Sida’s position and guidance on U.S. Policy the Mexico City Policy (MCP)/ Protecting Lives in Global Health Assistance (PLGH) – applicable to all Sida funding and financial instruments

1. Introduction

The U.S. administration decided on 23 January 2017 to reinstate the Mexico City Policy (MCP) and to expand its scope beyond U.S. global family planning assistance to include almost all U.S. global health assistance. In May, the new expanded policy was given the name “Protecting Lives in Global Health Assistance (PLGH)”. This decision will have severe consequences for the rights and health of women, children and adolescents in low and middle income countries. This Sida position and guidance on MCP/PLGH has been developed to assist Sida colleagues:

- with an outline of key components of the MCP/PLGH
- in understanding the conflict between the MCP/PLGH and Sweden’s position on Sexual and Reproductive Health and Rights (SRHR)
- in identifying issues to bring up in dialogue with development partners in relation to MCP/PLGH
- actions to take when a Sida partner chooses to comply with the MCP/PLGH.

It is important to understand that the reinstatement of the MCP/PLGH may lead to challenging discussions and negotiations with Sida’s partners and other donors. In the end, a partner’s choice to comply with MCP/PLGH may lead to Sida having to phase out a programme, end certain components or terminate an agreement.

2. Sweden’s position on SRHR, including safe abortion

The right to decide and exercise control over one’s own, body, sexuality and reproduction is fundamental for all people. Sweden therefore has a long history of prioritizing sexual and reproductive health and rights (SRHR) as a key issue in its foreign and development cooperation policies. SRHR is also one of the six pillars in the Swedish Foreign Service Action plan for the Feminist Foreign Policy 2015–2018. Explicit commitments to the strengthening of sexual and reproductive rights of girls and young people are included in Sweden’s Policy for Global Development in the Implementation of Agenda 2030 (2016)¹ and in the Policy Framework for Swedish Development Cooperation and Humanitarian Assistance adopted in December 2016, which states:

“The right to decide over and exercise control over one’s own body, sexuality and reproduction is fundamental. Sexual and reproductive health and rights (SRHR) play a prominent role in Swedish development cooperation. Increasing women’s, men’s and young people’s access to information and education about sex and relationships, contraception, sexually transmitted infections and safe abortions is a priority.”

¹ Government Communication 2015/16:182
² Policy Framework for Swedish development cooperation and humanitarian assistance, Government Communication 2016/16:60
Several human rights bodies indicate that women’s rights are threatened when their access to contraceptives and safe and legal abortion are restricted.3

Currently there is no existing agreed international definition of integrated SRH-services. However, in mid-2000s, the first international political commitments towards linking and providing HIV and SRH integrated services were made.4 This was developed based on evidence5 suggesting that linking SRH and HIV services is beneficial and feasible. In 2014, SRH-HIV integrated services were agreed to entail a set of comprehensive services by the 30+ members of the Inter Agency Working group on SRH-HIV linkages6.

Sida adopts this understanding of integrated SRH-services, and based on Swedish policies, domestic guidelines and practices explicitly add safe abortion services as an integral part in SRH-integrated services. Safe abortion services should hence be available within a continuum of care of reproductive, maternal, newborn and adolescent health services.


The Mexico City Policy was first enacted in 1984 by Republican President Ronald Reagan and has been reinstated by all Republican administrations after that. This time, the reinstatement of the MCP was declared through a Presidential Memorandum of 23 January, 2017. The MCP requires foreign NGOs to certify that they will not “perform or actively promote abortion as a method of family planning” using any funds (including non-U.S. funds), as a condition for receiving U.S. government global family planning or global health assistance. This means that, in order to be eligible for U.S. international family planning and/or global health assistance funding, foreign NGOs7 cannot provide abortion services, counsel or refer for abortion, or advocate for abortion law reform, even with its own, non-U.S funds (including other donor funding). There are a few exceptions to this policy, as outlined below. In contrast to previous Republican administrations’ implementation of the MCP (when the MCP only applied to USAID’s family planning funding) the scope of the MCP has been widened and the MCP is now applicable to almost all global health assistance provided by the U.S. government, which is primarily funded through the USAID and the State Department. The formal title of the expanded policy is “Protecting Lives in Global Health Assistance”, PLGH.

On 24 May 2017, USAID issued revised “Standard Provisions for Non-US NGOs” outlining provisions that are to be included in grants, cooperative agreements and contracts with USAID including the Protecting Lives in Global Health Assistance8. Although the MCP and PLGH do not apply to US-based NGOs, these organisations are obliged to ensure that no health funding is forwarded to sub-

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3 E.g. CEDAW, UN Special Procedures
4 Glion Call to Action on Family Planning and HIV (2005), New York Call to Commitment (2005) and the UNGASS Political Declaration on AIDS (2006)
7 Both for- and not-for-profit
8 USAID Standard Provisions for Non-US based Nongovernmental Organizations 05/22/2017, partially revised
recipients in a foreign country to perform or promote abortion. Although other U.S. agencies have not yet released their provisions, it is expected that they will be similar to the ones issued by USAID.

Entities/institutions to which the MCP and PLGH do not apply:
- Foreign governments ("national and sub-national")
- U.S. non-governmental organisations
- Multilateral/UN organisations, including the Global Fund to Fight AIDS, TB and Malaria (GFATM) and Gavi.

Activities or programmes to which the MCP and PLGH do not apply:
- Abortion services or counselling and referring for abortion in cases of life endangerment, rape, or incest;
- Post-abortion care, including “treatment of injuries or illnesses caused by legal or illegal abortions”;
- Humanitarian assistance, including State Department migration and refugee assistance and USAID and Department of Defence disaster and humanitarian relief activities;
- Basic health research, particularly biomedical, but not most operations or implementation-science research;
- American Schools and Hospitals Abroad, a programme created in 1947 to provide assistance to construct and equip schools, libraries, and medical centers overseas; and
- Food for Peace (P.L. 480) programmes, food assistance for both emergency relief and development purposes.
- Water Supply and Sanitation (program area HL.8) but exemption is only for water and sanitation infrastructure spending for some household settings, schools, health facilities, and industrial and commercial use and national policy development and governance activities (however, household and community-level water, sanitation, hygiene (WASH) activities are NOT exempted from MCP/PLGH)

It is also possible for the Secretary of State to do “additional, case-by-case exemptions” to the policy in consultation with the Secretary of Health and Human Services (presumably to be utilized in the event of public health emergencies such as disease outbreaks or epidemics or if there is only one viable foreign NGO to be partnering with in a given context).

The MCP and PLGH restrictions will not be applied to a foreign NGO until it faces a new funding action, either in the negotiation of a new grant or cooperative agreement or when existing grants and cooperative agreements “are amended to add incremental funding.” If funding is already obligated to a foreign NGO under an existing grant or cooperative agreement – but not expended – the organization should not be faced with certifying compliance with the restriction as a condition of its release of funds and should receive the USG funding due without interference.

In brief:
- **Foreign based NGOs** – cannot receive U.S. global health funding if they are working on abortion related activities.
- **U.S.-based NGOs** – can receive U.S. global health assistance and family planning funding but cannot sub-contract to foreign based NGOs without including the MCP/PLGH in agreements.
- **Humanitarian NGOs** – can work on abortion-related activities with other funding than from the U.S. However, some humanitarian NGOs receive parallel health development funding so it will be important to follow how policy implementation develops.
- **Foreign governments** – can receive U.S. global health assistance and continue to work on abortion related activities with other funding.
- **UN agencies** – can receive U.S. global health assistance and continue to work on abortion-related activities with other funding. However, as from April 2017, U.S. has defunded UNFPA by invoking the Kemp-Kasten Amendment.
- **Research institutions** – basic health and biomedical research can receive U.S. funding without including the MCP/PLGH.

4. **Sida’s actions to understand and mitigate the effects of the MCP/PLGH**

Below is a set of actions Sida should take to understand and reduce the negative effects of the MCP/PLGH. The actions points will also ensure that Sida’s partners implement programmes in accordance with their partner agreement with Sida and in line with Sweden’s position on SRHR.

**a. Dialogue about MCP/PLGH with partner organisations**
- Ask partners about how the MCP/PLGH impacts their operations and the situation on the ground.
- Ask partners if they are receiving or expecting to receive US government funding for global health and plan to comply with the MCP/PLGH (see 4 c).
- According to Sida templates for agreements with NGOs, partner organisations are expected to inform Sida if they see a risk that activities agreed to in their agreement with Sida are not successfully implemented.

**b. Sida’s Contributions**

- When relevant for SRHR (and other related topics, see below) include MCP/PLGH as a risk in assessments and follow up (including dialogue) of contributions.
- For new agreements with partners containing SRHR results, Sida units/Embassies should inform the Head of Department and the Lead Policy Specialist for Health and SRHR at Sida HQ.

**c. If a Sida partner organisation agrees to comply with the MCP/PLGH (signs USAID agreement including MCP)**

- If one of Sida’s partner organisations chooses to comply with the MCP/PLGH, Sida/the Embassy must look at the programmatic/operational implications of that decision. If the agreed activities with Sida include; integrated SRH-services, comprehensive sexuality education (CSE), SRHR-information, safe abortion services or information or advocacy or information on reproductive rights (such as the empowerment of girls and women by informing of their rights), the signing of the USAID contract will be in conflict with the Sida agreement.
- Sida should inform the partner organisation that it is the partner’s responsibility to ensure that the Sida-funded program can continue as per the agreement, including the SRHR-activities in the programme documents.
- If the partner cannot find a solution and certain components of a programme will be left out or changed due to MCP/PLGH, then Sida will have to examine alternatives.
- If the partner cannot carry out all or some of the agreed activities, Sida may see it fit to phase out the programme, end certain components or terminate the agreement. Funds may be reallocated to another partner that can implement the planned activities.
- If an agreement is terminated, Sida units/Embassies should inform the Head of Department and the Lead Policy Specialist for Health and SRHR at Sida HQ.