

UNCLASSIFIED

TELEGRAM

February 06, 2003

To: ALL DIPLOMATIC AND CONSULAR POSTS - PRIORITY

Origin: PM

From: SECSTATE WASHDC (STATE 34981 - PRIORITY)

Subject: REVISED GUIDANCE REGARDING LEAHY AMENDMENTS AND U.S. FOREIGN ASSISTANCE

Ref (A) 99 STATE 103806, (B) 99 STATE 085337

1. THIS TASKER HAS BEEN CLEARED BY HR/RMA/CSEP FOR SEP POSTS. THIS IS AN ACTION CABLE - SEE PARAGRAPHS 8-13 FOR DETAILS.

**SUMMARY.**

2. (A) THIS CABLE REPRESENTS A REVISION OF PREVIOUS GUIDANCE (REFS A AND B) CONCERNING IMPLEMENTATION OF STATE AND DEFENSE STATUTORY PROVISIONS RELATED TO PROVIDING U.S. FUNDS TO, AND TRAINING OF, UNITS OF FOREIGN SECURITY FORCES (THE "LEAHY AMENDMENTS").

(B) THIS ACTION CABLE DOES NOT GRANT A "CLEAN SLATE" TO UNITS IN CASES WHERE IT HAS PREVIOUSLY BEEN CONCLUDED THAT THERE IS CREDIBLE EVIDENCE THAT UNITS HAVE COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS, OR A CLEAN SLATE FOR PREVIOUS ACTIONS BY UNITS FOR WHICH A DETERMINATION HAS NOT YET BEEN MADE. ANY UNIT THAT THE DEPARTMENT HAS ALREADY IDENTIFIED AS INELIGIBLE, SHALL REMAIN INELIGIBLE FOR FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING UNTIL FURTHER DECISION. INFORMATION THAT COULD BE DEEMED CREDIBLE EVIDENCE OF A GROSS VIOLATION OF HUMAN RIGHTS BY A SECURITY FORCE UNIT, REGARDLESS OF THE PASSAGE OF TIME, WILL BE REPORTED BY POST AND WILL BE ADDRESSED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED IN THIS ACTION CABLE.

(C) THE MOST RECENT VERSION OF THE "STATE LEAHY AMENDMENT," SECTION 556 OF THE FY 2002 FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT (FOAA), PROVIDES THAT NONE OF THE FUNDS MADE AVAILABLE BY THAT ACT MAY BE PROVIDED TO ANY UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES IF THE SECRETARY OF STATE HAS CREDIBLE EVIDENCE THAT SUCH UNIT HAS COMMITTED GROSS HUMAN RIGHTS VIOLATIONS, UNLESS CERTAIN CONDITIONS HAVE BEEN MET. THE MOST RECENT VERSION OF THE "DOD LEAHY AMENDMENT," SECTION 8080 OF THE FY 2003 DOD APPROPRIATIONS ACT, CONTAINS A SIMILAR PROVISION REGARDING DOD-FUNDED TRAINING PROGRAMS.

(D) PARAGRAPHS 8-13 PROVIDE REVISED GUIDANCE ON IMPLEMENTING THESE TWO PROVISIONS. IN IMPLEMENTING THE LAN, THIS ACTION CABLE REQUIRES POSTS TO REPORT TO THE DEPARTMENT OF STATE ANY INFORMATION THAT COULD REASONABLY BE DEEMED TO BE CREDIBLE INFORMATION OF A GROSS VIOLATION OF HUMAN RIGHTS BY HOST NATION SECURITY FORCES RECEIVING OR SLATED TO RECEIVE FOAA-FUNDED ASSISTANCE OR INVOLVED IN DOD-FUNDED TRAINING. REPORTS OF INCIDENTS WILL NOT RESULT IN AUTOMATIC TERMINATION OF FOAA-FUNDED ASSISTANCE OR DODFUNDED TRAINING, BUT WILL TRIGGER A DEPARTMENTAL REVIEW THAT COULD RESULT IN A RECOMMENDATION TO TERMINATE FOAAFUNDED ASSISTANCE OR DOD-FUNDED TRAINING. IF THE DEPARTMENT DETERMINES THAT THESE REPORTS CONSTITUTE

CREDIBLE EVIDENCE OF GROSS VIOLATIONS OF HUMAN RIGHTS BY A UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES AND THAT CERTAIN CONDITIONS HAVE NOT BEEN MET, DEPARTMENT WILL GENERALLY ADVISE POST TO DELIVER A DEMARCHN TO THE HOST GOVERNMENT NOTIFYING IT OF THE INCIDENT(S), IDENTIFYING THE UNIT(S) INVOLVED, AND ADVISING THE HOST GOVERNMENT OF RESTRICTIONS ON DOD-FUNDED TRAINING OR FOAA-FUNDED ASSISTANCE FOR THOSE UNITS  
BACKGROUND.

3. THE FIRST FORM OF THE STATE LEAHY AMENDMENT APPEARED IN THE FY 1997 FOAA. AT THAT TIME IT APPLIED ONLY TO INTERNATIONAL NARCOTICS CONTROL (INC) FUNDING. BEGINNING IN FY 1998 A SIMILAR PROVISION WAS ENACTED WHICH AFFECTED ALL FUNDS APPROPRIATED UNDER THE FOAA - NOT JUST COUNTERNARCOTICS FUNDS - AND SINCE THAT TIME VERSIONS OF THE PROVISION HAVE BEEN INCLUDED ANNUALLY.

4. STATE LEAHY PROVISION: THE CURRENT VERSION OF THE STATE LEAHY AMENDMENT, SECTION 556 OF THE FY 2002 FOAA, READS AS FOLLOWS:

BEGIN TEXT: NONE OF THE FUNDS MADE AVAILABLE BY THIS ACT MAY BE PROVIDED 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, UNLESS THE SECRETARY DETERMINES AND REPORTS TO THE COMMITTEES ON APPROPRIATIONS THAT THE GOVERNMENT OF SUCH COUNTRY IS TAKING EFFECTIVE MEASURES TO BRING THE RESPONSIBLE MEMBERS OF THE SECURITY FORCES UNIT TO JUSTICE: PROVIDED, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO WITHHOLD FUNDS MADE AVAILABLE BY THIS ACT. FROM ANY UNIT OF THE SECURITY FORCES OF A FOREIGN COUNTRY NOT CREDIBLY ALLEGED TO BE INVOLVED IN GROSS VIOLATIONS OF HUMAN RIGHTS: PROVIDED FURTHER, THAT IN THE EVENT THAT FUNDS ARE WITHHELD FROM ANY UNIT PURSUANT TO THIS SECTION, 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. END TEXT.

5. THE FIRST FORM OF THE DOD LEAHY PROVISION APPEARED IN SECTION 8130 OF THE FY 1999 DEFENSE APPROPRIATIONS ACT WHICH PROHIBITED DOD-FUNDED TRAINING PROGRAMS INVOLVING A UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES "IF THE SECRETARY OF DEFENSE HAS RECEIVED CREDIBLE INFORMATION FROM THE DEPARTMENT OF STATE THAT A MEMBER OF SUCH UNIT HAS COMMITTED A GROSS VIOLATION OF HUMAN RIGHTS..." UNLESS CERTAIN CONDITIONS HAVE BEEN MET. BEGINNING IN THE FY 2000 DOD APPROPRIATIONS ACT, HOWEVER, THE CLAUSE "A MEMBER OF SUCH UNIT" WAS DELETED. SINCE FY 2000, THE DOD LEAHY PROVISION, LIKE THE STATE LEAHY PROVISION, HAS REFERRED TO CREDIBLE INFORMATION ABOUT SECURITY FORCE UNITS, RATHER THAN MEMBERS OF SUCH UNITS.

6. DOD LEAHY PROVISION: THE CURRENT VERSION OF THE DOD LEAHY AMENDMENT, SECTION 8080 OF THE FY 2003 DOD APPROPRIATIONS ACT, READS AS FOLLOWS:

BEGIN TEXT: (A) PROHIBITION - NONE OF THE FUNDS MADE AVAILABLE BY THIS ACT MAY BE USED TO SUPPORT ANY TRAINING PROGRAM INVOLVING A UNIT OF THE SECURITY FORCES 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, UNLESS ALL NECESSARY CORRECTIVE STEPS HAVE BEEN TAKEN.

(B) MONITORING - 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 SUBSECTION (A), FULL CONSIDERATION IS GIVEN TO ALL CREDIBLE INFORMATION AVAILABLE TO THE DEPARTMENT OF STATE RELATING TO HUMAN RIGHTS VIOLATIONS BY FOREIGN SECURITY FORCES.

(C) WAIVER - THE SECRETARY OF DEFENSE, AFTER CONSULTATION WITH THE SECRETARY OF STATE, MAY WAIVE THE PROHIBITION IN SUBSECTION (A) IF HE DETERMINES THAT SUCH WAIVER IS REQUIRED BY EXTRAORDINARY CIRCUMSTANCES.

(D) REPORT - NOT MORE THAN 15 DAYS AFTER THE EXERCISE OF ANY WAIVER UNDER SUBSECTION (C), THE SECRETARY OF DEFENSE SHALL SUBMIT A REPORT TO THE CONGRESSIONAL DEFENSE COMMITTEES DESCRIBING THE EXTRAORDINARY CIRCUMSTANCES, THE PURPOSE AND DURATION OF THE TRAINING PROGRAM, THE UNITED STATES FORCES AND THE FOREIGN SECURITY FORCES INVOLVED IN THE TRAINING PROGRAM, AND THE INFORMATION RELATING TO HUMAN RIGHTS VIOLATIONS THAT NECESSITATES THE WAIVER. END TEXT.

7. THE STATE DEPARTMENT LEAHY PROVISION APPLIES TO ALL ASSISTANCE PROGRAMS FUNDED BY THE ANNUAL FOAA. PROGRAMS FUNDED BY FOREIGN MILITARY FINANCING (FMF) GRANTS AND LOANS, INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT (INCLE) FUNDS, INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET) FUNDS AND PEACEKEEPING OPERATIONS (PKO) FUNDS AND CERTAIN NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS (NADR) FUNDS - E.G., ANTI-TERRORISM ASSISTANCE ARE OFTEN ORIENTED TO SECURITY FORCES. OTHER ASSISTANCE PROGRAMS FUNDED, B.G., BY ECONOMIC SUPPORT FUNDS (ESP), FREEDOM SUPPORT ACT (FSA) FUNDS, ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES (ABBE AKA SEED) FUNDS, AND DEVELOPMENT ASSISTANCE (DA) FUNDS AND CERTAIN PROGRAMS FUNDED BY THE NADR ACCOUNT (B.G., DEMINING ASSISTANCE) TYPICALLY DO NOT INVOLVE SECURITY FORCES, ALTHOUGH CERTAIN COUNTRIES' SECURITY FORCES MAY RECEIVE THESE TYPES OF ASSISTANCE. ASSISTANCE PROGRAMS TAKE A WIDE ARRAY OF FORMS, INCLUDING: PROVISION OF COMMODITIES, EQUIPMENT, OR OTHER GOODS; TRAINING AND EDUCATION PROGRAMS FOR GROUPS AND INDIVIDUALS; SUPPORT SERVICES, SUCH AS TRANSPORTATION, LOGISTICS, MAINTENANCE OF EQUIPMENT, AND CONFERENCE ATTENDANCE OR SUPPORT; GRANTS OR LOANS TO PROCURE GOODS AND SERVICES IN SUPPORT OF SECURITY FORCES; AND CASH TRANSFERS OF FUNDS. THE STATE LEAHY AMENDMENT APPLIES TO THESE AND ALL OTHER FORMS OF ASSISTANCE USING FOAA-APPROPRIATED FUNDS IN ALL COUNTRIES TO WHICH THE U.S. PROVIDES SUCH ASSISTANCE. (NOTE: THE EXPORT-IMPORT BANK (EX-IM) HAS ADVISED THE DEPARTMENT THAT IT TAKES THE POSITION THAT IN THE CASE OF PURCHASES BY SECURITY FORCES, THE LEAHY AMENDMENT APPLIES TO ITS LOAN AND GUARANTEE PROGRAMS. ACCORDINGLY, HOST COUNTRY PROGRAMS THAT WILL BENEFIT FROM OR RECEIVE EX-IM SUPPORT SHOULD BE EVALUATED IN THE SAME MANNER AS THE FOAA-FUNDED PROGRAMS DESCRIBED IN THIS CABLE IF THEY INVOLVE PROVISION OF SUPPORT TO SECURITY FORCES.)

8. THE DOD LEAHY PROVISION APPLIES TO USE OF FUNDS MADE AVAILABLE UNDER THE ANNUAL DOD APPROPRIATIONS ACTS. EXAMPLES OF TRAINING PROGRAMS FUNDED WITH DOD FUNDS ARE LISTED IN PARAGRAPH 19.

9. PRIOR-YEAR ASSISTANCE: POSTS SHOULD FOLLOW PROCEDURES DETAILED HEREIN WITH REGARD TO USE OF ANY PREVIOUS YEARS' FOAA FUNDS OR ANY TRAINING USING PRIOR YEARS' DOD FUNDS THAT MAY BE PROVIDED TO HOST NATION SECURITY FORCES.

10. THE RESTRICTIONS OF THE FOAA AND THE DEFENSE APPROPRIATIONS ACT VERSIONS OF THE LEAHY AMENDMENTS ARE SIMILAR. AFTER CAREFUL REVIEW WITHIN THE DEPARTMENT OF STATE AND DEPARTMENT OF DEFENSE, THIS CABLE: (A) SETS FORTH A PROCESS FOR IMPLEMENTING BOTH THE STATE AND DOD LEAHY AMENDMENTS; AND (B) ESTABLISHES A STRONGER RELATIONSHIP BETWEEN U.S. ASSISTANCE AND OBSERVANCE BY RECIPIENT NATION SECURITY FORCES OF INTERNATIONALLY ACCEPTED HUMAN RIGHTS STANDARDS.

11. AS POSTS REVIEW AND IMPLEMENT GUIDANCE DETAILED BELOW, THEY SHOULD KEEP IN MIND TWO OVERRIDING POLICY CONCERNS:

(A) U.S. ASSISTANCE PROVIDED UNDER THE FOAA - WHETHER IN THE FORM OF FUNDS, OTHER ASSISTANCE, OR TRAINING - SHOULD NOT BE PROVIDED TO UNITS OF FOREIGN SECURITY FORCES THAT HAVE ENGAGED IN GROSS VIOLATIONS OF HUMAN RIGHTS, AND DOD FUNDING SHOULD NOT BE PROVIDED FOR TRAINING INVOLVING SUCH UNITS; AND

(B) THE UNITED STATES SHOULD SEEK WAYS TO LEVERAGE ITS ASSISTANCE AND TRAINING TO ENCOURAGE HOST NATION GOVERNMENTS TO PREVENT SUCH VIOLATIONS AND TO HOLD PERSONS CREDIBLY BELIEVED TO BE RESPONSIBLE FOR SUCH VIOLATIONS ACCOUNTABLE FOR THEIR ACTIONS, INCLUDING BY BRINGING SUCH PERSONS TO JUSTICE.

POSTS SHOULD ALSO NOTE THAT DOD DOES EXECUTE OR IS INVOLVED IN MANY OF THE FOAA-SPONSORED PROGRAMS TO WHICH THE STATE LEAHY PROVISION APPLIES (N.G., CERTAIN PROGRAMS FUNDED WITH FMF, IMET, INC, PKO, OR NADR FUNDS). COUNTRY TEAM WILL NEED TO COORDINATE ACCORDINGLY TO ENSURE THAT THE CORRECT STATUTORY PROVISION (EITHER SECTION 56 OR SECTION 8080) IS APPLIED IN ANY RELEVANT INSTANCES IN WHICH THE DEPARTMENT HAS CREDIBLE INFORMATION OF GROSS VIOLATIONS OF HUMAN RIGHTS BY ANY UNIT OF A FOREIGN COUNTRY'S SECURITY FORCES. THE LEAHY AMENDMENTS DO NOT/NOT APPLY EITHER TO FMS SALES, OR TO ISSUANCE OF LICENSES FOR COMMERCIAL MUNITIONS EXPORTS, WHEN THESE ARE NOT FUNDED BY U.S. SECURITY ASSISTANCE.

#### **ACTION.**

##### **INCIDENT-RELATED REPORTING REQUIREMENTS.**

12. POSTS IN COUNTRIES THAT RECEIVE FOAA-FUNDED ASSISTANCE OR IN COUNTRIES WHERE UNITS OF FOREIGN SECURITY FORCES ARE INVOLVED IN DOD TRAINING ARE REQUIRED TO HAVE PROCEDURES IN PLACE TO IMPLEMENT THE LEAHY AMENDMENTS. DEPARTMENT PROVIDED GUIDANCE FOR IMPLEMENTING THE LEAHY AMENDMENTS IN 1998 AND 1999. THE INSTRUCTIONS CONTAINED IN THIS CABLE REPLACE THIS PREVIOUS GUIDANCE. POSTS SHOULD REVIEW THEIR PROCEDURES AND ENSURE THEY ARE CONSISTENT WITH CURRENT REQUIREMENTS, AS SET FORTH BELOW.

13. ANY TIME THROUGHOUT THE YEAR THAT A POST BECOMES AWARE OF ANY INFORMATION REGARDING INCIDENTS WHICH REASONABLY COULD BE DEEMED TO BE CREDIBLE INFORMATION OF A GROSS VIOLATION OF HUMAN RIGHTS BY ANY UNIT OF THE HOST NATION'S SECURITY FORCES RECEIVING OR PROPOSED TO RECEIVE FOAA-FUNDED ASSISTANCE OR INVOLVED IN DOD-FUNDED TRAINING, AND REGARDLESS OF THE SOURCE OF SUCH INFORMATION (N.G., STATE, DOD, DAOS/SAGS, OTHER POSTS, LAGOS, MEDIA REPORTS, ETC.), POST SHOULD SO INFORM THE DEPARTMENT BY CABLE. POST SHOULD DRAW ON THE EXPERTISE OF DADS/SAGS IN REPORTING SUCH INFORMATION. POST SHOULD, TO THE EXTENT PRACTICABLE, IDENTIFY THE UNIT THAT HAS ALLEGEDLY COMMITTED THE VIOLATION OF HUMAN RIGHTS AND INCLUDE POST'S VIEW AS TO WHETHER THE VIOLATION OF HUMAN RIGHTS RISES TO THE LEVEL OF BEING A GROSS VIOLATION AND WHETHER IT BELIEVES THE INFORMATION IS CREDIBLE. CABLES SHOULD BE SLUGGED ACTION FOR TUB APPROPRIATE REGIONAL BUREAU, WITH PM, DRL, H, INR, L, INL, AND OTHER STATE AND DEFENSE DEPARTMENT BUREAUS AND OTHER U.S. AGENCIES, AS APPROPRIATE, SLUGGED FOR INFO. REPORTS OF INCIDENTS WHICH COULD BE DEEMED GROSS VIOLATIONS WILL NOT RESULT IN AUTOMATIC TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING, BUT WILL TRIGGER A REVIEW BY REGIONAL BUREAUS, PM, DRL AND OTHERS, AS APPROPRIATE, WHICH COULD RESULT IN A RECOMMENDATION TO TERMINATE FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING.

14. REGIONAL BUREAUS ARE RESPONSIBLE FOR COORDINATING THE DEPARTMENT'S RESPONSE TO REPORTS OF INCIDENTS UNDER PARAGRAPH 13. IN CASES WHERE THE DEPARTMENT, AFTER CONSIDERING THE POSITIONS OF THE REGIONAL BUREAUS, DRL, PM AND OTHER RELEVANT BUREAUS, DETERMINES THERE IS A NEED FOR FURTHER REVIEW, THE REGIONAL BUREAU WILL SO ADVISE POST AND WILL MOVE TO RESOLVE QUESTIONS OR CONCERNS ON A CASE BY-CASE BASIS AND, AS APPROPRIATE, WITH DOD OR OTHER RELEVANT AGENCIES.

15. IF ANY CONCERNED BUREAU BELIEVES THERE IS IN FACT CREDIBLE EVIDENCE THAT A SPECIFIC UNIT OR UNITS RECEIVING FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING HAS COMMITTED A GROSS VIOLATION OR GROSS VIOLATIONS OF HUMAN RIGHTS, A MEMORANDUM SHALL BE PREPARED FOR DECISION BY THE SECRETARY. IN ANY CASE WHERE *THE* SECRETARY DETERMINES THAT THERE IS CREDIBLE EVIDENCE OF SUCH VIOLATION OR VIOLATIONS OF HUMAN RIGHTS BY ANY UNIT OR UNITS OF A FOREIGN COUNTRY'S SECURITY FORCES RECEIVING FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING, THE REGIONAL BUREAU WILL GENERALLY ADVISE "POST TO DELIVER A DEMARCHE TO THE HOST GOVERNMENT NOTIFYING IT OF THE INCIDENT(S), IDENTIFYING THE UNIT(S) INVOLVED, AND (WHERE APPLICABLE) ADVISING THE HOST GOVERNMENT OF ANY RESTRICTIONS ON DODFUNDED TRAINING OR FOAA-FUNDED ASSISTANCE THAT WILL APPLY WITH RESPECT TO SUCH UNIT(S). IN SUCH CASES, DEPARTMENT MAY TAKE SUCH ACTIONS AS: REQUIRING ADDITIONAL CONDITIONS IN FUTURE AGREEMENTS UNDER WHICH ASSISTANCE IS PROVIDED (INCLUDING, B.G., REVISING LOAS TO INCLUDE LANGUAGE REQUIRING RECIPIENT GOVERNMENTS NOT TO TRANSFER FMF-ORIGIN DEFENSE ITEMS TO OFFENDING UNITS); NOTIFYING CONGRESS OF THE COUNTRY'S FAILURE TO TAKE CORRECTIVE ACTION; OR EVEN TERMINATING SECURITY ASSISTANCE TO THE COUNTRY. PLEASE NOTE THAT NOTHING IN THESE PROCEDURES OR THIS ACTION CABLE SUPERCEDES THE PROCESS FOR CASE-BY-CASE APPROVAL AND VETTING AS PERFORMED BY REGIONAL BUREAUS, DRL, PM AND OTHER RELEVANT BUREAUS WITH INR'S SUPPORT WHEN DOD IS VETTING UNITS OR INDIVIDUALS FOR TRAINING.

16. DEPENDING ON CIRCUMSTANCES, DEPARTMENT MAY DIRECT POSTS TO DEMARCHE HOST GOVERNMENTS EVEN IN CASES WHERE EVIDENCE IS NOT DEEMED SUFFICIENT TO SUPPORT A TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING BUT WHERE *THE* CAUSE OF HUMAN RIGHTS COULD BE ADVANCED. FOR EXAMPLE, POST MIGHT BE ADVISED TO REMIND THE COUNTRY IN QUESTION OF THE *REQUIREMENTS* OF THE RELEVANT LEAHY AMENDMENT AND THE FACT THAT LEAHY VIOLATIONS MAY RESULT IN THE TERMINATION OF FOAA-FUNDED ASSISTANCE OR DOD-FUNDED TRAINING.

#### **APPORTIONMENT AND FUNDING REQUEST REQUIREMENTS.**

17. BUREAUS SHALL INCLUDE IN ALL REQUESTS FOR PROGRAM FUNDS (B.G., VIA ALLOCATION MEMORANDA OR APPORTIONMENT REQUESTS) WITH RESPECT TO ESF, FMF, PKO, IMBT, NADR AND ALL OTHER FOAA-FUNDED ASSISTANCE TO BE PROVIDED TO SECURITY FORCES OF A FOREIGN COUNTRY, A STATEMENT INDICATING THAT THE APPROPRIATE REGIONAL BUREAU IS NOT AWARE OF CREDIBLE EVIDENCE OF GROSS VIOLATIONS OF HUMAN RIGHTS BY ANY SECURITY FORCE UNITS RECEIVING ASSISTANCE IN THE PARTICULAR COUNTRY OR COUNTRIES TO WHICH THE ASSISTANCE WOULD BE PROVIDED. FOR COUNTRIES WHERE THE DEPARTMENT HAS DETERMINED THAT CREDIBLE EVIDENCE EXISTS THAT SUCH UNIT RECEIVING OR PROJECTED TO RECEIVE ASSISTANCE HAS COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS, REGIONAL BUREAU SHALL INCLUDE IN ITS REQUEST WHAT EFFECTIVE MEASURES THAT COUNTRY IS TAKING TO BRING RESPONSIBLE MEMBERS OF THE SECURITY FORCES UNIT TO JUSTICE IN ACCORDANCE WITH THE LEAHY AMENDMENT (IN CASES INVOLVING DOD TRAINING, WHETHER AND WHAT CORRECTIVE STEPS HAVE BEEN TAKEN) AND OTHER RELEVANT INFORMATION (B.G., ASSURANCES THE COUNTRY MAY HAVE PROVIDED THAT U.S. ASSISTANCE WILL NOT BE PROVIDED TO THAT UNIT).

18. *THE* DEPARTMENT IS CURRENTLY EXPLORING THE POSSIBILITY OF ESTABLISHING A "NAMS'CHECK" UNIT IN INR THAT WOULD RUN *QUERIES* AGAINST INR'S ELECTRONIC DATABASES TO IDENTIFY REPORTS ON SPECIFIC INDIVIDUALS OR ENTITIES. IF THE UNIT IS ESTABLISHED, INR WOULD *PROVIDE* RELEVANT MATERIALS TO THE *BUREAUS* RESPONSIBLE FOR MAKING A DETERMINATION OF ELIGIBILITY. IF THE UNIT IS NOT ESTABLISHED, INR WILL HELP AS IT CAN BUT WILL NOT BE ABLE TO CHECK MORE THAN A FEW NAMES AT A TIME.

#### **DISCUSSION AND DEFINITIONS.**

19. AS A MATTER OF LONGSTANDING POLICY, THE U.S. GOVERNMENT REQUIRES THAT CANDIDATES FOR ALL U.S.-SPONSORED TRAINING BE EVALUATED BY POSTS FOR A NUMBER OF DISQUALIFYING FACTORS. TRAINING REQUESTS WILL CONTINUE TO BE VETTED ON A CASE-BY-CASE BASIS. IF TRAINING IS SCHEDULED FOR UNITS, (E.G., MOBILE TRAINING TEAMS (MTTS) AND MOBILE EDUCATION TEAMS (NETS)), POST IS NOT REQUIRED TO SCREEN EACH MEMBER OF THE UNIT(S) SCHEDULED FOR TRAINING. INSTEAD, POST SHOULD REVIEW THE HUMAN RIGHTS RECORD OF THE UNIT AS A WHOLE. IN CASES WHERE TRAINING IS SCHEDULED FOR AN INDIVIDUAL, IT CAN PROCEED IF THERE IS NO CREDIBLE EVIDENCE THAT THE INDIVIDUAL HAS COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS. (OF COURSE, POST RETAINS THE AUTHORITY TO DENY APPROVAL FOR TRAINING TO A CANDIDATE WHO DOES NOT PASS OTHER FACTORS OF THE SCREENING PROCESS, SUCH AS DRUG TRAFFICKING, CORRUPTION, HEALTH, CRIMINAL ACTIVITY, AND ACTIVITIES THAT ARE INCONSISTENT WITH U.S. FOREIGN POLICY GOALS.)

20. ACTIVITIES COVERED UNDER THE DOD LEAHY PROVISIONS INCLUDE ALL DOD-FUNDED TRAINING PROGRAMS SUCH AS JOINT COMBINED EXCHANGES FOR TRAINING (JCETS), COUNTERNARCOTICS TRAINING, COMBATANT COMMANDERS INITIATIVE FUND, AND THE DOD REGIONAL COUNTERTERRORISM FELLOWSHIP TRAINING PROGRAM.

21. UNIT OF THE SECURITY FORCES: THE PHRASE "UNIT OF THE SECURITY FORCES" IS NOT DEFINED IN THE LEGISLATION, BUT SHOULD BE APPLIED FOR THE PURPOSES OUTLINED IN THIS CABLE TO INCLUDE ORGANIZATIONAL UNITS OF MILITARY, POLICE, OR ANY OTHER SECURITY FORCES. THE LEAHY AMENDMENTS DO NOT APPLY TO THE WHOLE OF A FOREIGN GOVERNMENT'S MILITARY, POLICE, OR OTHER SECURITY FORCES, BUT RATHER TO THE SPECIFIC COMPONENT UNITS RECEIVING TRAINING OR ASSISTANCE. THE QUESTION OF WHAT LEVEL OR ENTITY CONSTITUTES A "UNIT" FOR THE PURPOSES OF THE LEAHY AMENDMENTS WILL BE DETERMINED ON A CASE-BY-CASE BASIS. THE SENATE REPORT ACCOMPANYING THE FY 2002 FOIA PROVIDES THAT THE TERM "UNIT" IS TO BE "CONSTRUED AS THE SMALLEST OPERATIONAL GROUP IN THE FIELD THAT HAS BEEN IMPLICATED IN THE REPORTED VIOLATION." AS A GENERAL RULE OF THUMB, POST SHOULD CONSIDER THE LOWEST ORGANIZATIONAL ELEMENT OF A SECURITY FORCE CAPABLE OF EXERCISING COMMAND AND DISCIPLINE OVER ITS MEMBERS. IN DETERMINING THE ENTITY TO BE VETTED WITH RESPECT TO MILITARY, POLICE, OR PARAMILITARY FORCES, POST SHOULD TAKE INTO ACCOUNT THE PURPOSE OF THE FORCE, ITS UNIQUE COMMAND STRUCTURE AS WELL AS THE SPECIFIC ALLEGATIONS AT ISSUE. INABILITY TO IDENTIFY A PARTICULAR INDIVIDUAL AS A PERPETRATOR WOULD NOT PRECLUDE A CONCLUSION THAT THE UNIT HAS COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS IF FACTS OTHERWISE JUSTIFY SUCH A CONCLUSION. POSTS SHOULD KEEP TRACK OF ALLEGATIONS OF GROSS VIOLATIONS OF HUMAN RIGHTS INVOLVING ANY UNIT OF THE SECURITY FORCES, REGARDLESS OF WHETHER THAT UNIT IS CURRENTLY RECEIVING TRAINING OR ASSISTANCE.

22. GROSS VIOLATIONS OF HUMAN RIGHTS: ALTHOUGH THE TERM "GROSS VIOLATIONS OF HUMAN RIGHTS" IS NOT DEFINED IN THESE PROVISIONS, A SIMILAR TERM IS DEFINED IN SECTION 502B(D) OF THE FOREIGN ASSISTANCE ACT (FAA), AND POSTS SHOULD USE THAT DEFINITION AS A GUIDE: "THE TERM 'GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS' INCLUDES 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."

23. EXISTING REPORTING PROCEDURES FOR THE ANNUAL DRL HUMAN RIGHTS REPORT TO CONGRESS ARE UNCHANGED BY THIS ACTION CABLE: THE DEPARTMENT'S ESTABLISHED HUMAN RIGHTS REPORTING PROCEDURES REQUIRE POSTS TO REPORT ANNUALLY ON INSTANCES OF GROSS VIOLATIONS OF HUMAN RIGHTS KNOWN OR RELIABLY PRESUMED TO HAVE BEEN PERPETRATED BY OFFICIALS OR AGENCIES OF FOREIGN GOVERNMENTS. DEPARTMENT GUIDANCE FOR THIS ANNUAL REPORT DOES NOT ASK POSTS TO REPORT ALL HUMAN RIGHTS VIOLATIONS BY OFFICIALS OR AGENCIES OF FOREIGN GOVERNMENTS BUT RATHER A SAMPLING. HOWEVER, FOR THE PURPOSES OF LEAHY, POSTS ARE REQUIRED TO REPORT ANY INFORMATION REGARDING INCIDENTS WHICH REASONABLY COULD BE DEEMED TO BE CREDIBLE EVIDENCE OF GROSS VIOLATIONS BY ANY UNIT OF THE HOST NATION'S SECURITY FORCES RECEIVING FOIA-FUNDED ASSISTANCE OR INVOLVED IN DOD-FUNDED TRAINING, REGARDLESS OF THE SOURCE OF SUCH INFORMATION (E.G., STATE, DOD, DAOS/SAOS, OTHER POSTS, NGOS, MEDIA REPORTS, ETC.). THE REQUIREMENT TO IMPLEMENT THE LEAHY AMENDMENTS MAKES IT PARTICULARLY IMPORTANT THAT POSTS BE ALERT AND REPORT PROMPTLY TO DEPARTMENT WHENEVER ANY RELEVANT INFORMATION BECOMES KNOWN TO POST.

24. CREDIBLE EVIDENCE: WHILE THE DEPARTMENT RETAINS AUTHORITY FOR ALL FINAL DECISIONS REGARDING SPECIFIC CASES - INCLUDING THE "CREDIBILITY" OF EVIDENCE OF GROSS VIOLATIONS - IT MUST RELY, AT LEAST IN THE FIRST INSTANCE, ON POST'S JUDGMENT IN REVIZING AND ASSESSING AVAILABLE INFORMATION FOR ITS RELIABILITY AND THE CREDIBILITY OF ITS SOURCE. POST NEED NOT SUBMIT REPORTS THAT IT CONFIDENTLY BELIEVES TO BE UNFOUNDED. IF IN DOUBT ABOUT THE CREDIBILITY OF INFORMATION, POST SHOULD SUBMIT TO THE DEPARTMENT AND SO NOTE.

25. WITH REGARD TO THE MEANING OF "EVIDENCE," REPORT LANGUAGE ACCOMPANYING THE FY 1999 FOIA PROVIDES: "THE CONFEREES DO NOT INTEND THAT THE EVIDENCE MUST BE ADMISSIBLE IN A COURT OF LAW." HOWEVER, NEITHER THE LEGISLATION NOR ACCOMPANYING REPORT LANGUAGE DEFINES "CREDIBLE." POST SHOULD APPLY A RULE OF REASON IN INTERPRETING "CREDIBLE" IN VIEW OF THE OVERALL PURPOSE OF THE PROVISIONS, BEARING IN MIND THAT WHAT THE DEPARTMENT IS SEEKING IS INFORMATION DESERVING OF CONFIDENCE AS A BASIS FOR DECISION-MAKING. INFORMATION THAT CAN BE CORROBORATED THROUGH INDEPENDENT SOURCES STRENGTHENS THE CREDIBILITY OF SUCH REPORTS. NGOS CAN BE A VALUABLE SOURCE OF INFORMATION. WEIGHT TO BE ACCORDED PARTICULAR REPORTS REQUIRES CAREFUL JUDGMENT AND MAY TURN ON PARTICULAR CIRCUMSTANCES - B.G., THE RECORD OF THE GOVERNMENTAL OR NON-GOVERNMENTAL GROUP FOR ACCURATE AND IMPARTIAL REPORTING AND THE DEGREE OF DETAIL PROVIDED. ALL EVIDENCE - BOTH SUPPORTING AND REFUTING - SHOULD BE TAKEN AS A WHOLE IN ASSESSING WHETHER EVIDENCE IS "CREDIBLE" WITHIN THE MEANING OF THE LEAHY AMENDMENTS.

26. PARTICULARLY DIFFICULT LEGAL AND POLICY ISSUES MAY ARISE IN CASES WHERE A PERPETRATOR OF A GROSS HUMAN RIGHTS VIOLATION HAS CHANGED UNITS, OR EVIDENCE IS NOT TIED DIRECTLY TO SPECIFIC UNITS. IN ORDER TO IMPLEMENT THE LEAHY AMENDMENTS AND RELATED STATE DEPARTMENT POLICY, POSTS SHOULD IDENTIFY, TO THE EXTENT POSSIBLE, ALL SECURITY FORCE UNITS WITH WHICH AN INDIVIDUAL FOR WHOM THERE IS CREDIBLE EVIDENCE OF HAVING COMMITTED SUCH VIOLATIONS HAS BEEN A MEMBER, FROM THE DATE OF THE ALLEGED OFFENSE TO THE PRESENT. FOR EXAMPLE, IF A SECURITY FORCE MEMBER ALLEGEDLY COMMITTED A VIOLATION WHILE ATTACHED TO UNIT X, BUT HAS SINCE BEEN TRANSFERRED TO UNIT Y, POST SHOULD ADVISE OF THAT PERSON'S RELATIONSHIP WITH BOTH UNITS. POST SHOULD PROVIDE AN ADEQUATE DESCRIPTION OF THE SECURITY FORCE ORGANIZATION, INCLUDING ITS STRUCTURE AND HIERARCHY, AND INSTITUTIONAL RELATIONSHIPS INVOLVED.

27. EFFECTIVE MEASURES TO BRING THE RESPONSIBLE MEMBERS TO JUSTICE: FOR PURPOSES OF THE STATE LEAHY AMENDMENT, RELEVANT LEGISLATIVE HISTORY CONTAINS LANGUAGE REGARDING THE NEED FOR RESPONSIBLE INDIVIDUALS TO "FACE IMPARTIAL CRIMINAL PROSECUTION OR APPROPRIATE AND TIMELY DISCIPLINARY ACTION IN ACCORDANCE WITH LOCAL LAW." ORDINARILY, SOME CLEAR ACTION NEEDS TO OCCUR, B.G., INVESTIGATIONS, FORMAL ADMINISTRATIVE OR LEGAL PROCEEDING AGAINST THE INDIVIDUAL OR INDIVIDUALS IN QUESTION, OR OTHER ACTIONS DEMONSTRATING THE HOST NATION IS PROCEEDING TO BRING THE RESPONSIBLE PERSONS TO JUSTICE. THE MERE TRANSFER FROM A UNIT OF AN INDIVIDUAL ACCUSED OF HAVING COMMITTED HUMAN RIGHTS ABUSES DOES NOT, IN AND OF ITSELF, CONSTITUTE THE NECESSARY EFFECTIVE MEASURES TO BRING THE RESPONSIBLE MEMBER(S) OF THE UNIT TO JUSTICE. AN INVESTIGATION/PROSECUTION PROCESS NEED NOT HAVE BEEN CONCLUDED, NOR IS IT NECESSARY THAT THE PROCESS LED TO A CONVICTION. ON THE OTHER HAND, THE MERE OPENING OF A FORMAL INVESTIGATION DOES NOT, IN AND OF ITSELF, CONSTITUTE "EFFECTIVE MEASURES." THE REALISTIC CHANCE FOR SUCCESSFUL AND IMPARTIAL CONCLUSION OF THE INVESTIGATION, LEADING TO IMPARTIAL TRIAL AND APPROPRIATE PUNISHMENT IF CONVICTED, SHOULD BE ASSESSED. THE INSTITUTIONAL HISTORY OF THE HOST NATION MILITARY AND CIVILIAN JUSTICE SYSTEM IS RELEVANT IN MAKING THE NECESSARY JUDGMENTS. NOTE THAT THE DOD LFAHY PROVISION IS WORDED DIFFERENTLY THAN THE STATE LEAHY PROVISION ON THIS POINT, THE FORMER REQUIRING THAT "ALL NECESSARY CORRECTIVE STEPS HAVE BEEN TAKEN" BEFORE DOD-FUNDED TRAINING INVOLVING A UNIT THAT HAS TRIGGERED LEAHY CAN TAKE PLACE. THIS PHRASE IS NOT DEFINED IN THE LEGISLATION.

28. POST SHOULD DESIGNATE AN EMBASSY POINT OF CONTACT FOR THE LEAHY AMENDMENTS. AS HUMAN RIGHTS VIOLATIONS ARE ONE AMONG A SERIES OF OTHER CRITERIA THAT ARE TAKEN INTO CONSIDERATION BEFORE PROVIDING ASSISTANCE (S.C., COUNTER NARCOTICS, CORRUPTION), DEPARTMENT SUGGESTS THAT EMBASSY POC BE IN A POSITION TO COORDINATE A COMPREHENSIVE REVIEW WITH ALL RELEVANT MEMBERS OF THE COUNTRY TEAM.

29. AGENCIES OTHER THAN DOD (B.G., DEA, JUSTICE) RESPONSIBLE FOR IMPLEMENTING FOAA-FUNDED PROGRAMS WITH SECURITY FORCES SHOULD ENSURE SIMILAR COORDINATION AND COMMUNICATION WITH THE COUNTRY TEAM IN ACCORDANCE WITH THIS GUIDANCE.

30. DEPARTMENT WILL WORK WITH POSTS TO ENSURE THAT MOOS THAT IMPLEMENT FOAA-FUNDED PROGRAMS WITH SECURITY FORCES ARE INSTRUCTED OF THE NEED TO ENSURE COMPLIANCE WITH LEAHY LIMITATIONS.

31. POC AT DEPARTMENT OF STATE IS CHRISTOPHER DUVAL, BUREAU OF POLITICAL-MILITARY AFFAIRS, 202-736-4019, DUVALLCFGSTATB.GOV.

32. MINIMIZE CONSIDERED POWELL

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