

# ADVOCACY GUIDE

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# APPLYING THE LEAHY LAW TO U.S. MILITARY AND POLICE AID



LATIN AMERICA WORKING GROUP  
EDUCATION FUND

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## INTRODUCTION

Latin American and Caribbean human rights promoters and journalists may be unaware of a powerful tool to curb impunity among military and police that receive U.S. assistance: the “Leahy Law.”

Introduced by U.S. Senator Patrick Leahy in the 1990s, the Leahy Law prohibits the United States from providing assistance to any foreign military or police unit if there is credible information that such unit has committed grave human rights violations with impunity.<sup>1</sup> If the foreign country takes “effective steps to bring the responsible members of the security forces unit to justice,” the U.S. government can resume assistance to that unit.

In countries such as Colombia, Guatemala and Honduras, nongovernmental organizations based in the United States and in Latin America have already used the law to stop assistance to abusive military and police units, and to encourage armed forces to improve their practices with respect to human rights.

In order to use it effectively, it is important to fully understand how the Leahy Law works. This guide provides a basic understanding of the Leahy Law, and

<sup>1</sup>The Foreign Assistance Act, Section 620M, states that: “No assistance shall be furnished... to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights,” and applies to assistance provided by the Department of State.

explains how individuals and organizations working to encourage militaries and police agencies to promote and respect human rights can use it.

## WHY DID THE U.S. CONGRESS CREATE THE LEAHY LAW?

Starting in the 1970s, the U.S. Congress began to recognize that U.S. military assistance to repressive foreign governments came to be viewed as a sign of U.S. support for such repressive actions, which damaged perceptions of U.S. foreign policy at home and abroad. As a result, the U.S. Congress began conditioning U.S. military aid based on a government's human rights record. Most foreign police aid was outlawed entirely for more than a decade, though the law today includes numerous exceptions to this ban.

Besides the Leahy Law, there are two main legal methods for conditioning U.S. military and police aid and arms sales to foreign countries. First, the U.S. Congress may enact a law suspending all or some U.S. military and police assistance to a specific country for a year until the foreign government meets certain criteria. Second, Congress requires the U.S. government to suspend most U.S. assistance to any foreign government around the world with a consistent pattern of serious human rights violations.

Due to previous U.S. administrations' reluctance to withhold all security aid to a country's entire armed forces, Congress created the Leahy Law, which takes a narrower approach. It only requires the U.S. government to restrict U.S. military aid to a specific military or police unit that must be credibly identified and linked with specific types of gross human rights violations.

## HOW CAN LATIN AMERICAN ORGANIZATIONS USE THE LEAHY LAW?

As the above box illustrates, organizations observing military and police activity can use the Leahy Law to stop valued U.S. security training and weapons from reaching units involved in gross human rights violations. It can also be used to pressure militaries to bring members of such units to justice. However, the law is only effective when the armed force is receiving or is proposed to receive U.S. assistance and there is credible information that such forces have been involved in gross human rights violations.

## HOW THE LEAHY LAW HAS BEEN APPLIED IN THE WESTERN HEMISPHERE

- When Juan Carlos “El Tigre” Bonilla was promoted to National Director of Police in Honduras, several groups published documents from a decade ago indicating Bonilla allegedly ordered extrajudicial killings in San Pedro Sula. Efforts to freeze aid to the Honduran police were reinforced by news articles revealing that units under Bonilla’s command were receiving U.S. assistance and public responses from a senior State Department official. Bonilla had to resign his post in December 2013.
- In 2011, the Guatemalan government convicted and sentenced to long prison terms four members of the Kaibiles, a Special Forces unit deeply implicated in human rights violations during the country’s 36-year civil war. Until that conviction, the Kaibiles had been barred from receiving most U.S. assistance. Based on the prosecution and the government’s commitment to reorganize the Special Forces, the United States resumed aid to the unit through the Defense Department budget. Country-specific aid conditions continue to prohibit aid to Guatemala’s Army through the State Department’s budget.<sup>1</sup>
- Between 2002 and 2008, members of the Colombian army committed extrajudicial executions or “false positives,” claiming them as combat deaths. Human rights defenders documented thousands of such executions, taking advantage of an information law to get listings of cases opened by the Prosecutor General’s Office. In 2012, a list of 600 killings with the names of victims, dates, locations and more than 50 units was submitted to the State Department. Six months later, the State Department denied U.S. aid to ten of the identified military units.<sup>1</sup>

If your organization has information about military or police that may have been involved in human rights violations and the respective armed force receives U.S. assistance, you can act by gathering the following information:

**1) Collect information about the human rights violation:** Gather all relevant information about the suspected gross human rights violation, including the victims, the type of violation (e.g. torture, murder, disappearance, rape, etc.), the severity of the violation, the date and time the violation took place and any other relevant information. Pictures and video are powerful tools. In some circumstances, there may be news or NGO and governmental reports that describe the actions of the alleged perpetrators, which can be helpful in building a credible case. It may also be helpful to carry out interviews with the alleged victims or with people in the area where the violation reportedly occurred.

- 2) Obtain details about the specific unit:** Information that will help identify the unit responsible for the violation includes: names of the units, commanders or people specifically implicated in the violation; the location of the violation (coordinates, building, location on road, and the most specific administrative jurisdiction possible); the responsible branch (for example, the Police, Army, National Guard, Border Patrol); a description of the uniforms or badges; description of the vehicles used (brand/model, color, badges, license plate, any part with dents if possible); video (date, time).
- 3) Identify if unit received U.S. security assistance:** The Leahy Law requires the State Department to keep a list of all security units that receive training, equipment or other types of assistance from the United States. While the United States does not always disclose this information, it is possible to find some information through U.S. government reports. In order to make your search easier, you can obtain the information on which foreign security units

have received U.S. assistance from a new online resource, Security Assistance Monitor ([www.securityassistance.org](http://www.securityassistance.org)).

This site compiles all publicly available U.S. government data on U.S. military and police assistance and is searchable by country, kind of assistance (program), year and region. The site also includes official documents and analysis that are useful for understanding U.S. military and police assistance. While this document, other Leahy-related materials, reports and analysis of U.S. security assistance, and descriptions of security assistance programs and will be available in Spanish, the website's navigation, official reports and search functions will be in English.

For example, suppose you want to learn about the types of military and police units in Honduras that receive U.S. assistance. You would go to the above website address, click on "data." You would then select "trainees" in the top left pull-down menu, click "filter," and scroll down to find Honduras. In order to find information about the types of units, you need to click on one of the years and then click "show" when the website asks whether you want to see more. To see further details, such as the unit trained and location of training, click on the value in the "trainees" column.

This data is largely collected from a report the Department of State publishes each year that lists all military training courses provided to other countries.<sup>2</sup> It is supposed to include the unit trained, the number of participants, the dates and location of the training, the course, cost and source of funding. The Leahy Law also requires that the Department of State publish "to the maximum extent practical" a list of all the units to which assistance has been denied under the Leahy Law. To date, this list has not been made public.

4) **Search for disciplinary action or criminal prosecution:** It is also helpful to try and identify whether the alleged perpetrator has been brought before a court of law or if he or she received disciplinary action from his or her commander or supervisor. In some cases, organizations may be able to obtain information from the local justice system. When possible, and only if it is safe, it may also be useful to speak with a public representative of the Defense Ministry, military, or police to try to determine if disciplinary action has been taken in connection with an alleged violation. It is ultimately the responsibility of the State Department to determine whether prosecution or disciplinary action has been taken.

## WHAT CAN ORGANIZATIONS DO TO ENCOURAGE U.S. ACTION?

Once organizations have gathered the above information and believe the information is credible and trustworthy, the next step to use the Leahy Law is to encourage the U.S. government to take action. Depending on the security situation in the country, organizations may decide to go public with the information or may decide to submit the information to the U.S. embassy privately. Where possible, it is recommended that organizations do both. It may also be helpful to share your findings with other reliable local and international organizations so that they may also contact the U.S. embassy. Below are more details about these options:

<sup>2</sup>The annual Foreign Military Training Reports (FMTR) can be accessed at <http://securityassistance.org/en/content/foreign-military-training-and-dod-engagement-activities-interest>. To see what units received U.S. military training in a given year, click on the year you wish to see. In the section marked "IV Country Training Activities – Volume I," click on the appropriate region to download the report for that region, and then search for countries of interest. "Student's Unit" indicates a unit that was vetted and received U.S. training assistance. This report does not reflect other types of U.S. military assistance besides training, nor does it include much police training. For some countries, unit information in the FMTR is scarce.

**PUBLISH FINDINGS:** Because of the limited resources available to U.S. government officials to collect information about possible violations, it is important, when possible and safe to do so, to post credible information about the violation on the Internet or in print publications through news media or organizational reports. When publishing such information, it is essential to include as much of the information about the violation and perpetrators as possible, including the name of the unit and/or officials allegedly responsible as well as other relevant details—such as dates, places, or narratives—that do not compromise the security of the victims, their relatives or human rights defenders.

**ENGAGE WITH THE U.S. EMBASSY OR STATE DEPARTMENT:** Whether or not an organization decides to publish its findings, it is also important to share information about an alleged abuse directly with officials from the State Department or respective U.S. embassy. Organizations and individuals should send all information relevant to the Leahy Law in a note directly to the Department of State. You can send materials via email to: [DRL-SHR-Leahy@state.gov](mailto:DRL-SHR-Leahy@state.gov). In the subject line, please include 1) the country and 2) the unit, individual name, or a quick description.

An organization can also share information with the local U.S. embassy by arranging a meeting or by sending a letter or email to the embassy. It is often more effective to arrange a meeting with a U.S. embassy official as they may have questions about the information you have collected. Organizations may also find it helpful to bring in other individuals and organizations familiar with the information.

For details about where the U.S. embassy is located in your country, see the State Department's website of U.S. embassies, consulates and diplomatic missions: <http://www.usembassy.gov/wha.html>.

## HOW DOES THE UNITED STATES APPLY THE LEAHY LAW?

Before the U.S. government provides any type of aid or training to any member of a foreign armed force – ranging from soldiers to police to border guards to prison guards (or any unit that is authorized to use force) – the State Department is required to review that individual's unit. Typically, the U.S. Embassy in the foreign country receiving the assistance as well as the State Department's Bureau of Democracy, Human Rights, and Labor in Washington, D.C. carry out the review or "vetting," which they are required to conduct within 10 days of receiving the request. Before the State Department determines whether the selected individual or unit receives U.S. aid, they review these four questions required in the law:

- 1) With which military or police unit is the individual proposed to receive U.S. assistance currently serving?
- 2) Has the specific foreign unit been involved in any gross human rights violations?
- 3) If there are reports of gross human rights violations by members of the unit, how credible are the reports?
- 4) Has the foreign government taken effective steps to bring the responsible members of the military or police unit to justice?

The State Department uses the below definitions of unit, gross human rights violation, credible information and effective steps for justice when answering the above four questions.

**MILITARY / POLICE UNIT:** In general, the State Department considers a military or police unit to be “the lowest organizational element of a security force capable of exercising command and discipline over its members.”<sup>3</sup> Within an army, for instance, the State Department has classified battalions, brigades and a companies as units, but doesn’t normally consider a division, which is considerably larger, to be a unit. If the unit within a battalion responsible for a gross violation can be narrowed down to a company, then other companies in the battalion not tied to the abuse may continue to receive assistance.

**GROSS HUMAN RIGHTS VIOLATION:** For the purposes of the Leahy Law, the U.S. government only considers extrajudicial killings, forced disappearance, forced displacement, torture, rape, arbitrary detention without charges or trial (due process), and violent treatment (for instance punching/hitting, excessive use of tear gas in a closed space,) a gross human rights violation. The Leahy Law does not apply to short, arbitrary detentions, minor physical abuses, corruption, or violations of economic, social and cultural rights.

**CREDIBLE INFORMATION:** When determining whether or not reports of gross human rights violations are credible, the State Department considers the source of the information, the details available, the probability that the individual or unit could have engaged in the specific violation, the country’s political and security climate, and the existence of corroborating information, among other factors.<sup>4</sup> The information does not have to be admissible in a trial before a court, and information from NGOs and press reports can be sufficient if they are reliable sources.

**EFFECTIVE STEPS FOR JUSTICE:** If the State Department determines a military or police unit has been credibly linked to a gross human rights violation, then U.S. officials must determine whether the foreign government has taken effective steps to bring those responsible to justice before any individual from that unit can receive U.S. assistance. This typically means the foreign government must undertake a credible investigation and, if warranted, the individuals involved must face disciplinary action or be prosecuted under local or national law.

<sup>3</sup> Congressional Research Service, “Leahy Law Human Rights Provisions and Security Assistance: Issues Overview,” January 29, 2014, page 8, online at <http://fas.org/sgp/crs/row/R43361.pdf>.

<sup>4</sup> Ibid, page 10.

## MORE INFORMATION

For questions about applying the Leahy Law, organizations may contact groups in the United States that support the application of the Leahy Law: Leahy Law Working Group/Latin America and the Caribbean c/o Lisa Haugaard, Executive Director of the Latin America Working Group, [leahylaw@lawg.org](mailto:leahylaw@lawg.org).