

HUMAN RIGHTS POLICY DETERMINATION

Advocacy of human rights was an important theme during the creation of the United States of America. The American colonists' quest for liberty was founded on human rights principles expressed to the world in the Declaration of Independence. Human rights were further defined and given legal standing in our constitution and its first ten amendments - the Bill of Rights.

A central aim of U.S. foreign policy is increasing respect for human rights throughout the world. USAID is strongly committed to supporting this policy and that commitment is unequivocal.

I. Introduction

Legislative provisions in the Foreign Assistance Act of 1961, as amended, (FAA) are the legal foundation for USAID policy and programs concerning human rights. USAID implementation of the human rights legislation is an integral part of USAID's own work and of the United States' overall human rights policy. A principal goal of U.S. foreign policy as set forth by Section 502B(a)(1) of the FAA calls for the increased observance of internationally recognized human rights by all countries. Under Section 101(a)(3) of the FAA, USAID is instructed to emphasize the encouragement of development processes in which individual civil and economic rights are respected and enhanced. The Security Assistance Program is directed by Section 502B(a)(3) of the FAA to be formulated and conducted in a manner which will promote and advance human rights and to avoid identification of the United States with governments which deny to their people internationally recognized human rights and fundamental freedoms in violation of international law.

The means to accomplish these goals are also primarily determined by legislation. Section 116 applies to all assistance under Part I of the FAA; Section 502B covers Economic Support Fund (ESF); and Section 112 of PL 480 applies to Title I and Title III agreements.

Section 116 restricts USAID activities in countries that are found to be consistent gross violators of human rights to assistance that directly benefits needy people. Section 502B does not include the needy people proviso, but permits aid to gross violator countries in extraordinary circumstances. Section 112 of PL 480 requires that in countries that are consistent gross violators the commodities or the proceeds from their sale can only be used for specific projects or programs that directly benefit needy people.

In contrast to these prohibitions, Section 116(e) provides for a positive approach to human rights by encouraging the increased promotion of civil and political rights. USAID is particularly interested in supporting this human rights mandate, which is the second, or positive track, of U.S. human rights policy.

A guide detailing the procedures to be followed by bureaus and offices involved in implementing the human rights policy may be obtained from the Bureau of Program and Policy Coordination (PPC) .

II. Scope

Human rights can be grouped into two broad categories:

First, the right to be free from governmental violations of the integrity of the person--violations such as killing, torture, cruel, inhuman or

degrading treatment or punishment, arbitrary arrest or imprisonment, abduction and clandestine detention and the like.

Second, the right to enjoy civil and political liberties, including freedom of speech, press, religion, and assembly, the right of citizens to participate in governing themselves, the right to travel freely within and outside one's country, and the right of citizens to associate together with others in political, economic, and religious activities.

USAID's governing law recognizes human rights within these two broad categories in Sections 116(a) and 502B of the Foreign Assistance Act and Title I of the Food for Peace Act which prohibits assistance to any government which "engages in a consistent pattern of gross violations of internationally recognized human rights" subject to certain exceptions. These prohibitory provisions make manifest the repugnance which the U.S. Government has for such activities.

Section 116(e) directs USAID to carry out programs and activities which will enhance adherence to civil and political rights. Such activities are appropriate for a developmental organization because the United States recognizes that the engine of economic growth is personal liberty. Throughout the world, societies which protect civil and political rights are far more likely to experience economic development than societies which do not. The extent to which man is free and his human rights respected is directly proportionate to the extent to which his energies are directed to productive and developmental activities.

III. Human Rights Violations

A. General

This section sets forth the policies and procedures governing the denial of assistance to governments based on human rights violations.

Section 116(a) provides that assistance shall not be provided to the government of any country which engages

"in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person...."

For development assistance, the determination of whether the statutory provisions will apply to a country is made by the USAID Administrator in consultation with the Assistant Secretary for Human Rights and Humanitarian Affairs. For ESF, the determination is made by the Secretary of State. For PL 480, USAID with the Department of State (HA), principally the Bureau for Human Rights and Humanitarian Affairs, make the determination. An Inter-Agency Working Group on Human Rights and Foreign Assistance examines the above issues and makes recommendations to the appropriate offices.

In determining the degree of violations and whether violations form a consistent pattern, USAID and the Department of State take into account, among other considerations, the extent of cooperation of such government in

permitting an un-impeded investigation of alleged violations by appropriate international organizations, such as the International Committee of the Red Cross, specific actions which have been taken by the President or Congress relating to multilateral or security assistance because of human rights practices and the relevant findings of appropriate international organizations.

USAID will also consider improving or deteriorating trends in the status of human rights conditions in a country. It is USAID's policy to encourage improving trends in human rights conditions.

B. Coverage under Section 116(a) and Food for Peace

USAID will apply Section 116(a) to all of the following categories of assistance under its jurisdiction: development assistance, American Schools and Hospitals Abroad, housing guaranty programs, and other activities and assistance under Part I of the FAA. Pursuant to Section 112 of P.L. 480, the same test will apply to assistance under Titles I and III of that Act.

Section 116(a) contains a single exception to the rule prohibiting assistance to governments which engage in a consistent pattern of gross violations of human rights. That exception permits aid where "such assistance will directly benefit the needy people in such country." Where Section 116(a) is in effect, any project will be reviewed for its impact on needy people before being approved. Under USAID policy, "needy people" are defined by one or more of these criteria:

(1) Food Consumption Requirement: Households that expend 80% or more of their total income (cash and in kind) on food;

(2) Health Indicators: For any population subgroup, life expectancy at birth of below 60 years, infant mortality rate of over 50 per thousand live births, birth rates over 25 per thousand population, or any population subgroup in which 80% or more of the population does not have reasonable access to effective health care services; and

(3) Education Indicators: Any individual who by age 15 has not received at least 4 years of formal schooling or otherwise developed the skills of literacy and numeracy. For any population subgroup, less than 50% are completing at least four years of formal schooling by age 15 and/or less than 30% of those 15 or older are literate and numerate. In addition, where there are significant differences in the pattern of grade completion between rural and urban, between male and female, and between income groups, those on the lowest end are considered poor.

For a full description of USAID's definition of needy or poor people, please see Supplement A8 of USAID Handbook 2 and State telegram 30417 dated February 1, 1984.

In ensuring that Development Assistance will directly benefit the needy, particular attention will be paid to demonstrating that the primary purpose of an activity is to help the needy people and that it is reasonable to believe that they will benefit from the project. Regular project documentation, if it contains adequate economic and social analyses, should be sufficient to demonstrate that needy people are the primary beneficiaries. If not, additional information will be required since the USAID Administrator may be required by Congress to explain in writing how a project directly benefits the needy.

If a country has serious human rights problems and, in addition, the government is characterized by widespread corruption or repression against the poor and their organizations, then special care is required to assure that the needy do benefit from the USAID project.

In cases where the assistance (1) is to a private organization or individuals not connected in any way with the government, (2) does not relieve the government of a responsibility or demand it would otherwise have to deal with, and (3) is not viewed as part of a government program or an expression of American support for the government, then the assistance need not necessarily be directed at the poor, but must promote the general cause of human rights.

USAID works with the Department of State, principally the Bureau for Human Rights and Humanitarian Affairs, to determine which Food for Peace programs will embody the special requirement that the programs directly benefit the needy.

C. Economic Support Funds

Economic Support Funds and other forms of security assistance provided under Part II are subject to Section 502B. When the Secretary of State determines that Section 502B will apply to a country, then ESF will not be provided unless the President certifies in writing to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate "that extraordinary circumstances exist warranting provision of such assistance."

To the greatest extent possible and consistent with security, political and economic problems that ESF addresses, USAID will design ESF projects in countries with serious human rights concerns so that they directly benefit the needy.

IV. Countries of Concern

It is USAID policy that the statutory limitations for Development Assistance, Economic Support Funds and Food for Peace are applied whenever the Bureau of Human Rights and Humanitarian Affairs in consultation with USAID finds that there is a serious question about the recipient's human rights status, even if the government has not been found to be a consistent gross violator. In making this determination, improving or deteriorating trends in the status of human rights conditions in a country are of major importance. The policy is to encourage improving trends in human rights conditions. The Department of State's Annual Country Human Rights Reports, submitted to the Congress every January, should be consulted for an overall view of a country's human rights status.

V. Promotion of Civil and Political Rights

Section 116(e) authorizes the use of not less than \$3 million for each fiscal year "for studies to identify, and for openly carrying out, programs and activities which will encourage or promote increased adherence to civil and political rights ..." No such funds may be used directly or indirectly to influence the outcome of any election of any country.

This positive or developmental side of human rights activities of USAID is an express recognition of the U.S. understanding that civil and political rights cannot be segregated from economic policies and economic development. Under this section, USAID supports specific projects which cover one or more of the following seven themes. The themes, not listed in priority order, encourage:

1. Research and discussion of civil and political rights.
2. The awareness of civil and political rights.
3. Adherence to the rule of law through a legal framework conducive to civil and political rights.
4. Free and democratic electoral systems.
5. Development of democratic principles and institutions that promote human rights.
6. Development of human rights organizations.
7. Increased access of women and ethnic groups to the judicial system and to the political processes.

Guidelines intended to help identify projects eligible for USAID funding under Section 116(e) are annexed to this Policy Determination.

In addition to specific projects funded under Section 116(e), USAID attempts to integrate its concern for civil and political rights in its other programs and projects. USAID has an active private sector program which attempts to stimulate the activity of the indigenous private sector, through economic activities, cooperative, and indigenous private and voluntary organizations, in the recognition that the development of a strong, non-governmental sector is critical for the long-term preservation of civil and political rights in a society. These principles are implemented by USAID in its normal project design and review process.

IV. Implementation

USAID coordinates with other agencies to assure compliance with the legislative provisions of Section 116(a) and 502B through its activities on the Inter-Agency Working Group on Human Rights and Foreign Assistance. PPC represents USAID on that working group. PPC is responsible for assuring that procedures agreed to for review of the USAID program are followed and are integrated into the project review process.

USAID's Bureau for Food for Peace and Voluntary Assistance in collaboration with regional bureaus is responsible for ensuring that the Food for Peace statutory provisions are implemented in countries where they are to be applied. The USAID Office of the General Counsel advises whether specific projects satisfy the statutory requirement.

The Department of State Bureau of Human Rights and Humanitarian Affairs is provided an opportunity to comment on and participate in the CDSS, ABS, and other budget reviews as a means to factor human rights concerns in concrete terms into USAID programs and projects. Where desired by the Bureau of Human

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Rights and Humanitarian Affairs or where identified by USAID, HA makes recommendations on specific proposals, based on human rights concerns.

Finally, in designing programs and projects under Section 116(e), USAID works closely with HA which advises USAID on the selection and implementation of such projects. USAID believes that close coordination and consultation with the Bureau will assure effective and consistent implementation of U.S. policy.

M. Peter McPherson
Administrator

26 SEP 1984
Date

ANNEX

USAID POLICY GUIDELINES FOR THE PROMOTION
OF CIVIL AND POLITICAL RIGHTS

USAID is strongly committed to implementing Section 116(e) which provides funding to encourage increased adherence to civil and political rights in countries eligible for U.S. bilateral assistance. The legislation establishes a target of \$3 million for such projects, a target USAID views as a minimum, not a ceiling. "Civil and political rights" is a broad term, including but not limited to the legal structure and the electoral process. Also included are such areas as freedom of the press, the right of association (trade unions, and social groups, as well as political parties) and the like.

The overall approach to the program contains the following elements:

- New initiatives are encouraged. We are looking for innovative approaches to a broad range of civil and political rights concerns.

- Projects should encourage the building of institutions that promote human rights and uphold democratic principles. This approach recognizes that in the long term democracies are the best guarantee of civil and political rights. It is not necessary to confine projects to societies that already respect human rights and democratic principles. Experience has shown that even in repressive societies there are opportunities to encourage increased adherence to civil and political rights. These opportunities should be identified and supported.

- Projects should emphasize activities that will have a positive, rather than adversarial, influence on governmental human rights policies. USAID supports projects that will increase the understanding and enhance the role of civil and political rights, or that will incrementally improve performance in one or another area of rights.

- To the greatest extent possible, projects should emphasize activities that originate in developing countries themselves, and that directly involve the people of those countries.

- Projects from private groups and individuals are encouraged.

- Regional Bureaus and USAID Missions should be actively engaged in identifying and helping to develop projects and activities that will promote wider observance of human rights. Funding needs for such activities should be anticipated and provided for in the regular budget cycle.

In order that USAID may meet the legislative target, each Regional Bureau is responsible for providing a proportional share of funding for human rights activities.

The human rights programs USAID is encouraged to support cover the seven broad themes listed below. Included are some illustrative examples of the types of activities and programs we wish to promote:

1. Encourage research on and discussion of civil and political rights.

Programs that will expand the philosophical understanding of human rights in developing countries; developing and improving the teaching of civil and political rights; studies or research on the relationship between civil and political rights and development.

2. Encourage the awareness of civil and political rights. Studies, seminars and educational programs for developing country personnel on the full range of fundamental rights; the distribution of human rights materials; programs designed to educate the citizenry of a country to know and understand the rights and protections offered under their legal system, as well as their political rights and responsibilities; formulating, producing, translating and disseminating publications which address the establishment of principles of civil and political rights and the legal and institutional mechanisms through which they are protected and promoted.

3. Encourage adherence to the rule of law through a legal framework conducive to civil and political rights. Included are projects assisting a government to strengthen its legal system, focusing such efforts on establishing or preserving the fundamental principles of law. A strong legal system should include such essential elements as the rule of law, due process, and an educated and independent judiciary. The legal system should encourage fairness and equal protection for all. Some of the general areas covered are the development of democratic constitutions; improvements in the administration of justice; legal education and professional development of lawyers and judicial personnel; improved informational resources on legal theory and practice; reform and implementation of civil and criminal codes; and publication and distribution of court opinions.

4. Encourage free and democratic electoral systems. The right to vote, the right to a secret ballot, the right to a fair and accurate count of the votes, and the assurance that those fairly elected will enter into office are fundamental to the establishment and perpetuation of free elections. Programs of local or international organizations that educate citizens on their right and responsibility to vote, provide advice in designing and implementing an electoral system, or provide for the presence of independent election observers, are examples of activities appropriate for USAID support.

5. Encourage development of democratic principles and institutions that promote human rights. Activities include programs to increase public understanding of democracy; improved functioning of democratic institutions, such as the legislature and the press; the study of democratic principles; the development and support of private indigenous groups that are pluralistic and democratic; and assistance to programs designed to help a country develop, or return to, civilian democratic rule.

6. Encourage the development of human rights organizations. Activities should develop and support indigenous, regional and international human rights institutions that are independent of individual countries or governments; assisting groups in their efforts to develop and make available information on human rights; and develop and build contacts and institutional relationships among human rights groups.

7. Encourage the increased access of women and ethnic groups to the judicial system and to political processes. Activities that redress violations or discriminatory laws or practices against members of a particular group;

outreach programs that broaden knowledge and awareness of civil and political rights among these groups.

While the program emphasizes the above seven themes, USAID is receptive to areas not listed above if a strong justification can be demonstrated showing how the proposed activity improves or promotes adherence to civil and political rights.

The legislation prohibits funds to be used directly or indirectly to influence the outcome of any election in any country. All legislative restrictions relating to Development Assistance and Economic Support Funds in the Foreign Assistance Act, including Section 660 which prohibits assistance to police, prisons, and law enforcement forces, apply to Section 116(e) activities.

The Bureau for Program and Policy Coordination (PPC) oversees the human rights program in USAID. USAID administers the program in coordination and consultation with the Department of State's Bureau of Human Rights and Humanitarian Affairs (HA), from which USAID receives policy guidance on this subject.