

Submission to the UN Human Rights Council  
*Universal Periodic Review – 22<sup>nd</sup> Session*  
**United States of America**

**A. Executive Summary**

This submission sets out concerns over a United States (“US”) policy that results in the systematic denial of safe abortion services to girls and women raped in war in violation of their rights under international humanitarian law. The policy in question is a set of abortion restrictions that the US places on all of its foreign aid, without exception, including on humanitarian assistance to war victims. As a result of the overly narrow interpretation and implementation of these restrictions, US funds cannot be used for the provision of safe abortion services to girls and women raped in war. The restrictions also act to limit and censor abortion-related speech abroad. As explained in this submission, these restrictions by the US Government render the US noncompliant with its obligations under international humanitarian law, UN Security Council Resolutions, and international human rights law.

**B. Framework of United States Policy Relevant to this Submission**

1. This submission focuses on United States’ (“US”) policy that denies safe abortion services to girls and women raped in armed conflict in violation of the Geneva Conventions, customary international law and international human rights law. This US policy consists of restrictions on abortion services and abortion-related speech that the United States Government (“USG”) attaches to all of its foreign assistance, including humanitarian aid for war rape survivors in places like Syria, Nigeria and Burma.<sup>1</sup>
2. During the first cycle of the UPR of the US, Norway recommended that the USG remove these restrictions on humanitarian aid for girls and women raped in war,<sup>2</sup> a recommendation that the USG rejected, citing “currently applicable restrictions.”<sup>3</sup> It is crucial to note that under international law, a State may *not* invoke—as the USG does here—provisions of its internal law as justification for failing to comply with treaty- or customary-based international legal obligations.<sup>4</sup> The USG refusal to accept Norway’s recommendation has, since 2011, resulted in the denial of comprehensive medical care to war rape survivors in conflicts around the world and censored billions of dollars in humanitarian and development aid.
3. The US policy arises from the overly narrow administrative interpretation and implementation of congressionally-imposed restrictions on foreign aid, in particular the Helms Amendment to the Foreign Assistance Act of 1961. The Helms Amendment provides that “[n]one of the funds made available to carry this part [Part 1 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 abortions.”<sup>5</sup> The phrase “abortion as a method of family planning” is interpreted to allow, at a minimum, funding for abortions in cases of rape, incest or life endangerment.<sup>6</sup> The interpretation and imposition of these regulations by the USG, eliminates the phrase “as a method of family planning” and amounts to a full ban on abortion services with US foreign aid (see Annex A).<sup>7</sup>

4. The US abortion restrictions are applicable to all US foreign aid without exception<sup>8</sup> and are imposed on nearly all the major providers of medical care for war victims, including the conflict countries themselves and multilateral agencies such as the United Nations (“UN”) and the International Committee of the Red Cross (“ICRC”). It should also be noted that the United Nations Population Fund (“UNFPA”) is subject to a unique restriction in addition to the general restrictions discussed above: UNFPA cannot perform a single abortion, even with funds from other donors, or it will be defunded by the US entirely.<sup>9</sup> Since the US is the largest bi-lateral donor of humanitarian aid in the world, this US anti-abortion policy has become the de facto medical protocol for female victims of war rape worldwide,<sup>10</sup> despite growing global consensus on the imperative to provide safe abortion services to girls and women raped in war.
5. In addition to restricting the provision of abortion services, US abortion restrictions also curtail abortion-related speech. The term “motivate,” as used in the Helms Amendment, is interpreted by the USG to prohibit virtually all public discussion of abortion and applies to “information, education, training, or communication programs” about abortion, including political speech.<sup>11</sup> Further, the Siljander Amendment prohibits the use of foreign assistance funding to lobby for or against abortion.<sup>12</sup>
6. In recent years, due to the increasing prioritization of preventing and responding to sexual violence in conflict, global consensus has grown around the legal and moral imperative of providing all necessary medical care, including abortion services, to war rape survivors (See Annex B). The UN Security Council has passed two resolutions recognizing a mandate to provide safe abortion services to girls and women raped in war (see Section B below). In response to these resolutions, the United Kingdom reviewed and changed its policy on humanitarian aid for women war rape victims recognizing that safe abortion services for these victims is protected under international humanitarian law (“IHL”).<sup>13</sup> The Netherlands and France have likewise underlined the importance of complying with this IHL mandate.<sup>14</sup>
7. The US imposition of abortion restrictions on medical care for girls and women raped in war has become the subject of increasing global concern. In 2012 and 2013, the European Parliament passed two resolutions asking European Union Member States to segregate their humanitarian aid from that provided by the US due to concerns about the impact of US abortion restrictions on Member State aid.<sup>15</sup> Several countries, including the United Kingdom and the Netherlands, have engaged the US in bilateral discussions on this issue to urge policy change.<sup>16</sup> Finally, over 30 letters, representing over 3,500 groups, have been sent to President Obama urging him to ensure the rights

of girls and women raped in war by taking action to lift US abortion restrictions on foreign assistance (See Annex C).

### **C. US Abortion Restrictions on Humanitarian Aid for War Victims Violate International Humanitarian Law**

8. International humanitarian law, in particular common Article 3 of the Geneva Conventions of 1949, their Additional Protocols (“API” and “APII”), and customary international law (“CIL”), require that all persons “wounded and sick” in armed conflict, including girls and women raped in armed conflict, whether civilian or combatant, be provided with comprehensive, non-discriminatory medical care.<sup>17</sup> Specifically, they must be provided “to the fullest extent practicable and with the least possible delay the medical care and attention required by their condition,” with no adverse distinction made “on any grounds other than medical ones.”<sup>18</sup> In recognition of the fact that the medical needs of men and women may differ based on biological differences, IHL provides that women “shall in all cases, benefit by [medical] treatment as favourable as that granted to men.”<sup>19</sup> This means that the “outcome for each gender must be the same, not that the treatment must be identical.”<sup>20</sup> Furthermore, women and girls raped in war have an absolute right to be “treated humanely, without any adverse distinction founded on . . . sex”<sup>21</sup> and must never be subjected to “cruel treatment and torture.”<sup>22</sup>
9. Reinforcing the comprehensive, non-discriminatory nature of medical care owed to the “wounded and sick,” IHL provides that medical personnel treating war victims “shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick.”<sup>23</sup> Because IHL trumps national law in times of armed conflict,<sup>24</sup> medical personnel are protected with immunity from prosecution under domestic laws that run contrary to IHL,<sup>25</sup> including laws criminalizing abortion.
10. Each of the above medical care provisions constitute CIL and are thus binding on the US.<sup>26</sup> The US itself, despite the fact that it has not ratified either Additional Protocol, considers itself bound by API’s comprehensive, non-discriminatory medical treatment mandate as CIL.<sup>27</sup>
11. Common Article 1 of the Geneva Conventions of 1949 requires that all States, whether or not a party to the conflict, “respect” and “ensure respect for” the Conventions and IHL “in all circumstances.”<sup>28</sup> The US must therefore “respect” and “ensure respect for” IHL in all of its activities, including by providing humanitarian aid to women and girls in conflict settings “without discrimination of any kind.”<sup>29</sup>
12. US abortion restrictions on humanitarian aid violate the mandates of IHL to provide comprehensive and non-discriminatory medical care to the “wounded and sick.” The restrictions single out and ban one particular medical procedure, which one sex alone requires, while permitting male war rape victims to be provided all necessary medical

care. This disparity in medical treatment on the basis of sex constitutes a violation of IHL's absolute prohibition on "adverse distinction," or discrimination. As the former head of the ICRC's legal division, Louise Doswald-Beck, has explained, "IHL treaties do not spell out the types of medical treatments that should be given, but only require that they be those necessary for the condition of the patient, without any adverse distinction." For many women, abortion is not only the preferable option but also the safer option as compared to an unwanted and dangerous pregnancy. Even outside of conflict, where women and girls face increased maternal mortality due to many factors,<sup>30</sup> childbirth is 14 times more likely to lead to death than a safe abortion.<sup>31</sup>

13. US abortion restrictions also violate IHL's requirement of humane treatment. The denial of abortions to women and girls raped in war results in increased maternal mortality and compounds the damaging physical, psychological, and social consequences of rape.<sup>32</sup> By forcing female rape victims to carry their unwanted and oftentimes dangerous pregnancies to term, US policy violates their right to be treated humanely.
14. Finally, US abortion restrictions contravene IHL's prohibition on cruel treatment and torture. War rape victims are considered to be victims of torture.<sup>33</sup> The US recognizes this, utilizing funds appropriated for treating torture victims to provide medical care to war rape survivors in places like the Democratic Republic of Congo. As victims of torture, women and girls raped in armed conflict are entitled to full rehabilitative medical care, including the option of abortion,<sup>34</sup> and the denial of such care has been deemed torture or cruel and inhuman treatment.<sup>35</sup> US policy, by forcing torture victims to suffer through unwanted and risky pregnancy and childbirth on the one hand or unsafe abortion or suicide on the other hand, violates this IHL prohibition.

#### **D. US Abortion Restrictions on Humanitarian Aid for War Victims Violate United Nations Security Council Resolutions 2106 and 2122**

15. In 2013, the Council passed two new resolutions under the Women, Peace and Security umbrella, both of which require donor States to ensure access to comprehensive and non-discriminatory medical care, including safe abortion services, and both of which were voted for by the US.<sup>36</sup>
16. Security Council Resolution 2106 calls for all donor states to "provide non-discriminatory and comprehensive health services, including sexual and reproductive health . . . services for survivors of sexual violence . . ." <sup>37</sup> This language was adopted in reference to the following recommendation by the Secretary-General, in his annual report on sexual violence in conflict, that aid to girls and women raped in armed conflict must include safe abortion services:

Girls and women lack access to services that would allow them to safely terminate a pregnancy and are often forced to either carry out unwanted pregnancies resulting from rape or undergo dangerous abortions. Therefore,

access to safe emergency contraception and services for the termination of pregnancies resulting from rape should be an integral component of any multisectoral response.<sup>38</sup>

17. Security Council Resolution 2122 reinforces this requirement by “*noting* the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination . . .”<sup>39</sup> This language was adopted in response to a recommendation by the Secretary-General to the Security Council that Member States should ensure that their humanitarian aid can be used to provide safe abortion services in compliance with the non-discrimination mandates of international law. Specifically, the Secretary-General states that Member States should:

[E]nsure that humanitarian aid and funding provides for the full range of medical . . . services to victims of rape, including access to services for safe termination of pregnancies resulting from rape, without discrimination and in accordance with international human rights and humanitarian law.<sup>40</sup>

18. The US, as a member of the UN, is bound by the UN Charter and must accordingly accept and carry out the decisions of the UN Security Council.<sup>41</sup> By failing to permit the provision of safe abortion services to girls and women raped in war with US humanitarian aid, the US is in violation of Security Council Resolutions 2016 and 2122, and, consequently, its obligation under Article 25 of the UN Charter to accept and carry out the decisions of the Security Council.

## **E. US Abortion Restrictions on Foreign Aid Violates US Obligations under the Convention against Torture and the International Covenant on Civil and Political Rights**

### **International Covenant on Civil and Political Rights (“ICCPR”)**

19. Under article 19 of the ICCPR,<sup>42</sup> everyone has the right to freedom of expression. US abortion restrictions, including the Helms Amendment and the Siljander Amendment, infringe upon that right “to seek, receive and impart information and ideas of all kinds.” They effectively censor political speech: US funding recipients are prohibited from expressing any ideas that “motivate” or “lobby” for abortion, and women are unable to receive information regarding abortion.
20. Under article 2(1) of the ICCPR, the US has a legal obligation to protect all rights guaranteed by the Covenant and such rights are owed not only to individuals, but also to other State parties to the Covenant.<sup>43</sup> In this context, US abortion speech restrictions impede the realization of rights guaranteed in the ICCPR by other State parties, including obligations relating to the right to abortion and obligations to eliminate structural barriers to women’s rights, such as criminal abortion laws.

21. Given that the US is the largest bilateral donor to rule of law and governance programs,<sup>44</sup> family planning and reproductive health programs,<sup>45</sup> and humanitarian assistance, funding conditions on abortion speech widely limit access to unbiased training and implementation of equality rights under treaties including the ICCPR. Additionally, the Human Rights Committee (“HRC”) has on numerous occasions recommended that State parties amend their criminal abortion laws to comport with the ICCPR.<sup>46</sup>
22. US abortion censorship stifles domestic dialogue on criminal abortion laws, impeding changes required to comply with the ICCPR.<sup>47</sup> For example, in December 2013, USAID prevented funding recipients’ participation in a working group to address reproductive health solutions to the high maternal mortality rate in Kenya. It should be noted that the HRC had specifically recommended that Kenya “should review its abortion laws, with a view to bringing it into conformity with the covenant.”<sup>48</sup> Specifically, USAID stated that given that the meeting would discuss “an RH [reproductive health] approach,” it would violate the Helms Amendment and other US abortion restrictions (including the Siljander Amendment) due to the fact that under these restrictions USAID grantees could not “advocate for or promote certain RH services.”<sup>49</sup>

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)**

23. The Committee against Torture has increasingly found that access to abortion, at least in certain circumstances, implicates the rights guaranteed by the Convention, including its Article 2 guarantee to be free from torture, or cruel, inhuman or degrading treatment and its Article 14 guarantee of “the means for as full rehabilitation as possible,” which includes complete medical care for injuries resulting from violations.<sup>50</sup>
24. The Committee has also found that impediments to safe abortion access, in particular for rape victims, lead to “grave consequences, including unnecessary deaths of women,”<sup>51</sup> and that “the situation entails constant exposure to the violation committed against her and causes serious traumatic and stress and a risk of long-lasting psychological problems.”<sup>52</sup> Accordingly, States have obligations under CAT to take steps to “prevent acts that put women’s physical and mental health at grave risk and that constitute cruel and inhuman treatment,”<sup>53</sup> including by ensuring access to safe abortion services for rape victims. US abortion restrictions violate these obligations under CAT.

## **F. Recommendations**

25. President Obama should issue an executive order to permit US foreign assistance to be used for safe abortion services in the cases of rape, life endangerment or incest and, in the case of women and girls raped in war, to affirm that their rights to safe abortion are governed and guaranteed by the Geneva Conventions.

26. The USG should issue clear guidance regarding US abortion restrictions so that organizations and foreign governments know that they can provide information about abortion as well as abortion services to women and girls raped and impregnated in war without jeopardizing their US funding.

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<sup>1</sup> Global Justice Center, *Lift the Ban: The Impact of US Abortion Restrictions on Kidnapped Nigerian Schoolgirls*, [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=420&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=420&cf_id=34); Global Justice Center, *How the US is Blocking Access to Safe Abortion Services for Women and Girls Impregnated by Rape in Syria*,

[http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=419&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=419&cf_id=34).

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶ 92.228, U.N. Doc. A/HRC/16/11 (4 Jan. 2011).

<sup>3</sup> 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*, ¶¶ 27, U.N. Doc. A/HRC/16/11/Add.1 (8 Mar. 2011).

<sup>4</sup> Draft Articles of State Responsibility, art. 3 and Commentary ¶¶ 1-7 to art. 3; Vienna Convention on the Law of Treaties, art. 27 1980 U.N.T.S. 331. *See also* Anglo-Norwegian Fisheries, U.K. v. Norway, Order, 1951 I.C.J. 117, 132 (Jan. 18); Nottebohm, Liechtenstein v. Guatemala, Preliminary Objection, Judgment, 1953 I.C.J. 111, 123 (Nov. 18); Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, 1988 I.C.J. 12, 34-35, ¶ 57.

<sup>5</sup> 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).

<sup>6</sup> For example, the guidance issued by the Bush Administration in restoring the Mexico City Policy defined “as a method of family planning” as follows: “Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).” Memorandum on Restoration of the Mexico City Policy, at 4, 66 Federal Register 17306 (March 29, 2001), available at <http://www.gpo.gov/fdsys/pkg/FR-2001-03-29/pdf/01-8011.pdf>.

<sup>7</sup> Global Justice Center, *Q&A: How President Obama Can – and Must – Save the Lives of Girls & Women Raped in War by Lifting the Abortion Ban Attached to Humanitarian Aid*, [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=413&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=413&cf_id=34).

<sup>8</sup> LUISA BLANCHFIELD, CONG. RESEARCH SERV., R41360, ABORTION AND FAMILY PLANNING-RELATED PROVISIONS IN U.S. FOREIGN ASSISTANCE LAW AND POLICY (2014), available at <http://fas.org/sgp/crs/row/R41360.pdf>.

<sup>9</sup> United States Consolidated Appropriations Act 2014, Pub. L. No. 113-76, §7063(d)(2), 128 Stat. 5 (Jan. 17, 2014).

<sup>10</sup> *See* Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict*, at 8, <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011>.

<sup>11</sup> USAID Policy Paper – Bureau for Program and Policy Coordination, Population Assistance, September 1982, at 7.

<sup>12</sup> Siljander Amendment, FY 2006 Appropriations Act, Pub. L. No. 109-102, “Child Survival and Health Programs Fund,” 119 Stat. 2172.

<sup>13</sup> DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, SAFE AND UNSAFE ABORTION - THE UK’S POLICY ON SAFE AND UNSAFE ABORTION IN DEVELOPING COUNTRIES (a DfID Strategic Document), June 2014, at p. 9.

<sup>14</sup> *See* Written parliamentary answers from Frans Timmermans, Minister of Foreign Affairs, and Liliaane Ploumen, Minister of Foreign Trade and Development Aid, in answer to questions from Parliament Member Sjoerd Sjoerdsma regarding safe abortion for raped women in war zones (Mar. 8, 2013), available at <http://globaljusticecenter.net/index.php/news-and-events/news1/press-releases/319-netherlands-affirms-right-of-women-raped-in-armed-conflict-to-abortions-as-part-of-necessary-medical-care-under-international-law>; Security Council, 6984th meeting, U.N. Doc. S/PV.6984 (June 24, 2013), at 48 (statement by

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Netherlands); Security Council, 7160th meeting, U.N. Doc. S/PV.7160 (Apr. 25, 2014), at 15 (statement by France).

<sup>15</sup> European Parliament resolution of 13 March 2012 on equality between women and men in the European Union – 2011, P7\_TA(2012)0069, ¶ 61, *available at* <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0069&language=EN&ring=A7-2012-0041> (“Reminds the Commission and the Member States of their commitment to implement UN Security Council Resolution 1325 on Women, Peace and Security, and urges the provision of EU humanitarian aid to be made effectively independent from the restrictions on humanitarian aid imposed by the USA, in particular by ensuring access to abortion for women and girls who are victims of rape in armed conflicts . . .”); European Parliament resolution of 13 June 2013 on the Millennium Development Goals – defining the post-2015 framework, P7\_TA-PROV(2013)0283, ¶ 31, *available at* <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0283+0+DOC+XML+V0//EN>.

<sup>16</sup> *See, e.g.*, Questions Asked by Baroness Uddin regarding Abortion – Answered by Baroness Northover (Dec. 2, 2013), *available at*

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131202w0001.htm>; Written parliamentary answers from Frans Timmermans, Minister of Foreign Affairs, and Liliaane Ploumen, Minister of Foreign Trade and Development Aid, in answer to questions from Parliament Member Sjoerd Sjoerdsma regarding safe abortion for raped women in war zones (Mar. 8, 2013), *available at*

[http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=319&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=319&cf_id=34).

<sup>17</sup> 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>.

<sup>18</sup> Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict*, at 8, <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011> (citing Protocol I art. 10 and Protocol II art. 7 (relating to non-discriminatory health care)).

<sup>19</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1950) 75 UNTS 135, art. 14.

<sup>20</sup> Letter from Professor Louise Doswald Beck (former Legal Advisor to the ICRC) to President Barack Obama (10 Apr. 2013), *available at*

[http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=321&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=321&cf_id=34).

<sup>21</sup> *See* Common Article 3 to the Geneva Conventions of 1949; Protocol I Arts. 8, 10; Protocol II, art. 7; ICRC, Customary IHL Database, Rules 87 (humane treatment) and 88 (non-discrimination).

<sup>22</sup> *See* Common Article 3 to the Geneva Conventions of 1949; ICRC, Customary IHL Database, Rule 90 (torture and cruel, inhuman or degrading treatment).

<sup>23</sup> *See* Protocol II, art. 10; Protocol I, art. 16; ICRC, Commentary to Protocol I, art. 16, (General protection of medical duties: protecting those providing medical care to the wounded and sick “against any compulsion to perform acts - or refrain from performing acts - contrary to the patient’s interests”); ICRC, Customary IHL Database, Rule 26 (medical activities).

<sup>24</sup> *See* Memorandum of the Deputy U.S. Secretary of Defense to Secretaries of the Military Departments on the Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (7 July 2006) *available at*

<http://www.defense.gov/pubs/pdfs/DepSecDef%20memo%20on%20common%20article%203.pdf>; ICRC, *Professional Standards for Protection Work: Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence*, at 41 (Oct. 2009) (“pending such changes [to bring national law into



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conformity with international law] protection actors should nevertheless be prepared to point out that domestic law cannot be used as an excuse for non-compliance with international obligations”).

<sup>25</sup> See Protocol I, art. 16 (“Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics . . .”); Protocol II, art. 10 (“Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics . . .”).

<sup>26</sup> ICRC, Customary IHL Database, Rules 26 (medical activities) and 110 (treatment and care of the wounded, sick and shipwrecked).

<sup>27</sup> Michael J. Matheson, *The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 AM. U.J. INT’L L. & POL’Y 419 (1987).

<sup>28</sup> Common Article 1 to the 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).

<sup>29</sup> Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits, Judgment, 1986 I.C.J. 14, ¶ 243.

<sup>30</sup> Harvard School of Public Health & Physicians for Human Rights, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan*, at 20 (Oct. 2004).

<sup>31</sup> E.G. Raymond & D.A. Grimes, *The comparative safety of legal induced abortion and childbirth in the United States*, 199(2) Obstetrics and Gynecology 215-219 (Feb 2012).

<sup>32</sup> Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict*, at 9, <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011>

<sup>33</sup> See International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnib Delalić (Čelebići Camp)*, Appeals Chamber Judgement of 20 February 2001, IT-96-21, ¶ 501 (finding that a woman prisoner’s rape, which was committed by an armed official with “discriminatory intent” and which “caused [her] severe mental and physical pain and suffering,” constituted torture); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, U.N. Doc. A/HRC/7/3 (15 Jan. 2008), ¶ 36 (noting that “rape can cause suffering that even go[es] beyond the suffering caused by classic torture . . . [including because rape victims] may experience unwanted pregnancies, miscarriages, forced abortions or denial of abortion”) (internal citations omitted).

<sup>34</sup> Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that victims of torture are to be given the “means for as full rehabilitation as possible.” Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, 1456 U.N.T.S. 85, art. 14 (10 Dec. 1984). In addition, the Istanbul Protocol, which sets out guidelines for doctors and others, provides that doctors treating torture victims have a “duty to act only in the patient’s interest . . . regardless of other considerations, including the instructions of employers, prison authorities or security forces,” and they must “have the professional independence to represent and defend the health needs of patients against all who would deny or restrict needed care for those who are sick or injured.” See UN Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”)*, U.N. Doc. HR/P/PT/8/Rev.1, at 13 (2004) (internal citations omitted).

<sup>35</sup> K.L. v. Peru, U.N. Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005) available at <http://reproductiverights.org/sites/crr.civactions.net/files/documents/KL%20HRC%20final%20decision.pdf>.

<sup>36</sup> 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).

<sup>37</sup> S.C. Res. 2106, ¶19, U.N. Doc S/RES/2106 (June 24, 2013).

<sup>38</sup> Report of the Secretary-General on Sexual violence in conflict, ¶12, U.N. Doc. S/2013/149 (14 Mar. 2013).

<sup>39</sup> S.C Res 2122, preamble, U.N. Doc S/RES/2122 (Oct. 18, 2013).

<sup>40</sup> Report of the Secretary-General on women peace and security, ¶ 72(a), U.N. Doc. S/2013/525 (Sept. 4, 2013) (emphasis added).

<sup>41</sup> U.N. Charter art. 25.

<sup>42</sup> International Covenant on Civil and Political Rights (“ICCPR”), art. 19(2), Dec. 16. 1966, 99 U.N.T.S. 171.

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<sup>43</sup> Human Rights Committee, General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant, ¶2, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (29 Mar. 2004).

<sup>44</sup> USAID, *DCHA/DG User's Guide to DG Programming* (Nov. 2010), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/DG\\_UserGuide\\_November10.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/DG_UserGuide_November10.pdf).

<sup>45</sup> United States Mission on the United Nations, *Non-paper by the United States of America, on the Report of the Secretary General on the Flow of Financial Resources for Assisting in the Implementation of the Programme of Action of the International Conference on Population and Development in the United Nations Economic and Social Council Commission on Population and Development*, 42nd Sess. (Mar. 30, 2009), available at: <http://usun.state.gov/briefing/statements/2009/march/131657.htm>.

<sup>46</sup> See Human Rights Committee, Concluding Observations: Poland, ¶8, U.N. Doc. CCPR/CO/82/POL (27 Oct. 2010); Human Rights Committee, Concluding Observations: Guatemala, ¶19, U.N. Doc. CCPR/CO/72/GTM (27 Aug. 2001); Human Rights Committee, Concluding Observations: Nicaragua, ¶13, U.N. Doc. CCPR/C/NIC/CO/3 (12 Dec. 2008).

<sup>47</sup> Kristina Kallas and Akila Radhakrishnan, *If These Walls Could Talk, They Would be Censored: U.S. Restrictions on Pro-Choice Speech*, Center for Women Policy Studies (June 2012), available at [http://www.centerwomenpolicy.org/programs/health/statepolicy/documents/REPRO\\_IfTheseWallsCouldTalk\\_KristinaKallasAkilaRadhakrishnan.pdf](http://www.centerwomenpolicy.org/programs/health/statepolicy/documents/REPRO_IfTheseWallsCouldTalk_KristinaKallasAkilaRadhakrishnan.pdf).

<sup>48</sup> Human Rights Committee, Concluding Observations: Kenya, ¶ 14, U.N. Doc. CCPR/CO/83/KEN (Apr. 29, 2005).

<sup>49</sup> Ipas, *The Helms Amendment and USAID Censorship and Intimidation in Reproductive Health Policymaking in Kenya*, Feb. 18. 2014.

<sup>50</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), art. 2 and 14, Dec. 10, 1984, 1465 U.N.T.S. 85. See also Amnesty International, *The Impact of the Complete of Abortion in Nicaragua: Briefing to the United Nations Committee Against Torture* (2009), available at: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/NICARAGUA%20THE%20IMPACT%20OF%20THE%20COMPLETE%20BAN%20OF%20ABORTION%20IN%20NICARAGUA:%20BRIEFING%20TO%20THE%20UNITED%20NATIONS%20COMMITTEE%20AGAINST%20TORTURE?CMD=VEROBJ&MLKOB=27451372258>.

<sup>51</sup> Committee against Torture, Concluding Observations: Peru, U.N. Doc. CAT/C/PER/CO/4, ¶23 (25 July 2006).

<sup>52</sup> Committee against Torture, Concluding Observations: Nicaragua U.N. Doc. CAT/C/NIC/CO/1, ¶16 (10 June 2009).

<sup>53</sup> Committee against Torture, Concluding Observations: Peru, U.N. Doc. CAT/C/PER/CO/4, ¶23 (25 July 2006).