

Abortion Politics and U.S. Population Aid: Coping with a Complex New Law

By Susan A. Cohen

Some members of the U.S. Congress call it a necessary restriction on abortion funding. U.S. Secretary of State Madeleine Albright calls it anti-family planning and antidemocratic. Enyantu Ifenne, Nigeria country director for the Centre for Development and Population Activities, calls it simply “un-American.”

Now commonly referred to by reproductive health advocates as the “global gag rule,” it is a new U.S. law, enacted in November 1999 but implemented beginning in April 2000. The law’s goal is to discourage nongovernmental organizations (NGOs) based outside of the United States from providing any abortion services (even if abortion is legal in the country) with any of their funds, even those not coming from the U.S. government. The law also aims to inhibit such groups from engaging in any advocacy activities (again, with their own funds) that might in any way be construed as designed to “alter” their own country’s law or policy on abortion.

Origins of the Gag Rule

U.S. law has long prohibited the use of U.S. funds for abortion services and for lobbying on abortion, either for or against abortion rights. Numerous government investigations have confirmed that all recipients of U.S. population aid are and have been in compliance with this requirement.¹ Yet opponents of family planning and abortion have argued for many years that the law does not go far enough: It should also limit what an organization

may do with other donors’ funds.

Thus, in response to the demands of his antiabortion, anti-family planning constituency, in 1984 President Ronald Reagan had the U.S. delegation to the United Nations-sponsored international population conference that year in Mexico City announce a new U.S. international family planning policy. This policy denied U.S. funding to any NGO that engaged directly or indirectly in abortion-related activities.

President Reagan was able to impose this first incarnation of the gag rule policy (one very similar in principle to the current formulation) unilaterally, without the consent of Congress. The policy remained in effect through the subsequent administration of President George Bush. It was not until President Bill Clinton took office in January 1993 that it was rescinded (along with a similar domestic version); this change was his first official presidential act, and took place only two days after he had been sworn in.

During the first two years of the Clinton administration, the president and Congress worked together to dramatically increase funding for international family planning assistance. The administration’s strong philosophical commitment to a broad reproductive health agenda also was evident in U.S. pronouncements made at the 1994 International Conference on Population and Development (ICPD) in Cairo. At that time, the total U.S. contribution to the global population aid effort had reached its peak of \$585 million (including the U.S. contribution to the United Nations Population Fund), and more was promised.

By 1995, however, as a result of the November congressional elections, control of Congress had shifted to the Republican Party. Along with this changeover came a sharp ideological shift rightward in Congress generally, and particularly among party leaders—especially where social is-

suces were concerned. Starting in 1995, congressional leaders decided to make restoration of what had become known as the “Mexico City” policy a priority.

From the outset, President Clinton opposed the repeated annual attempts by Congress to reinstate the gag rule, which this time had taken the form of a legislative initiative (since its proponents were in control of the legislative branch) rather than an administrative directive (as it had been in the 1980s, when its proponents were in control of the executive branch).^{*} In 1998, Congress sent President Clinton legislation that would have authorized payment of the back dues owed by the United States to the United Nations, but the President vetoed the bill because it included language that would have reimposed the Mexico City policy.[†]

By November 1999, however, the United States owed almost \$1 billion in unpaid dues to the United Nations. Congressional conservatives had held up the necessary legislation allowing the back dues to be paid as a tactical maneuver in order to pressure the Clinton administration to accept the gag rule. Threatened with the loss of the U.S. vote in the General Assembly as of January 2000, the President instructed his staff to resolve the standoff over the family planning restrictions in exchange for freeing the UN dues. Thus, in the final hours of the 1999 legislative session, Congress passed a bill containing the global gag rule, and President Clinton signed it into law.

Interpreting the Law

The law is quite complex because it is the product of a careful, secret, end-of-the-year negotiation between the president’s most senior staff, who were charged with

^{*}Both have the force of law. An administrative order, however, is enforced at the direction of a particular president, while statutory laws can only be changed or removed by an act of Congress.

[†]The president cannot delete individual provisions that he opposes from bills presented to him by Congress and enact only the parts of the legislation that he supports. He must either sign the entire package or veto the entire package.

minimizing the impact of the restrictions, and their counterparts working for Speaker of the House of Representatives Dennis Hastert (R-IL), who wanted more restrictions. The end result is one that pleases neither side, although partisans on both sides concede that those seeking more restrictions fared far better.

The law stipulates that in exchange for U.S. family planning assistance, non-U.S. groups* must "certify" in writing that they will not use their own funds to provide abortion services (beyond cases of rape, incest or where an abortion is necessary to save the woman's life) or to engage "in activities or efforts to alter the laws or governmental policies of any foreign country" concerning abortion.² These conditions apply for the entire period during which FY 2000 population aid funds are available (through September 2001). The President is permitted to waive the restrictions against as much as \$15 million (4%) of the \$385 million appropriated for the entire program.

Further, the law specifies that if the waiver is exercised, the overall amount available for the program will be reduced automatically to \$372.5 million. The remaining \$12.5 million is to be transferred to the U.S. Agency for International Development's (USAID's) child survival program, with the caveat that none of these additional funds be used for any activities, such as birthspacing, that could be construed as relating to fertility control. President Clinton invoked the waiver immediately upon signing the bill into law.

Whether or not an agency is providing abortion services is clear. What constitutes "altering" law or policy on abortion, however, is far from straightforward. In implementing this part of the policy, USAID has adhered strictly to the letter of the law, while heeding President Clinton's instructions to interpret it "in such a way as to minimize to the extent possible the impact on international family planning efforts and to respect the rights of citizens

to speak freely on issues of importance in their countries, such as the rights of women to make their own reproductive decisions."³

As defined by USAID, efforts to "alter" law or policy would include directly communicating with political leaders or government officials either in support of or opposition to laws or policies relating to abortion; conducting public outreach efforts (such as through the mass media) intended to alter abortion laws or policies (as opposed to those that may merely have that effect); and organizing demonstrations or media events with the same intent.⁴

USAID, recognizing that organizations tend to be very cautious when funding support is at stake, also identified in its guidance to the field a number of activities that do not qualify as efforts to "alter" laws and therefore remain permissible—although not necessarily with U.S. funds. Such activities include:

- providing pregnancy options counseling that includes abortion, and providing referrals for abortion services;
- advocating for changes in laws or policies related to postabortion care, as well as treatment of illnesses or injuries caused by legal or illegal abortions;
- expressing opposition to coercive abortion or involuntary sterilization;
- seeking to remove legal penalties applied to women who obtain abortions (i.e., decriminalization);
- conducting research and disseminating information about the incidence of abortion or its legal status;
- transmitting factual information related to abortion;
- participating in meetings in which abortion laws or policies are discussed, but in which there is no accompanying effort intended to alter them;
- sponsoring meetings or conferences in which such laws or policies are discussed, but in which changes in laws or policies are addressed only in a minimal way;
- engaging in any effort aimed at maintaining the status quo concerning the legality of abortion or at ensuring proper implementation of an existing law;
- participating in a network of organizations that seeks to change abortion laws, so long as membership does not require active involvement in the efforts of the network; and
- advocating for legal changes in one's individual capacity.

NGOs that are unable or unwilling to certify that they will refrain from either performing abortions or altering abortion laws (as defined) are not necessarily ren-

dered ineligible for U.S. funding; rather, their names are being compiled, and the amounts they are slated to receive from USAID for family planning are being totaled. As long as the combined sum is less than \$15 million, these groups will each be able to receive full support. However, if the sum exceeds \$15 million, USAID must apportion appropriate reductions to meet this funding cap.

Reactions to the Law

Measuring the law's impact is difficult for many reasons, not least because the certification process will not be complete until all FY 2000 population aid funds are allocated (September 2001). By May 2000, though, a large number of NGOs had already responded to USAID in anticipation of receiving funding during this period. The vast majority of organizations certified that they would neither provide abortions nor participate in advocacy—although many made clear they were doing so neither willingly nor easily.

PROCOSI, a network of 24 health-related NGOs in Bolivia, was able to certify, and did. However, the NGO wrote to USAID that being forced to do so "affect[s] considerations of mutual respect that should exist in cooperative relationships.... The law is defining differences between the rights of national (local) organizations and U.S. ones, a fact which we do not understand and which had never before been presented."⁵

Movimiento Manuela Ramos, a Peruvian NGO with more than 20 years of experience in advocating for women's rights and well-being, operates a project called ReproSalud that receives substantial funding from USAID. This innovative reproductive health project, which works with very poor and indigenous groups, is aimed at empowering women with the information and tools they need to "exercise their right to family planning and other essential reproductive health services."

After much deliberation, the leaders of Manuela Ramos signed the certification form, since so much money was at stake. However, they protested to President Clinton, Secretary of State Albright and USAID Administrator J. Brady Anderson about the U.S. government's decision to "place conditions on our own funds and autonomy."⁶ They added that "democracy is nourished and strengthened by open debate and freedom of expression.... Shackling the discussion of ideas impoverishes such public debate and, in doing so, weakens democracy. In formulating public policy, individuals and institutions

*The law applies only to NGOs and multilateral organizations not based in the United States. For political and legal reasons, the gag rule cannot be applied to U.S.-based groups; to do so would violate the right guaranteed by the U.S. Constitution to "peaceably assemble and to petition the government for a redress of grievances." Moreover, to avoid diplomatic problems, proponents of the law exempted foreign governments and any USAID-population assistance that flows through them. Further, it concerns only entities or agencies that seek funds from USAID's population assistance program. Thus, it affects the World Health Organization but not the United Nations Population Fund, which is not funded through USAID. Additionally, according to the statute, the restrictions do not apply to in-kind, technical and administrative assistance, or to the provision of commodities.

in leadership positions must draw on a foundation of full information, awareness and understanding of social problems. As abortion is widely recognized as a public health problem in Peru, we consider that it is not feasible to legislate responsibly or to create effective public policy in a context in which provision of information and opinion regarding various proposals has been restricted.”

Had this requirement been a part of the original project agreement, Manuela’s leaders added, they would not have accepted the funds on these terms. “We are now in the difficult position of having to choose between needed funding for a historic project, on the one hand, and essential democratic participation on the other. Either way, there is a cost to women’s reproductive health and to democracy in Peru.” Ironically, Manuela’s other major partnership with USAID involves its Promujer project (Promotion of Women’s Political Participation), which is funded through USAID’s “democracy” program. Its purpose is to promote advocacy, including advocacy concerning laws and policies, and to train women as voters and candidates in an effort to strengthen democratic values in Peru.

So far, fewer than a dozen organizations, slated to receive about \$10 million in population assistance, have declined to certify. Since this total is well below the \$15 million limit that is available to groups that refuse to certify, they are expected to receive their full funding. However, USAID has not disclosed the names of these groups or the names of those that have certified, and has requested that key members of Congress who are entitled to the information do the same. The agency is concerned that such a list, which has never existed before, could be used to harass certain organizations or otherwise interfere with their programs.

Nonetheless, two groups that have refused to certify revealed themselves in writing to the U.S. government explaining their positions. The World Health Organization, which is to receive about \$2.5 million in population aid for reproductive health research, declined to certify on the grounds that as a UN organization it cannot respond to an individual member state’s request about other member states’ donations.⁷

In addition, the London-based International Planned Parenthood Federation (IPPF), which is expected to receive about \$5 million, did not certify. In a letter to the President, IPPF’s leaders defended the organization’s firmly held commitment to

eliminating unsafe abortion and to removing legal and policy barriers to safe and legal abortion. Reducing the need for abortion overall through voluntary, high-quality family planning services and information is the cornerstone of IPPF’s work, they noted. “Yet, there are also, all over the world, as we speak, countless women who cannot carry to term their pregnancy. For them, the time has passed to discuss contraceptive options. The fact is that where we are not enabled to provide access to a safe abortion, those women will seek out an unsafe one, paying for it often with their health and sometimes with their life.”⁸

The new U.S. law allows NGOs to provide abortions in cases of life endangerment, rape or incest without any penalty, but there are 28 countries that receive population assistance from USAID where abortion is legal under broader circumstances than that (see Figure 1). This means that simply by using its own funds to provide legal abortions to preserve a woman’s physical health, for example, an NGO in one of these countries would run afoul of the U.S. restrictions. If that NGO should want to receive U.S. family planning assistance, it would either have to cease providing these legal abortions or it would have to risk losing some or possibly all U.S. support by declining to certify that it would adhere to USAID’s requirements.

In addition to the potential conflict in 28 countries between the provision of abortion services and the U.S. law, the gag rule part of the U.S. requirements affects all 50 countries receiving USAID population aid (see Figure 1). Whether or not a debate is taking place over the status of legal abortion in a particular country right now, an NGO certifying to observe USAID’s gag rule is pledging that it will not participate in such a debate should one emerge anytime through next September.

In the last two years alone, debates over abortion law or policy have taken place, with varying degrees of intensity and frequency, in about a dozen countries receiving USAID population aid—Brazil, the Dominican Republic, El Salvador, Ethiopia, India, Kenya, Malawi, Nepal, the Philippines, Russia, Senegal and Zimbabwe. Sometimes, as in El Salvador and Russia, activism has gone in the direction of further restricting legal abortion; in Brazil, Kenya and Nepal, the impetus for change is in the direction of liberalizing a restrictive law. For the purpose of the U.S. “gag rule,” however, having such a debate at all is enough to trigger further scrutiny

Figure 1. Countries receiving population assistance from the U.S. Agency for International Development (USAID), FY 2000, by current legal status of induced abortion

Legal Status	Country
Illegal (22)	Bangladesh, Benin, Dominican Republic, Egypt, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Kenya, Madagascar, Malawi, Mali, Nepal, Nicaragua, Nigeria, Paraguay, Philippines, Senegal, Tanzania, Uganda, Yemen
Legal* (28)	Albania, Armenia, Azerbaijan, Bolivia, Ecuador, Eritrea, Ethiopia, Georgia, Ghana, Guinea, India, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Moldova, Morocco, Mozambique, Peru, Romania, Russia, South Africa, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Zambia, Zimbabwe

*At least in cases where an abortion is necessary to preserve a woman’s physical health; in some of these countries, abortion is available under broader circumstances. Sources: USAID Office of Population; Center for Reproductive Law and Policy.

by the U.S. government, and the result could be the reduction or loss of U.S. family planning support.

While the law’s primary targets are the NGOs themselves, its impact also extends to other donors to the reproductive health field, since the restrictions are linked to activities related to abortion or abortion advocacy that are supported with these other donors’ funds. The United Kingdom, for example, funds safe abortion services as well as contraceptive and related reproductive health care. Hypothetically, an Indian NGO that receives support from the United Kingdom for safe abortion services but also seeks USAID family planning funding might have to choose between its two programs—and two donors. Either way, it is the clients—who depend on those service delivery systems for quality family planning–related reproductive health care or perhaps safe abortion services—who will lose.

Issues of Rights and Sovereignty

Defenders of the global gag rule have invoked the charge of cultural imperialism, arguing that the “religious, cultural and legal traditions [of USAID-assisted countries] are under assault” from U.S.-subsidized groups that, in this case, are pressuring countries to change their abortion laws.⁹ Indeed, this is simply an extension of the longstanding assertion that donor assistance for family planning is by definition imposed on women in countries receiving aid from USAID.

Yet in Cairo at the ICPD, in Beijing at the Fourth World Conference on Women in

(continued on page 145)

Abortion Politics and U.S....

(continued from page 139)

1995, and at the Cairo and Beijing five-year review processes in 1999 and 2000, it was the women from these very countries who made it clear that they want the same access to quality family planning and reproductive health services that women in the industrialized world have. They also want the same right to participate in a democratic process, to voice their opinions about their own laws—and to provide legal medical services with their own funds.

In April, President Clinton hosted a gathering at the White House designed to highlight the importance of international family planning programs. "America has a profound interest in safe, voluntary family planning," he said. It also has "a moral interest in saving human lives [and] a practical interest in building a better world of healthy children and strong societies. And because we are a nation that believes in individual freedom and responsibility, we have every interest in supporting others around the world who seek the same rights and responsibilities we ourselves enjoy." Referring to the congressionally imposed restrictions as a "destructive double standard," Clinton asked, "When would we ever accept rules telling Americans at home not even to discuss women's health and women's choices?"¹⁰

At the same gathering, Enyantu Ifenne of Nigeria described the "tentative steps to nurture and sustain democracy" in her native country. "Your support enables women to use newly created democratic space to transform their lives," she said. "I believe that the global gag rule imposed by the U.S. Congress stifles robust debates on women's reproductive rights in developing countries. It is retrogressive. It is repressive. It is, indeed, undemocratic."¹¹

Conclusion

It is too soon at this point to know exactly how the law is working at the program level. Confusion and excessive caution were common under the terms of the gag rule's earlier, and less complicated, incarnation during the Reagan and Bush administrations. With that experience in mind, USAID, through its guidance to the field and subsequent clarifications, is attempting to minimize the inevitable chilling effect that will result from such a complicated and controversial law.

Both the Clinton administration and family planning supporters in the U.S. Congress have committed themselves to ensuring that the restrictions are not renewed beyond the life of the FY 2000 legislation. In the meantime, however, USAID must continue to apply them, and NGOs in the 50 countries receiving USAID population assistance in FY 2000

must submit to them in exchange for this support. Regardless of a country's law on abortion and whether a particular NGO actually provides abortion services, all NGOs in these countries are affected by the section of this law that punishes free speech and advocacy activities around the abortion issue—whether they are for or against abortion rights. Indeed, it is a "gag rule" by any other name.

References

1. Office of Population, Safeguards to assure USAID funds are not used for prohibited abortion-related activities, Washington, DC: U.S. Agency for International Development (USAID), July 2000.
2. PL 106-113, enacted 11/29/99.
3. Clinton WJ, Washington, DC, Nov. 30, 1999.
4. USAID, *Guidance for FY 2000 Population Assistance Certification*, Washington, DC: USAID, Jan. 2000.
5. Ridgley R, letter to Susan Brems, USAID/Bolivia, La Paz, Bolivia, March 13, 2000.
6. Chavez VV and Silva SG, letter to President Bill Clinton, Lima, Peru, April 2, 2000.
7. Van Look P, letter to Duff Gillespie, Assistant Administrator, USAID, Geneva, April 7, 2000.
8. Gomez A and Brueggemann I, letter to President Bill Clinton, London, April 5, 2000.
9. Smith C, Foreign aid and abortion overseas, *Washington Post*, March 16, 1998, p. A21.
10. Clinton WJ, Washington, DC, April 7, 2000.
11. Ifenne E, The White House, Washington, D.C., April 7, 2000.