

Proponents Say Women's Health, Core American Values at Stake In Global Gag Rule Debate

By Susan A. Cohen

As the legislative debate begins over international family planning funding and policy issues for FY 2001, the administration is proceeding with plans to implement the law enacted last November that, in effect, restored the Reagan-era "Mexico City gag rule" policy for FY 2000. Under the law, no more than \$15 million of the \$372.5 million available to the program this fiscal year may go to foreign nongovernmental organizations (NGOs) that use their own funds either to provide legal abortion services or to engage in advocacy for or against abortion rights in their own country.

Having reluctantly and under extreme political pressure agreed to this policy ("Global Gag Rule Threatens International Family Planning Programs," February 2000), the Clinton administration, through the U.S. Agency for International Development (USAID), has issued a "guidance" to the field creating procedures and criteria for implementing it. Despite the administration's best efforts, however, the guidance cannot overcome the fact that the law itself is antithetical to a key purpose of U.S. foreign policy—the promotion of democracy—and would be unconstitutional as a violation of free speech if applied against U.S. citizens. Further, from the perspective of foreign NGOs, the target of the policy, it embodies cultural imperialism at its worst.

Proponents know that the damage to the international family planning program, and to the women it serves, may be difficult to quantify in the short term, but they assert

that the harm the new law is doing to what the United States stands for is already real.

The Guidance and Free Speech

Using U.S. family planning funds as the leverage, the law targets two types of privately funded activities: the provision of abortion services and abortion-related advocacy. Whether or not an organization is providing abortions is fairly clear; what constitutes advocacy, on the other hand, is a matter of interpretation.

With regard to the latter, USAID is asking foreign NGOs to certify whether or not, between now and October 2001, they will engage in "efforts or activities to alter the laws or government policies of any foreign country" concerning the legality of abortion. As defined by USAID, such efforts or activities would include

- having direct communications with political leaders or government officials either supporting or opposing laws or policies relating to abortion;
- conducting public outreach efforts (such as through the mass media) intended to alter abortion laws or policies; and
- organizing demonstrations or media events with the same intent.

In an effort to address the inevitable chilling effect that will accompany these new restrictions, USAID also attempts to make clear the kinds of activities that are *not* subject to the certification process. Such activities would include

- expressing opposition to coercive abortion or involuntary sterilization (which is specifically allowable under the statute);
- conducting research and disseminating information about the incidence of abortion or its legal status;
- transmitting factual information relating 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; and
- engaging in any effort aimed at maintaining the status quo concerning the legality of abortion or at ensuring implementation of existing law. (The gag rule stipulates that only efforts to "alter" laws or policies are at issue.)

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NGOs unable or unwilling to certify that they will refrain from engaging in the "offending" activities will not automatically be rendered ineligible for U.S. funding; rather, they may be subject to funding cuts (or defunded entirely) should the total amount of U.S. funds slated for all such groups exceed \$15 million.

Assaulting Democratic Values

Even with USAID's clarifications, it is clear that the new law may punish, by withholding U.S. aid, those NGOs that engage in the democratic process in their own country—those

that choose to use their own funds to change abortion laws or policies that affect their own people. Indeed, they may be punished for engaging in activities that, with respect to U.S. citizens, are not only legal but also constitutionally protected.

Just since 1999, debates over abortion law or policy have been taking place in at least 12 countries that also receive USAID population funds: Brazil, Dominican Republic, El Salvador, Ethiopia, India, Kenya, Malawi, Nepal, the Philippines, Russia, Senegal and Zimbabwe. In some cases, the agitation has been in the direction of making the laws or policies more restrictive, while in others the political tide has gone the other way. In Nepal, for example, there is an ongoing, active debate over liberalizing the country's abortion law, one of the harshest in the world (see box). There, indigenous groups are seeking

to reduce the death toll from illegal, unsafe abortion both by increasing access to family planning services and by lobbying for legal, safe abortion. Under the new U.S. law, however, they may not be able to do both.

Peggy Curlin, president of the Centre for Development and Population Activities—which promotes women's empowerment in developing countries, in part by mobilizing their participation in public policy, especially around reproductive health issues—calls it “un-American” to target the political debate itself. “It would be unthinkable,” she says, “for government to use the power of the purse to stifle the abortion debate here in the United States. Yet citizens in USAID-assisted countries, where the U.S. Constitution's free-speech guarantee is no obstacle—mostly women who are struggling for a political voice—

are being admonished by our government for participating in their own debate around their own reproductive decisionmaking.”

Impact on Abortion Services

Foreign NGOs that provide legal abortion services but wish to receive U.S. funds for family planning also will become ensnared in the USAID certification requirement. As of 1999, USAID population assistance went to 29 countries where abortion is legal beyond cases of life endangerment, rape or incest—the only exceptions specified in the statute (see box, page 7). NGOs in those countries could be among the few resources, perhaps the only resources, to which women could turn for a safe abortion, but as a result of the new law, they will be targeted for possible funding cuts or even disqualification from U.S. family planning aid.

Valerie DeFillipo, who directs Planned Parenthood Federation of America's Global Partners Program, argues that by virtue of the new law, “antichoice members of Congress are intervening in the affairs of sovereign nations to accomplish there what they cannot achieve here: stopping the provision of safe abortion services. The fact that this does not reflect U.S. domestic policy or represent U.S. majority opinion makes it all the more offensive from the point of view of those affected.”

Moreover, DeFillipo argues that subjecting U.S.-based groups and foreign NGOs to different rules exemplifies only one of the “double standards” created by the new law. Another exists between foreign NGOs and foreign governments. “For diplomatic and political reasons, the statute exempts foreign governments from having to certify about their involvement in providing abortion services,” she notes. “As a result, an indigenous group could be disqualified from U.S. assistance because it provides services that its own government might actually subsidize as

NGO Works to Save Women's Lives Through Family Planning and Abortion Legalization

Nepal is one of the 10 poorest countries in the world. Over half of its 24 million people live in poverty, and over 40% are under the age of 15. The Family Planning Association of Nepal (FPAN), the country's largest NGO, accounts for 25–30% of the national family planning effort. Working in close collaboration with the government, FPAN also provides immunizations and basic primary health care, prenatal and postnatal care, screening and treatment for sexually transmitted infections and infertility treatment.

While working to save women's health and lives through prevention, FPAN also is active in an effort to change Nepal's stringent abortion law to help save the lives of those women who experience unwanted pregnancies and resort to dangerous, illegal abortion. Abortion is virtually banned in this country, where it is equated with infanticide and treated as a criminal offense. Still, Nepali women resort to illegal, unsafe abortion in large numbers. Half of all maternal deaths in Nepal (which has one of the highest maternal mortality rates in the world) are attributable to unsafe abortion. Women who do not die may be maimed for life—and then they may be charged with murder and imprisoned.

FPAN is working in coalition with Nepali medical professionals, journalists, human rights activists, and women's and health advocates to legalize abortion in the first trimester under certain conditions. The groups also are seeking to “decriminalize” abortion—that is, to change the country's policy of imprisoning women who have had abortions. Under the terms of the “global gag rule,” however, FPAN might have to decide between its contraceptive services program and its advocacy efforts. Either way, the lives of Nepali women are in the balance—and either way, women lose.

**LAWS ON ABORTION IN COUNTRIES RECEIVING
FY 1999 USAID POPULATION ASSISTANCE**

COUNTRIES WHERE ABORTION RESTRICTIONS ARE CONSISTENT WITH THOSE IN THE FY 2000 POPULATION ASSISTANCE LAW (23):

Abortion prohibited altogether
EL SALVADOR

Abortion permitted only to save the life of the woman

BANGLADESH	MALAWI
BENIN	MALI
DOMINICAN REPUBLIC	NEPAL
EGYPT	NICARAGUA
GUATEMALA	NIGERIA
HAITI	PARAGUAY
HONDURAS	PHILIPPINES
INDONESIA	SENEGAL
KENYA	TANZANIA
MADAGASCAR	UGANDA
	YEMEN

Abortion permitted only to save the life of the woman or in cases of rape or incest
BRAZIL

COUNTRIES WHERE ABORTION IS LEGAL UNDER BROADER CIRCUMSTANCES (29):

Abortion permitted when the woman's life or health is at risk or in cases of rape, incest or fetal defect

BOLIVIA	JAMAICA
ECUADOR	JORDAN
ERITREA	MOROCCO
ETHIOPIA	MOZAMBIQUE
GHANA	PERU
GUINEA	ZIMBABWE

Abortion permitted for all of the above plus social and economic reasons

INDIA	ZAMBIA
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Early abortion permitted without regard to reason

ALBANIA	SOUTH AFRICA
ARMENIA	
CAMBODIA	TAJIKISTAN
GEORGIA	TURKEY
KAZAKHSTAN	TURK-MENISTAN
KYRGYZSTAN	
MOLDOVA	UKRAINE
ROMANIA	UZBEKISTAN
RUSSIA	

Source: USAID Office of Population.

part of its health care system. Yet, the government itself could receive USAID population aid funds directly so long as it ensures that U.S. funds are not used for abortion.”

Undoing the Damage

By later this spring, USAID expects to have a good sense of how foreign NGOs are responding to the certification process. Because of the critical need for family planning and for U.S. funding, some NGOs that are involved in abortion advocacy or service provision may reluctantly agree to abandon those activities. Others almost certainly will not, however. Still others, notwithstanding what activities they might or might not be engaged in, may refuse to certify because to do so could subject them to the perception

that they are a tool of the U.S. government rather than an independent organization responding to local needs and cultural values.

Those NGOs that intend to continue their involvement in abortion services or “lobbying” will be placed on one list and become subject to funding cuts. But the certifying organizations—those that say they will not engage in these activities—will find themselves on a de facto list as well. As a result, opponents of family planning and abortion soon will be provided with an international road map of hundreds of groups in developing countries whose activities they can scrutinize and target.

Meanwhile, the political strategy for preventing the new law from being continued into FY 2001 is getting under way. It centers on two pieces of legislation introduced in the House recently. One is the Global Democracy Promotion Act, introduced by Reps. Nita Lowey (D-NY), Nancy Pelosi (D-CA), Christopher Shays (R-CT) and James Greenwood (R-PA). This bill affirms the U.S. commitment to free speech and democratic participation—abroad as well as at home—as well as to respect for national sovereignty. Its sponsors will seek to use it to educate their colleagues about the fundamental principles at stake in this fight and as the basis for changing the law in the context of the FY 2001 appropriations cycle.

The other bill, introduced by Reps. Carolyn Maloney (D-NY), Greenwood and Pelosi, is the Saving Women’s Lives Through International Family Planning Act. The main purpose of this legislation is to make the case for an ongoing U.S. contribution to the United Nations Population Fund (UNFPA) and for substantially expanding USAID’s family planning program. The administration’s budget request would increase funding for the program from its current level of \$372 million to its previous high-water mark of \$542 million, reached in FY 1995 (*For the Record*, February 2000).

In her testimony before the House Appropriations Subcommittee on Foreign Operations in March, Secretary of State Madeleine Albright addressed both the policy and the funding issues. In doing so, she elaborated on the notion that the gag rule puts foreign NGOs—and the United States—in an untenable situation. Because it is “antidemocratic” and “hinder[s] free speech,” Albright said, it is contrary to U.S. foreign policy. But she was quick to add that family planning aid also is

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“among the most important aspects of our foreign policy,” because enhancing the status of women, including their ability to decide the timing and spacing of their children, is integral to promoting stability and democracy around the world.

Albright termed it an “abomination” that last year, Republican leaders forced the administration to choose between back dues for the United Nations and the integrity of the international family planning program. “I think it is very important that we make up for it this time,” she said. “We will oppose any kind of Mexico City [gag rule] language.... We are also asking for funding up to the previous levels.” ☹