the extent possible, the Agency should harmonize its objectives with these other programs.

Implementation

USAID programs in the area of civilian policing may be implemented through appropriate mechanisms, depending on the specific nature of the work required. The choice of implementing mechanism is to be made at the mission or operating unit level, and should be based upon the specific nature of the services required.

USAID has established an intra-agency technical support team, led by DCHA/DG, to aid missions in program design and implementation related to civilian policing. Missions can use standard field-support mechanisms and processes to access this assistance. Implementation should include ongoing consultation with the country team.

Annex: Illustrative Activities

The following descriptions of possible activities in the civilian policing arena are illustrative. They do not represent the full scope of permissible activities and do not all require application of these guidelines and the full range of consultations listed. This policy guidance applies only to assistance to law enforcement forces that ordinarily fall under the purview of Section 660 of FAA.

Institutional capacity building addresses organizational as well as management deficits that result in behavior or performance that obstructs democratic development. Specific areas of intervention might include change management, problem-solving, communications, organizational design, anticorruption activities, and personnel management and tracking systems.

Institutional performance oversight, such as through executive and legislative branches, fosters democratic governance and reduces human rights abuses and corruption. Enhancing accountability and transparency through oversight may involve personnel reforms and disciplinary policy and practice, interdepartmental coordination, and legislative strengthening. Accountability and transparency may also entail strengthening the media and civil society as well as promoting direct forms of citizen access to complaint mechanisms or criminal justice when there are incidents of po-

lice abuse. All these activities should be specifically focused on police. Although they may be through non-police institutions, the involvement of police may be essential to achieving system reforms and results and ensuring buy-in.

Technical assistance to improve the performance of police authorities should be designed to support compliance with internationally accepted standards and ensure that their performance is measured against these standards. Training, curriculum development, and programs that develop internal affairs and accountability standards are appropriate.

Institutional or sector strategic planning support may be provided through technical assistance and training. The purpose of such support is to increase institutional responsiveness to community needs in the area of public security and order through joint examination of challenges, goals, resources, and strategies. Such assistance is not intended to encompass tactical support. Thus, while it might be appropriate to fund the development of mechanisms and models for collecting and analyzing crime statistics as a basis for developing community crime prevention plans, it would not be appropriate, based on such analyses, to finance assistance to the police for their decisionmaking on deploying assets.

Decentralization of the police is often an important element of community policing, since it encourages the devolution

of authority and funding to local levels. This is particularly important in countries where police forces are nationally managed. Decentralizing the police requires

- improving organizational capacity of civilian police at lower levels of government (i.e., state, provincial, metropolitan, and community) to improve their efficiency, accountability, and responsiveness
- facilitating the participation of civil society and community residents in assisting and monitoring the police

Modest community support for community-based policing efforts, such as provision of bicycles, two-way radios, and development of a 911 system, may be appropriate as a component of such assistance.

U.S. Agency for International Development

The U.S. Agency for International Development (USAID) is an independent federal agency that receives overall foreign policy guidance from the Secretary of State. For more than 40 years, USAID has been the principal U.S. agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms.

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- humanitarian assistance

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- Sub-Saharan Africa
- Asia and the Near East
- Latin America and the Caribbean
- Europe and Eurasia

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