



**Global
Justice Center**

Human Rights Through Rule of Law

United States of America

UPR Mid-Term Submission to the UN Human Rights Council

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Executive Summary

During the United States' ("US") second-cycle Universal Periodic Review ("UPR"), multiple recommendations were made with respect to US abortion restrictions on foreign assistance, including the Helms Amendment. The US has failed to take any action on these recommendations, and in fact, in 2017, the Trump Administration entrenched and expanded the scope of these policies further with the reinstatement of the Global Gag Rule (or "GGR", officially termed "Protecting Life in Global Health Assistance"). This submission highlights continuing concerns over these US policies which impose blanket prohibitions on abortion services and speech, in violation of US obligations under international humanitarian law, international human rights law, customary international law, and UN Security Council Resolutions.

US Abortion Restrictions During Cycle 1 and 2 of the UPR

1. The issue of US abortion restrictions has been raised by concerned states during both Cycle 1 and Cycle 2 UPR's of the United States, with a focus on the impact on girls and women raped in conflict zones.
2. In Cycle 1, Norway explicitly recommended that the US "remove blanket abortion restrictions on humanitarian aid covering medical care given to women and girls who are raped and impregnated in situations of conflict."¹ The US rejected this recommendation with the spurious reason of "currently applicable restrictions"² following Cycle 1 and in the years that followed continued to impose blanket restrictions on abortion services in conflict zones, in violation of their obligations under international human rights and humanitarian law.
3. In Cycle 2, US abortion restrictions were once again challenged, this time by 6 states—the Netherlands, United Kingdom ("UK"), Norway, Belgium, France and Switzerland.³
4. Switzerland and Norway, in advanced questions,⁴ asked the United States what action had been taken to address Norway's Cycle 1 recommendation (above, para. 2) on the impact of these restrictions on women raped in conflict. Norway, the Netherlands, and the UK in addition asked for information regarding the ability to clarify and permit exceptions to the Helms Amendment, including with respect to services for girls and women raped in war, and in cases where US policies conflict with the funding policies of other states. Finally, Norway further asked for clarification on the barriers to acting to permit exceptions in the restrictions for rape, life endangerment and incest. Despite these clear questions submitted in advance, the United States did not provide the requested information during the review.⁵
5. In addition to advanced questions, 5 states made recommendations⁶ to the United States on these restrictions during the review. The Netherlands, France, Belgium and the UK, all recommended action on these restrictions with respect to girls and women raped in conflict zones. In addition, Norway, the UK and Belgium more generally recommended that the US take action to ensure that the US abortion restrictions, at a minimum, had clear exceptions in cases of rape, incest and life endangerment. The US government, without reason, rejected all but one of these restrictions.⁷ It did however accept in part France's recommendation to "ensure that US international aid allows access to sexual and reproductive health services for female victims of sexual violence in conflict" and stated that they supported the "recommendation's principle: addressing the needs of women who have been victims of sexual violence in conflict zones."⁸

6. Despite the plurality of concerns raised about these restrictions during both Cycles 1 and 2, the US has failed to take any action in line with these recommendations or mitigate the harms raised, including on girls and women raised in war. Worse yet, in 2017, the newly installed Trump Administration, through its reinstatement and expansion of the Global Gag Rule, has further entrenched these restrictions and expanded the scope of the restrictions beyond US funding. As explained in this submission, these actions put the US place the US even further in violation of their obligations under international law, including under international humanitarian law, international human rights law and Security Council resolutions.
7. As a result of the US's failure to act on Helms-related restrictions and the reinstatement of the Global Gag Rule, other states, including many who have previously expressed concern to the US government about these policies during the UPR have translated their concerns to action. Examples include the Dutch and Belgian-led "She Decides" campaign, which seeks to fill funding gaps in the field of global sexual and reproductive health and rights ("SRHR") caused by US abortion restrictions, as well as individual efforts by countries like the United Kingdom and Canada to increase their support for family planning and SRHR. These efforts are essential to ability of women and girls around the world to access the rights guaranteed to them under international human rights and humanitarian law. Meanwhile, the US continues to impose its policies in blatant violation of their obligations under international law and women's rights.

Framework of US Policies Relevant to this Submission

8. This section details the US policies that restrict abortion services and speech for women and girls overseas, including those imposed by the US congress—the Helms and Siljander Amendments—as well as the Presidentially imposed Global Gag Rule. The congressionally mandated restrictions (or "Helms-related restrictions") dictate how US foreign aid can be spent and is applied to all foreign assistance funds. The GGR places additional limits on how funds from *any* donor can be spent if a foreign non-governmental organization receives US global health assistance.

Helms-related restrictions

9. The 1973 Helms Amendment to the Foreign Assistance Act of 1961 provides that "[n]one of the funds made available to carry this part [Part I of the Foreign Assistance Act] may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortion." The Helms Amendment applies to all US foreign aid regardless of program purpose, including humanitarian aid, and to all categories of grantees, including US and non-US NGOs (foreign NGOs or "fNGOs"), governments and public international organizations.
10. Generally, the phrase "abortion as a method of family planning" is understood to permit abortions in situations where the pregnancy is the result of rape or incest, or where it threatens a woman's life. However, since the George W. Bush administration, the Helms Amendment has been implemented as a total ban on abortion services without exceptions for rape, incest, or life endangerment exceptions.¹⁰
11. In addition to abortion services, Helms also restricts abortion-related speech. In particular, the "motivate" provision is interpreted to limit all public dialogue around abortion and applies to

“information, education, training, or commination programs” on abortion, including political speech.¹¹

12. The related Siljander Amendment also restricts abortion-related speech and political activity. Specifically, Siljander prohibits US foreign assistance funds from being used to lobby for or against abortion,¹² and is broadly interpreted and implemented. Like Helms, Siljander applies to all foreign assistance and all categories of grantees.
13. While both the Helms and Siljander restrictions technically only limit abortion services and speech with US funds, unless grantees implement onerous and rigorous efforts to keep segregated funding accounts and practices, US abortion restrictions *de facto* also affect the funds provided by other donors. While certain larger and well-established organizations and agencies have such policies in place, many do not, which radically expands the reach of these restrictions beyond US funds.
14. The Helms Amendment has consistently been in place since 1973 and the Siljander Amendment since 1981. These restrictions are fundamental cornerstones of US foreign assistance, have been rigorously enforced and monitored by both Democratic and Republican presidential administrations and as a result, have impeded efforts to realize women’s fundamentally protected human rights to access safe abortion services for decades.

The Global Gag Rule

15. The GGR is a separate and additional abortion restriction that is currently attached to US global health assistance. At its most basic: where the Helms-related restrictions prohibit abortion services and speech with US foreign aid, the GGR further prohibits fNGOs from providing abortion services or engaging in abortion-related speech *with funds from any source, including other donor*.¹³ That is, the GGR controls how fNGOs can spend non-US aid and applies to both direct funding and sub-grants.
16. The GGR is imposed at the discretion of the US President and has been implemented and rescinded along political party lines since the Reagan Administration. All Republican administrations since 1984 have re-implemented the policy via executive order after previous Democratic administrations had withdrawn it. The constant back and forth between implementing and rescinding the GGR has created widespread confusion and service interruptions around the world. In addition, the GGR, coupled with the Helms-related restrictions, has had a chilling effect on abortion services speech, which extends far beyond the direct reach of these policies. As a result, US grantees avoid even permitted services and speech due to fears of withdrawal or loss of US funding.
17. The version of GGR put in place by the Trump Administration exacerbates GGR’s ill effects by vastly expanding the scope of the funding affected. Whereas previous Republican presidents applied the GGR only to fNGOs who received US family planning assistance, under Trump’s expansion, the GGR now applies to all fNGOs receiving US global health assistance, whether directly or as sub-grants.¹⁴ “Global health assistance” is broadly defined to include funding for health programs related to HIV, maternal and child health, nutrition, tuberculosis, malaria, global health security, family planning and reproductive health.¹⁵ “Assistance” includes “the provision of funds, commodities, equipment, or other in-kind global health assistance.”¹⁶

18. The 2017 expansion of the GGR to all global health assistance impacts over \$8 billion in US funding (compared to \$600 million when applied only to family planning assistance).¹⁷ Studies show that organizations who are unable to refuse to sign the GGR face resource shortages for family planning, reproductive health services, family planning counseling, contraception, and reproductive cancer screenings.¹⁸ A recently released review of the first 6 months of GGR implementation reveals that of 733 funding contracts that contained the requirements of the GGR, only 4 organizations (or 0.5%) were able to decline to sign gagged contracts.¹⁹ Since the requirements of the GGR only apply to new or modified funding agreements, the full scope of the impact will not be apparent in the foreseeable future.
19. One known consequence of GGR-related funding cuts and service reductions is higher abortion rates around the world, particularly unsafe abortion. One study examining the impact of this policy found that abortion rates actually increased in places with “high exposure” to the GGR, which was likely the result of fewer resources for family planning from fNGOs who had declined US funding in order to protect their abortion services.²⁰ One of USAID’s largest partners in family planning, Marie Stopes International, estimates that the expanded GGR will result in 2.2 million more abortions worldwide each year.²¹ Of those, 2.1 million will be unsafe.
20. While the GGR specifically applies to fNGOs (restricting US NGOs would violate US Constitutional guarantees to free speech), US-based NGOs are in fact impacted by the policy because they are required to pass the restrictions on to their sub-grantees. In other words, the GGR specifically requires US NGOs that receive global health funds to apply the GGR when making sub-grants to fNGOs, rendering those organizations as agents of censorship and limiting the scope of their partnerships and ability to freely associate.
21. Trump’s GGR restricts funding from USAID, the State Department, the Department of Defense, Department of Health and Human Services, the National Institute for Health, and the Center for Disease Control and Prevention. Previous iterations only impacting funding from USAID and the State Department.
22. While humanitarian assistance and disaster relief funding streams are technically excluded from GGR, fNGOs that receive multiple US grants may still be gagged—as long as one of the grants comes from US global health assistance funding. For example, if an organization receives global health assistance *and* exempted humanitarian assistance, the organization must sign the GGR, imposing GGR restrictions on all their programs.
23. The consequences of this policy are devastating to women throughout the world, particularly those in rural areas where their healthcare options are limited.²² FNGOs receiving US foreign assistance are forced to choose between severe budget cuts if they forgo US funding in order to offer comprehensive reproductive health services or drastically reduce their services to women and girls who likely already face a shortage of healthcare options should they accept the aid and eliminate their abortion related services.²³

US Abortion Restrictions on Humanitarian Aid for War Victims Violate International Humanitarian Law

24. International humanitarian law (“IHL”) seeks to limit the effects of armed conflict by providing people in conflict settings a set of fundamental rights and protections, including to all necessary medical care.²⁴ Accordingly, US abortion restrictions implicate the right to medical care under IHL. The 1949 Geneva Conventions and their Additional Protocols require that the “wounded and sick” be collected, cared for and receive comprehensive, non-discriminatory medical treatment.²⁵ As a legal matter, the terms “wounded” and “sick,” “cover maternity cases...and other persons who may be in need of immediate medical assistance or care, such as...expectant mothers,” which clearly includes pregnant women and girls in conflict settings.²⁶ Additionally, under IHL, “it is irrelevant whether the need for care [for the wounded and sick] arises from a medical condition that pre-dates the conflict or is linked to, even if not caused by, the conflict.”²⁷ IHL also mandates equal treatment between men and women in the provision of medical care and prohibits discrimination on the basis of sex (as well as other criteria).²⁸ This means that medical outcomes for men and women must be the same, not that treatment must be identical. Intentionally broad, the right to non-discriminatory medical care in conflict situations therefore includes the right to abortion and related services.²⁹
25. In addition to encompassing abortion services as non-discriminatory medical care, IHL also protects the procedure via its guarantee of humane treatment and the right to be free from treatment that is cruel and inhuman.³⁰ While a precise legal definition of humane treatment does not exist, its meaning is context specific and encompasses “the physical and mental condition of the person,” and differences based on gender.³¹ In addition, to qualify as cruel or inhuman treatment, an act must cause physical or mental pain of a serious nature—such as lack of adequate medical attention.³²
26. The US is bound by IHL under the Geneva Conventions and customary international law (“CIL”).³³ Specifically, common Article 1 of the 1949 Geneva Conventions requires all states “respect” and “ensure respect for” the Conventions, including the minimum standards set forth on common Article 3 and IHL “in all circumstances” regardless of whether they are a party to the conflict.³⁴ Thus, the US must “respect” and “ensure respect for” IHL, which includes providing non-discriminatory humanitarian aid to women and girls in conflict situations.³⁵

Helms-related restrictions

27. As noted above, Helms-related restrictions apply to all US foreign assistance, including humanitarian assistance for war victims and all categories of grantees. These restrictions do not permit exceptions in cases of rape, incest and life endangerment.
28. The Helms Amendment violates the IHL mandate to provide comprehensive and non-discriminatory medical care to the “wounded and sick” by excluding abortion as a medical procedure available to pregnant war victims. This policy singles out and excludes a medical procedure uniquely and exclusively needed by women and girls, and in the humanitarian context, those raped and impregnated in war. For example, in the context of rape, which is perpetrated against women and men in different ways and by different methods, the injuries suffered necessitate different medical care. A man raped with the barrel of a gun who develops a fistula requires different treatment than a woman raped by a penis who becomes pregnant. While the

“medical care and attention required by the condition” may require surgery or some other procedure in the man’s case, the pregnant woman may require an abortion. Indeed, in the case of a pregnancy that threatens the life of a woman or girl, the option of an abortion is the *only* appropriate medical service.

29. This policy also violates IHL’s right to be free of cruel and inhuman treatment. Denying abortion services for victims of conflict exacerbates their suffering and exposes them to severe physical and/or mental harm.³⁶ It takes away a woman’s right to make decisions about her body and forces her to assume the risks of an unwanted pregnancy, risks that are exacerbated in war. This includes an increased risk of maternal mortality as well as prolonged physical, emotional and psychological harm resulting from carrying an unplanned pregnancy to term.³⁷ Pregnant women and girls may be ostracized by their communities and their suffering can be so severe that denying abortion services in certain circumstances has been found to constitute torture or cruel, inhuman, or degrading treatment.³⁸

The Global Gag Rule

30. Because of narrow exceptions, the GGR does not directly apply to US humanitarian aid funding streams.³⁹ However, NGOs subject to GGR who receive funds from both global health funding streams and humanitarian funding streams may in fact have their humanitarian programming impacted if they must sign GGR as a condition of their global health grants. Furthermore, GGR contains explicit exceptions for the provision of services in cases of rape, life endangerment and incest, permitting the provision of these services in these cases with funds from other donors. That said, whether through mis- or over-application or censorship through other funding streams, GGR limits abortion services for war rape victims, the application of GGR in those contexts would violate obligations under IHL to provide all necessary and non-discriminatory medical care, human treatment, and the prohibition on cruel and inhumane treatment, as detailed above in paragraphs 27-29.

US Abortion Restrictions on Foreign Aid Violate US Obligations Under the International Covenant on Civil and Political Rights

31. The International Convention on Civil and Political Rights (“ICCPR”) protects the civil, political, economic, social and cultural rights of all human beings.⁴⁰ The Covenant protects access to abortion services under a variety of rights including the right to non-discrimination under Article 3, the right to life in Article 6, and the right to be free from torture, cruel, inhuman or degrading treatment under Article 7.⁴¹ Most recently, the Human Rights Committee (“HRC”), in its draft General Comment on Article 6, stated that “State parties may not regulate pregnancy or abortion in a manner that run contrary to their duty to ensure that women do not have to undertake unsafe abortions” and that “the duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access...to information and education about reproductive options.”⁴² In addition, the HRC draft Comment notes that legal restrictions on abortion must not “jeopardize their lives or subject them to physical or mental pain or suffering which violates article 7” and that abortions should be available, at a minimum in circumstances to protect a woman’s health and life, where carrying the pregnancy to term would cause “substantial pain or suffering” or in cases of rape, incest or fetal impairment. The HRC has also on numerous occasions recommended that state parties amend their criminal abortion laws to comport with the ICCPR.⁴³

32. In addition to protecting abortion services, the ICCPR also provides essential protections for free expression/speech and free association. Article 19 protects the right to freedom of expression, which includes the “freedom to seek, receive, and impart information and ideas of all kinds.”⁴⁴ Article 22 protects the right to freely associate with others, including the right of an association to carry out its statutory duties⁴⁵ and access funding for its existence and purposes from domestic, foreign and international sources.⁴⁶ Any restriction on these rights must be: (1) prescribed by law; (2) serve a legitimate aim specified in Article 19(2); and (3) be necessary in a democratic society and proportional to achieving that aim.⁴⁷
33. The US has a legal obligation to uphold and protect all individual rights guaranteed by the Covenant, as well as an obligation to not interfere with the obligations of other States parties.⁴⁸

Helms-related restrictions

34. By restricting access to abortion services and information Helms-related restrictions impede the realization of ICCPR protected rights for women around the world. Studies show that women will often resort to unsafe methods to terminate their pregnancies when denied access to safe abortion services,⁴⁹ putting their lives unnecessarily at risk.⁵⁰ It is estimated that 25 million unsafe abortions take place each year, and between 4.7% and 13.2% of maternal deaths annual result from unsafe abortions.⁵¹ In addition, the Helms Amendment is implemented as a total ban with none of the exceptions required by the ICCPR. The service and information limitations that result from Helms-related restrictions and force women to resort to unsafe methods and do not allow for access in the required exceptions are in clear violation of ICCPR protected rights, including the right to life, non-discrimination and to be free from torture, cruel, inhuman and degrading treatment.
35. Moreover, the Helms-related restrictions censor the speech of a wide range of actors and recipients of US aid—limiting the activities, speech, and information that can be legally provided by doctors, health professionals, experts and advocates. These speech restrictions in some contexts intervene in the one to one relationship between a medical professional and a patient, which has been shown to in violation of the freedom to “seek, receive, and impart information and ideas of all kinds.”
36. Helms-related speech restrictions also directly “impede political debate” and prevent the dissemination of information of “legitimate public interest,” including research regarding unsafe abortions and maternal mortality in violation of ICCPR Article 19. For example, guidance on implementing the Siljander Amendment USAID has reminded staff that “the subject of abortion can come up in non-health contexts, such as constitutional or other legislative reform.” The guidance further notes, with respect to USAID standard provisions implementing Helms and Siljander in contracts with foreign governments, that the language should be “include[d] in any Agreement that finances any democracy and governance activities that will support constitutional or any health-related legislative reform.”⁵²
37. The implementation of these requirements also fails the ICCPR’s test for valid restrictions on the freedom of speech. Their language remains vague and their consequences unclear to the point where they are not “prescribed by law.” The US government has created a chilling effect on abortion-related speech through overbroad application of these restrictions and by failing to clarify what speech and activities are allowed. Second, the restrictions do not serve a legitimate

aim, and negatively affect public health by limiting access to safe abortion services and information. Lastly, they are not necessary in a democratic society, and instead limit democratic debate on the availability of and access to a human right in other countries.⁵³

38. In addition to impacts on speech, the Helms-related restrictions also impede the ability to freely associate. Funding restrictions violate an NGO's right to freedom of association by curbing access to resources they need to exist and operate as an organization. The right to seek and secure funding is inherent to an organization's right to association, and international law does not distinguish between sources of funding.⁵⁴ When an NGO is not allowed to seek and secure funding, it also loses its ability to provide essential services in line with its mission and to advocate for human rights.⁵⁵ There is no doubt that Helms-related restrictions are the types of funding restrictions that impede on the freedom of association.

The Global Gag Rule

39. Like the Helms-related restrictions, the GGR's limitation on service provision force women to seek out unsafe methods or carry to term an unwanted pregnancy with outcomes that are at odds with women's fundamental rights under the ICCPR. Furthermore, while the GGR does have exceptions for rape, life endangerment and incest, unlike the Helms Amendment, it defines abortions performed for the physical or mental health of the mother or in cases of fetal abnormalities as abortions "as a method of family planning"—meaning these cases are not exempted from GGR.⁵⁶ As noted above, the HRC's draft comment on the right to life envisages a broad range of required exceptions, including for physical and mental health and fetal impairment, placing the GGR in direct opposition to the requirements of the ICCPR.
40. The GGR prohibits the "active promotion" of abortion as a method of family planning. Prohibited activities include: counseling, including advice and information, and public information campaigns about the benefits and/or availability of abortion; providing advice that abortion is an available option or encouraging women to consider an abortion; and lobbying a foreign government to legalize, continue the legality or make abortion available.⁵⁷ The impact of these restrictions on speech are similar to, as well as intertwined with, the violations of the freedom of speech and association described in paragraphs 34-38 above.

US Abortion Restrictions on Foreign Aid Violate US Obligations Under the Convention against Torture

41. The Convention against Torture ("CAT") guarantees the right to be free from torture, or cruel, inhuman or degrading treatment.⁵⁸ This includes the right, in certain circumstances, to abortion and the "means for as full rehabilitation as possible."⁵⁹ The CAT Committee has found that the denial of safe abortion services to women and girls, especially rape victims, leads to "grave consequences, including unnecessary deaths of women,"⁶⁰ and "constant exposure to the violation committed against her...serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression."⁶¹ Thus, States parties to CAT are obligated to help "prevent acts that put women's physical and mental health at grave risk and that constitute cruel and inhuman treatment,"⁶² and that includes ensuring access to safe abortion services for rape victims.

42. Under the rules of the Vienna Convention on the Law of Treaties (“VCLT”), states that are signatories to a treaty are, at minimum, obligated not to undermine the essential goals of a treaty’s object and purpose whereas ratification indicates a state’s “consent to be bound by a treaty.”⁶³ These rules are considered binding customary international law. Thus, the US, having signed (1988) and ratified (1994) the CAT, is obligated to uphold its object and purpose, which is to protect against torture and prevent other acts of cruel, inhuman or degrading treatment or punishment.⁶⁴

Helms-related restrictions

43. Because the Helms Amendment has been interpreted as a full ban on abortion services with US foreign aid, this policy is a violation of the CAT as it forces women and girls raped and impregnated in war to carry their pregnancies to term and suffer serious physical and mental health consequences as a result of the forced pregnancy.

44. The anti-abortion policy of the Helms Amendment subjects countless thousands of women and young girls worldwide—including those raped in war—to carry their unwanted to pregnancies to term in violation of the objects and purpose of the CAT. Given that access to abortion, at least in certain circumstances, implicates the rights to be free from torture, cruel, inhuman or degrading treatment, the US, as a ratifying state, is bound under the VCLT and customary international law to uphold these core objectives and purposes.

The Global Gag Rule

45. The 2017 GGR expands the reach of the US’s anti-abortion policies to cover all fNGOs that either directly or indirectly receive US global health assistance. Despite the technical exceptions for rape, incest, and life endangerment, the application of the policy in practice results in a de facto ban on abortions in violation of CAT.

US Abortion Restrictions on Humanitarian Aid for War Victims Violate United Nations Security Council Resolutions 2106, 2122 and 2242

46. The UN Security Council passed three resolutions under the Women, Peace and Security agenda requiring donor states—including the US—and humanitarian programming to ensure access to comprehensive, non-discriminatory medical care and access to safe abortion services.⁶⁵

47. Security Council Resolution 2106 reiterates that “sexual violence in armed conflict are war crimes” and calls attention to the disproportionate impact of sexual violence on women and girls in armed conflict.⁶⁶ In recognition of the impact of sexual violence on women and girls and the “importance of providing timely assistance to survivors of sexual violence,” the Resolution calls for all donor states to “provide non-discriminatory and comprehensive health services, including sexual and reproductive health...for survivors of sexual violence.”⁶⁷

48. Security Council Resolution 2122 stresses that Member States safeguard humanitarian aid funding, including “the full range of medical...services to women affected by armed conflict and post-conflict situations...*noting* the need for access to the full range of sexual and reproductive health services, including regarding from pregnancies resulting from rape, without discrimination.”⁶⁸ This language is reinforced in Security Council Resolution 2242 which calls on

Members States and the UN to integrate “gender considerations across humanitarian programming by seeking to ensure...the full range of medical, legal and psychosocial and livelihood services, without discrimination.”⁶⁹

49. As a member of the UN, the US is bound by the UN Charter and must therefore “accept and carry out” decisions of the Security Council.⁷⁰

Helms-related restrictions

50. The Helms Amendment restrictions on abortion services amount to a denial of non-discriminatory and comprehensive medical care to women and girls raped and impregnated during war in violation of UN Security Council Resolution 2106.
51. The policy further violates Resolutions 2122 and 2242 by specifically denying women and girls access to the full range of reproductive healthcare, which includes pregnancy services.
52. As Resolutions 2106, 2122 and 2242 incorporate IHL, the US’s contravention of these Resolutions amounts to a violation of IHL. In its failure to comply with these resolutions, the US has violated its obligation under Article 25 of the UN Charter to accept and carry out decisions of the Security Council.

The Global Gag Rule

53. While the GGR contains exceptions for cases of rape, incest or life endangerment, the policy is widely misunderstood by aid recipients and in practice over broadly applied. As a result, GGR has resulted in a de facto ban on abortions, including in cases of rape, incest, or life endangerment in violation of Security Council Resolutions 2016, 2122 and 2242.

Conclusion

54. The US government has wholly failed to act to implement UPR recommendations made during Cycle 1 and 2 with respect to its abortion restrictions or even take any actions to mitigate concerns raised about its harms. Worse yet, with the reinstatement and expansion of the Global Gag Rule in early 2017, the harmful impact of these restrictions has broadened and deepened. These restrictions not only ignore the US’s own obligations under international law, but violate a broad array of women’s rights, deny them essential services and put their lives and well-being at risk.
55. The Helms Amendment has been continually in place for 44 years, the Siljander Amendment for 37 years and the Global Gag Rule intermittently since 1984. These restrictions place US aid grantees in the often-untenable decision of choosing between continuing to receive US funds, while ending or limiting essential sexual and reproductive health services for women and girls around the world, or lose US funding with a similar impact. It is far beyond time for the US to repeal these regressive and harmful policies and allow their generous aid to be used to pursue positive health outcomes for women and to realize women’s fundamental rights under international human rights and humanitarian law. In addition, and at a minimum, the US government should ensure the broadest possible exceptions to the policy, including in cases of rape, life and health endangerment, incest and fetal impairment, fully exempt humanitarian aid

and allow such aid to be provided in line with IHL, and issue clear guidance on permitted and prohibited activities to allow grantees to regulate their conduct without onerous or overbroad procedures and with minimal risk.

Endnotes

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011).

² Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, U.N. Doc. A/HRC/16/11/Add.1 (Mar. 8, 2011).

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/30/12 (Jul. 20, 2015); Human Rights Council; Advance Questions to the United States of America-Addendum 1, available at <http://lib.ohchr.org/HRBodies/UPR/Documents/Session22/US/Advance%20questions%20to%20United%20States%20of%20America%20Add.1.docx>.

⁴ Human Rights Council; Advance Questions to the United States of America-Addendum 1, available at <http://lib.ohchr.org/HRBodies/UPR/Documents/Session22/US/Advance%20questions%20to%20United%20States%20of%20America%20Add.1.docx>.

⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/30/12 (Jul. 20, 2015).

⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/30/12 (Jul. 20, 2015).

⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015).

⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015).

⁹ Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 104(f)(1), 75 Stat. 424, as amended by the Foreign Assistance Act of 1973 (P.L. 93-189).

¹⁰ Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women's Rights and Human Rights* (January 2018), <http://globaljusticecenter.net/files/FAQAbortionRestrictions.pdf>.

¹¹ USAID Policy Paper - Bureau for Program and Policy Coordination, Population Assistance, September 1982, at 7.

¹² Siljander Amendment, FY 2006 Appropriations Act, Pub. L. No. 109-102, "Child Survival and Health Programs Fund," 119 Stat. 2172.

¹³ Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women's Rights and Human Rights* (January 2018), <http://globaljusticecenter.net/files/FAQAbortionRestrictions.pdf>.

¹⁴ Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, Including the Global Gag Rule, Violate Women's Rights and Human Rights* (November 2017), available at <http://www.globaljusticecenter.net/files/FAQAbortion.pdf>.

¹⁵ United States Department of State, *Factsheet: Protecting Life in Global Health Assistance* (May 15, 2017), available at <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>; see also Kaiser Family Foundation, *The Mexico City Policy, An Explainer* (June 1, 2017), available at <https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/>.

¹⁶ PAI Org, *Implementation of Protecting Life in Global Health Assistance* (May 2017), available at https://pai.org/wp-content/uploads/2017/09/FINAL-MCP-Press-Guidance_2017-05-14.pdf; see also The Kaiser Family Foundation, *The Mexico City Policy: An Explainer* (June 1, 2017), available at <https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/>.

¹⁷ The Kaiser Family Foundation, *The Mexico City Policy: An Explainer* (June 1, 2017).

¹⁸ The Kaiser Family Foundation, *The Mexico City Policy: An Explainer* (June 1, 2017).

¹⁹ The Kaiser Family Foundation, *The Mexico City Policy: An Explainer*, at footnote 21 (June 1, 2017).

²⁰ The Kaiser Family Foundation, *The Mexico City Policy: An Explainer* (June 1, 2017).

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- ²¹ Jina Moore, Here's How Trump's Anti-Abortion Rule will Affect Women Worldwide, BuzzFeed (January 23, 2017), available at https://www.buzzfeed.com/jinamoore/trump-just-slapped-an-anti-abortion-rule-on-foreign-aid?utm_term=.gq71JVaQgG#.ba1mD0edL7.
- ²² Emily Crockett, How the Global Gag Rule Will Hurt Women and Families, as Explained by 2 Experts on the Ground (March 8, 2017), Vox, available at <https://www.vox.com/identities/2017/1/27/14397126/global-gag-rule-trump-increase-abortion-reduce-birth-control>.
- ²³ The Kaiser Family Foundation, *The Mexico City Policy: An Explainer* (June 1, 2017).
- ²⁴ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [hereinafter "Protocol I"], (1979) 1125 UNTS 3, art. 10, "In all circumstances they [the wounded and sick] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones;" Additional Protocol (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts [hereinafter "Protocol II"], (1979) 1125 UNTS 609, art. 7. See also International Committee of the Red Cross (ICRC), Customary International Law Database, Rule 26 (medical personnel must be allowed to give the best possible care in accordance with medical ethics (this rule is codified in API, art. 16 and also applies to non-international conflicts)) available at <https://www.icrc.org/customary-ihl/eng/docs/Home>.
- ²⁵ Codified in Additional Protocol I, Article 10 of the Geneva Conventions.
- ²⁶ International Committee of the Red Cross, *Commentary of the 2016 Convention (I) for the Amelioration of the Condition of the Wounded and Sick Armed Forces in the Field*, available at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>
- ²⁷ International Committee of the Red Cross, Commentary to Protocol Additional (II) to the Geneva Conventions of 1949 (1977), common Article 3, ¶ 743.
- ²⁸ Common Article 3 to the four Geneva Conventions of 1949. 6 UNTS 31.
- ²⁹ Akila Radhakrishnan, Elena Sarver & Grant Shubin, *Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers*, Reproductive Health Matters, 25:51, 40-47, available at <https://doi.org/10.1080/09688080.2017.1400361>.
- ³⁰ Common Article 3 to the four Geneva Conventions of 1949. 6 UNTS 31.
- ³¹ ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶ 553.
- ³² ICRC, 2016 Commentaries to Geneva Convention I, Art. 3, ¶¶ 618, 620.
- ³³ Michael M. Matheson, *The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1959 Geneva conventions*, 2 AM. U. J. INT'L. L. & POL'Y 419 (1987).
- ³⁴ Common Article 1 to the four Geneva Conventions of 1949. See International Committee of the Red Cross, Laurence Boisson de Chazournes & Luigi Condorelli, Common Article 1 of the Geneva Conventions revisited: Protecting collective interests, INT'L REV. RED CROSS, Article No. 837 (March 31, 2000).
- ³⁵ Global Justice Center, *Submission to the UN Human Rights Council, Universal Periodic Review- 22nd Session, United States of America* (2015), available at <http://www.globaljusticecenter.net/documents/GJC.US.UPR2015.CompleteSubmission.pdf>.
- ³⁶ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, paras. 46-50, 90, U.N. Doc. A/ HRC/22/53 (Feb. 1, 2013).
- ³⁷ Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict* (February 2011), available at <http://www.globaljusticecenter.net/documents/LegalBrief.RightToAnAbortion.February2011.pdf>.
- ³⁸ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, paras. 46-50, 90, U.N. Doc. A/ HRC/22/53 (Feb. 1, 2013).
- ³⁹ US Dept. of State, Factsheet, *Protecting Life in Global Health Assistance* (May 15, 2017).
- ⁴⁰ International Covenant on Civil and Political Rights (hereinafter "ICCPR"), Dec. 16, 1966, 99 U.N.T.S 171.
- ⁴¹ Human Rights Committee, General Comment 28 on Equality of rights between men and women, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000); Human Rights Watch, Q&A: Human Rights Law and Access to Abortion (Jul. 24, 2017).
- ⁴² Human Rights Committee, Draft General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (Jul. 2017).
- ⁴³ See Concluding Observations - Poland (2004), CCPR/CO/82/POL, ¶8; Concluding Observations - Guatemala (2001), CCPR/CO/72/GTM, ¶19; Concluding Observations - Nicaragua (2008), CCPR/C/NIC/CO/3, ¶13; Concluding Observations - Ecuador (1998), CCPR/C/79/Add.92, ¶11; Concluding Observations - Argentina (2000), CCPR/CO/70/ARG, ¶14; Concluding Observations - Peru (2000), CCPR/CO/70/PER, ¶20; Concluding Observations - Chile (1999), CCPR/C/79/Add.104, ¶15.
- ⁴⁴ ICCPR, art. 19(2), Dec. 16, 1966, 99 U.N.T.S 171.

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- ⁴⁵ Human Rights Committee, *Korneenko v. Belarus*, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006).
- ⁴⁶ 2013 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, ¶ 8; G.A. Res. 53/144, Annex, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms art. 13, U.N. Doc. A/RES/53/144 (Dec. 9, 1998).
- ⁴⁷ International Covenant on Civil and Political Rights art. 19(3); Human Rights Comm., General Comment No. 34, ¶ 22.
- ⁴⁸ ICCPR, art. 2(1), Dec. 16, 1966, 99 U.N.T.S. 171.
- ⁴⁹ World Health Organization, *Factsheet: Preventing unsafe abortion* (Jan. 2018).
- ⁵⁰ Guttmacher Institute, *Induced Abortion Worldwide* (Sept. 2017).
- ⁵¹ World Health Organization, *Factsheet: Preventing unsafe abortion* (Jan. 2018).
- ⁵² USAID, USAID Guidance for Implementing the Siljander Amendment; USAID, Development Objective Agreement and Bilateral Project Agreement Template (revised July 28, 2014), Annex 2, art. F, § F.2(b)-(d), https://www.usaid.gov/sites/default/files/documents/1868/350mac_0.pdf.
- ⁵³ For further information see Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women's Rights and Human Rights* (January 2018), <http://globaljusticecenter.net/files/FAQAbortionRestrictions.pdf>.
- ⁵⁴ *General Principles: Protecting Civic Space and the Right to Access Resources*, FORMER U.N. SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION (May 28, 2014), <http://freeassembly.net/news/general-principles-right-to-funding/>; *Factsheet: Civil Society's Ability to Access Resources*, FORMER U.N. SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION (May 2015), <http://freeassembly.net/wp-content/uploads/2015/05/Funding-report-factsheet-final.pdf>; Human Rights Council Res. 22/6, Protecting Human Rights Defenders, ¶ 9(b), U.N. Doc. A/HRC/RES/22/6 (Apr. 12, 2013).
- ⁵⁵ 2013 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, ¶ 9 (“undue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political and social rights as a whole.”).
- ⁵⁶ USAID, Standard Provisions for Non-U.S. Nongovernmental Organizations, § RAA29(a)(II) (6)(i) (Oct. 4, 2017).
- ⁵⁷ USAID, Standard Provisions for Non-U.S. Nongovernmental Organizations, § RAA29(a)(10)(iii)(A)(I-IV) (Oct. 4, 2017).
- ⁵⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “CAT”), preamble, Dec. 10, 1984, 1465 U.N.T.S. 85.
- ⁵⁹ CAT, art. 14 Dec. 10, 1984, 1465 U.N.T.S. 85.
- ⁶⁰ Committee against Torture, Concluding Observations: Peru, U.N. Doc. CAT/C/PER/CO/4, ¶23 (25 July 2006).
- ⁶¹ Committee against Torture, Concluding Observations: Nicaragua U.N. Doc. CAT/C/NIC/CO/1, ¶16 (10 June 2009).
- ⁶² Committee against Torture, Concluding Observations: Peru, U.N. Doc. CAT/C/PER/CO/4, ¶23 (25 July 2006).
- ⁶³ Vienna Convention on the Law of Treaties (hereinafter “VCLT”), art. 18 & 60, May 23, 1969, 1155 U.N.T.S.
- ⁶⁴ CAT, Dec. 10, 1984, 1465 U.N.T.S. 85.
- ⁶⁵ S.C. Res. 2106, ¶ 19, U.N. Doc S/RES/2106 (June 24, 2013); S.C Res 2122, preamble, U.N. Doc S/RES/2122 (Oct. 18, 2013).
- ⁶⁶ S.C. Res. 2106, ¶ 2, U.N. Doc S/RES/2106 (June 24, 2013).
- ⁶⁷ S.C. Res. 2106, ¶ 19, U.N. Doc S/RES/2106 (June 24, 2013).
- ⁶⁸ S.C Res 2122, preamble, U.N. Doc S/RES/2122 (Oct. 18, 2013).
- ⁶⁹ S.C. Res 2242, ¶ 16, U.N. Doc S/RES/2242 (Oct. 13, 2015).
- ⁷⁰ U.N. Charter art. 25.