Q&A: How the U.S. “No Abortion” Prohibition on Humanitarian Aid Violates the Rights of Women Raped in Armed Conflict

The Global Justice Center’s (GJC) August 12th Campaign seeks to address the near universal failure to provide the option of abortion to girls and women raped and impregnated in armed conflict. This discriminatory treatment of women rape victims is a serious breach of the laws of war, including the Geneva Conventions. Named for the anniversary of the signing of the Geneva Conventions, the August 12th Campaign has three goals:

➢ To ensure that all States make clear public statements, such as the one already made by Norway, affirming that common Article 3 of the Geneva Conventions requires the inclusion of abortion as part of comprehensive medical care for rape victims in humanitarian aid settings.

➢ To ensure that all donor countries require their humanitarian aid be kept separate from US aid, which prohibits abortion speech and services. Further, that donor countries monitor medical services provided for rape victims in conflict areas to ensure that they have access to abortions.

➢ To ensure that President Obama lifts the “no abortion” clause put on US humanitarian aid directed for girls and women raped in armed conflict thereby affirming US compliance with common Article 3 of the Geneva Conventions, which requires non-discriminatory medical treatments for all persons “wounded and sick” in armed conflict.

This Q&A explains why denying abortions to girls and women raped in armed conflict violates international humanitarian law (IHL), including the Geneva Conventions, and how the abortion ban attached to all US humanitarian aid has influenced the treatment standards for impregnated victims of war rape globally.

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Section I- Obligations of States under the Geneva Conventions

1. Do the Geneva Conventions require that abortion services be made available for women raped in armed conflict?

Yes. States must ensure that the care provided to war victims is provided in a non-discriminatory manner. Girls and women raped in armed conflict are “protected persons” under the Geneva Conventions and are entitled, as the “wounded and sick,” to “receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.”

The Geneva Conventions further provide that “there shall be no distinction among them founded on any grounds other than medical ones” and is explicit that women “shall in all cases benefit from medical treatment as favorable as that granted to men.”

Further, the central purpose of IHL is to alleviate the suffering of war victims to the fullest extent possible. To this end, IHL incorporates medical ethics into its legal prescriptions and guarantees doctors immunity from prosecution for providing medical services (such as abortions) that are required by medical ethics.

Therefore, IHL imposes an absolute and affirmative duty to provide the option of abortion to rape victims in humanitarian aid settings, and failing to do so violates common Article 3 of the Geneva Conventions, its Additional Protocols, and customary international law (CIL).

2. Are women raped in armed conflict considered to be victims of torture? Do states have obligations to ensure that rape victims, as victims of torture, have access to abortion?

Yes and Yes. Decisions from international tribunals hold that that rape in armed conflict can constitute torture. The Convention against Torture (CAT), which applies concurrently with IHL during armed conflict, requires State Parties to provide the highest standard of rehabilitative care for torture victims, which includes the provision of complete medical services for injuries resulting from torture. In the case of impregnated female rape victims, such care must include the option of abortion.

US policy is clear that girls and women raped in armed conflict are victims of torture. In fact, the US uses foreign aid appropriated for treating torture victims to provide medical care for rape victims in the Democratic Republic of Congo (DRC) and elsewhere.

3. How can it be illegal for a provider of medical care for war victims to comply with a local criminal law that forbids abortion?

It is illegal in the same way it was illegal for the US military to comply with domestic directives permitting water-boarding, instead of with standards set by the Geneva Conventions.

The mandates of common Article 3 guaranteeing comprehensive, non-discriminatory care to the

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3 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 10 (2), Jun. 8, 1977, 1125 U.N.T.S. 302 (hereinafter AP I) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, art. 7(2), Jun. 8, 1977, 1125 U.N.T.S. 609 (hereinafter AP II)

4 Id.


6 Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, June 26, 1987.


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“wounded and sick”, including the option of abortion to rape victims, are non-derogable. The International Court of Justice (ICJ) has affirmed that the rules mandated by common Article 3 are not only binding as treaty law, but as part of customary international law. This means they must be obeyed in all circumstances. These medical care mandates apply both to states in conflict, states providing humanitarian assistance, and their local partners.

Further, the Geneva Conventions are “local law” under the very terms of the Geneva Conventions itself. The DRC, for one example, is explicit that the Geneva Conventions are binding domestic law. The fact that the DRC’s penal code criminalizes abortion is irrelevant to providers’ absolute duty to provide services in accord with the Geneva Conventions. We recognize that conflicting local abortion laws present difficulties, but these must be addressed without compromising the rights of women war victims.

4. What is the legal authority for the Geneva Conventions prevailing over domestic criminal abortion law?

The dictates of common Article 3 to nondiscriminatory medical care have jus cogens status under international law. This means that the rules governing the treatment of persons injured in conflict is part of the law of nations to be obeyed by all states. Furthermore, it is international law, not domestic law, that determines whether a state is in breach of its international obligations.

Article 27 of the Vienna Convention on the Law of Treaties provides that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Further, under the customary laws of state responsibility (LSR), the characterization of an “internationally wrongful act” by a state is “governed by international law” and “such characterization is not affected by the characterization of the same act as lawful by internal law...the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations.”

5. Are donor states and the providers they fund responsible for what happens to war rape victims who are denied the option of abortion in humanitarian aid settings?

Yes. The consequences of denying abortions to rape victims—suicide, death from childbirth, lifelong trauma, and mutilation due to unsafe abortions—are so well-documented and expected that treatment for these conditions are built into sexual violence response protocols. The failure to include abortion as part of comprehensive care for rape victims is a positive act of inflicting torture/inhuman treatment on already injured rape victims. Both the Committee against Torture and the Human Rights Committee (monitoring the ICCPR) have held that denying abortion services for rape victims or for women whose lives are endangered by continued pregnancy constitutes cruel and inhuman treatment and torture.

Of course, donor states, with the exception of the US, clearly intend for their humanitarian aid to be provided and used in conformity with the Geneva Conventions. However, most countries are unaware of the fact that the US abortion ban is being applied to their funding (see Question 8). For example, ICRC programs, which are funded by many donor states, are all compromised by ICRC’s US funding, which bans discussion of abortion, and bans the ICRC from providing abortion services.

6. Isn’t the obligation to provide medical care to the “wounded and sick” in armed conflict only the duty of the States in armed conflict?

No. Although States in conflict have the primary duty to provide medical care under common Article 3, all states have a duty to ensure their humanitarian aid conforms with the Geneva Conventions.

The duties on all states arise under the obligation in common Article 1 to “ensure respect” for the...
Conventions “in all circumstances.” The International Court of Justice (ICJ) stated, referring to common Article 1, that “every party...whether or not it is a party to a specific conflict,” has an “obligation to ensure that the requirements of the instruments in question [the Geneva Conventions] are complied with.”

Section II - How the US became the driving force behind the near universal denial of abortions for women raped in armed conflict

7. What is the US policy regarding abortions for girls and women raped and impregnated in armed conflict?

The US opposes all abortions, including those for women raped in armed conflict.

The United States Agency for International Development (USAID), which administers US humanitarian aid, requires a “no abortion” clause—covering both abortion speech and medical services—in all foreign assistance contracts, including those to provide humanitarian aid.

A June 2008 USAID directive mandates that all foreign aid contracts contain a mandatory base “no abortion” clause. This directive sets out three variations of standard base clauses: one imposed on foreign aid to foreign governments, one on UN and US and Foreign NGOs, and a third which applies to foreign aid for population/family planning projects.

These clauses define the US foreign policy on abortion and are operationalized through US humanitarians aid policy which opposes any abortions for victims of rape in armed conflict. This includes abortions for women forcibly impregnated as part of genocide, as happened in Rwanda, and for girls in the DRC as young as eleven whose lives are put at further risk by forcing continuation of their rape-induced pregnancies.

The USAID website is clear: “[w]hile USAID supports treatment for abortion-related complications, USAID does not support abortion as a means of family planning nor does USAID provide abortions in any circumstances.”

8. How is the US abortion ban able to affect other donor funds?

Easily. The US is the world’s largest provider of humanitarian aid and the US “no abortion” prohibition has enabled the US to define the treatment policy for victims of war rape.

The scope of US funding means that nearly all the major humanitarian organizations providing direct care or working on humanitarian law or policy for women raped in armed conflict receive, either directly or indirectly, censored US funding. These include: the International Committee of the Red Cross (ICRC), the International Rescue Committee (IRC), the United Nations Population Fund (UNFPA), the Office of the Special Representative of the Secretary General on Sexual Violence in Conflict (SRSG-SVC), and the governments of the approximately 23 countries deemed to be in armed conflict (and bound by IHL).

The US “no abortion” clause is required for all US foreign aid, including aid going to the UN, foreign governments, and US citizens (such as US universities teaching democracy and free speech rights overseas). The ban applies to all programs, not just those related to family planning or health. Although recipients of US foreign aid (other than UNFPA, see Question 18) could theoretically segregate their US funds from other donor funds, we have been unable to find any humanitarian aid recipient of US funds that does so.

9. Why have I never heard of this?

12 USAID states that they “do not require the language for non-family planning awards to public international organizations,” however, it is still often imposed on these groups, including UN organizations. Government Accountability Office, Foreign Assistance: Clarifying Guidance Needed on Compliance Oversight with Legislation Prohibiting Abortion-Related Lobbying, October 2011.

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The US abortion ban clause restricts both services and abortion speech. A word search for the term “abortion” in reports by major humanitarian organizations typically only yields results related to “post-abortion” care – medical care that the US does allow to try to save women’s lives after they are injured by unsafe, clandestine methods to abort. The US “no abortion” prohibition on foreign aid silences even discussion of abortion in the context of armed conflict; this is evident when one examines the programs of ICRC, UNFPA, IRC, the SRSG-SVC, and the UN Office of Humanitarian Affairs.

10. What is the impact of denying abortions to women impregnated by war rape?

Treatment that is cruel and sometimes deadly. Denying abortions forces war rape victims to continue unwanted or dangerous pregnancies. This is cruel and inhuman treatment and does not comport with the rules of medical ethics. Women can and do die from attempts to self-abort, suicide, and risky childbirth. All States have a duty to rectify the discrimination that leads to these fatal repercussions.

11. Is the US “no abortion” ban on humanitarian aid for victims of rape in armed conflict a US law or an administrative policy?

Both. The abortion ban now applied to conflict victims is a US administrative policy that is more restrictive than the underlying US law it purports to be implementing. US law permits foreign aid funds to be used for abortions for rape and to save a woman’s life.

12. What is the legal authority for the US imposing an abortion ban on humanitarian aid for conflict victims?

There is none. The Geneva Conventions are US domestic law. Any other US law that may conflict with the Conventions should be read, if possible, to be consistent with US obligations under international law. The “no abortion” policy violates this duty by giving an overly restrictive interpretation to the underlying laws regarding funding of abortions with US foreign assistance funds.

The major law restricting abortion is the “Helms Amendment.” Passed in 1973, Helms states that “[n]one of the funds made available to carry this part 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.”14 USAID construes the Helms language, “the performance of abortions as a method of family planning,” to mean that all abortions are prohibited, except in the case of rape, incest, or endangerment of a woman’s life, which are not considered for “family planning.” This means that under the 1973 Helms Amendment, US foreign aid funds may be used to fund abortions for victims of rape in armed conflict.

Since Helms, Congress has put in place other abortion restrictions on foreign assistance, mostly through annual appropriations. The two legal restrictions most relevant to humanitarian aid are (1) the Siljander Amendment that prohibits “lobbying for or against abortion,” and (2) the law authorizing US funds for the United Nations Population Fund (UNFPA), which prohibits UNFPA from providing any abortions whatsoever, even with its funds from other donors, if it wishes to remain eligible for US funding.

Further, the Helms Amendment was limited to restricting funds under Part 1 of the Foreign Assistance Act, which primarily targets development projects, including those supporting international family planning. This ban has now evolved administratively to cover all foreign assistance, going beyond what is required by US law.

13. What activities are forbidden by the US “no abortion” condition on foreign aid?

Almost everything. US policy directives cover both abortion services and speech. The 2008 policy prohibits the use of US foreign aid to perform any abortions under any circumstances. The prohibition on abortion speech is extremely broad since the

terms “lobbying,” “motivating,” and “coercing,” the operative phrases in the law, are interpreted to cover discussions of abortion, including discussing abortion law in the context of overseas US-funded democracy and law trainings, and trainings by the ICRC on the medical care requirements of the Geneva Conventions.13

14. Which recipients of US foreign assistance are subject to the abortion ban?

All of them. The prohibitions are imposed on all entities receiving funds from foreign aid appropriations, including over 153 foreign governments, US citizens, US universities funded under the National Endowment for Democracy (NED) (including for overseas training on international law and free expression), foreign governments, UN agencies, the International Committee of the Red Cross (ICRC), and US-based organizations. The Congressional Research Services has repeatedly confirmed that the “no abortion” prohibitions on speech and services is attached to all “Department of State, Foreign Operations, and Related Programs Appropriations.”

15. What is the difference between the current abortion restrictions of foreign aid and the “Global Gag Rule” lifted by President Obama?

There seems to be residual confusion about the distinction between the now defunct “Global Gag Rule” (or Mexico City Policy) and the continuing abortion restrictions on foreign aid, which were explicitly left in place by President Obama’s Executive Order repealing the gag rule.

The gag rule applied only to foreign NGOs receiving US foreign aid for family planning and was an expansion of the Helms Amendment and other related abortion restrictions. This subset of US aid grantees were prohibited from engaging in any abortion-related activities, even when using their own private funds. The gag rule affected approximately $130m, or .03%, of all US annual foreign aid. By contrast, the Helms-related “no abortion” clause is put on all US foreign aid for whatever purpose.

18. Does the global gag rule still exist?

Yes, in another form. The US imposes a form of the gag rule on the United National Population Fund UNFPA, which, as a condition of US funds, must pledge not to “fund abortions” with any funds from any of its donors in any context. So, although the US only provides UNFPA with approximately $50 million per year, UNFPA will lose US funds if it performs any abortions with the $750 million in funds it receives from other donors. UNFPA provides critical services for rape victims in conflict.

20. Does the Obama Administration actually enforce these abortion-related restrictions?

Yes. The Obama Administration, through USAID, rigorously enforces the restrictions outlined in this Q&A16 and has been working to ensure compliance with these restrictions, in particular the restrictions as applied to USAID-funded democracy and governance programs.17

17. What is being done to stop this injustice? How can I help?

GJC was the first organization to challenge the routine denial of abortions for rape victims in conflict as violating the laws of war. As part of the campaign to rectify this injustice, GJC is seeking an executive order from President Obama lifting the US abortion ban, which would be a significant step towards ending this violation.

The August 12th Campaign is making great progress. On November 5, 2010, Norway broke the silence

about the US ban during the Universal Periodic Review process of the US at the Human Rights Council, recommending to the US “[t]he removal of blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.”

The US response to Norway on March 8, 2011 is a partial victory in that the reason given as to why the ban could not be lifted was “currently applicable restrictions.”

Furthermore, in December 2011, President Obama issued two significant executive orders illustrating the Administration’s use of executive orders to achieve important, and potentially controversial, policy prerogatives.

Of particular interest is the Executive Order issued by President Obama on December 19, 2011, on the new U.S. policy on “women, peace, and security.” This Executive Order and accompanying US National Action Plan on Women, Peace and Security contains language that demonstrates that the GJC’s August 12th Campaign has already influenced the Obama Administration U.S. policy. While the language is vague, the National Action Plan and Executive Order does require “safe, equitable access to humanitarian assistance” and the National Action Plan specifically incorporates medical care (including reproductive care) as a component of this assistance for survivors of sexual and gender based violence.

21. Does President Obama have the authority to lift the abortion ban on humanitarian aid?

Yes. President Obama has both the authority and the duty to repeal these restrictions on humanitarian aid and bring US policy into compliance with its international obligations, including common Article 3 of the Geneva Conventions. The statutory language of these abortion restrictions allows for abortions in rape cases or to save a woman’s life. President Obama can thus issue an executive order lifting the restrictions as they apply to humanitarian aid covering women raped in armed conflict.

III. How the US abortion ban affects European donor funds

22. Does the US “no abortion” prohibition affect humanitarian aid funds given by EU countries to help victims of sexual violence in armed conflicts?

Absolutely. The US “no abortion” prohibition compromises all EU country level and European Commission funding, both for the medical treatment of victims of armed conflict and for ensuring enforcement of humanitarian law. This means that countries like the DRC or Colombia who get US funds for, say, law reform, judicial trainings, or health programs, are prohibited from even discussing the rights of rape victims to abortions under the Geneva Conventions without carefully segregating their US funds, which virtually no country does and is virtually impossible to do in the context of speech.

23. But aren’t EU countries in charge of determining how their money is used when they provide funding to the UN and other international organizations?

Not currently. US foreign aid funding is a powerful tool for the US to use in advancing its policies. The sheer longevity and universality of this US policy has entrenched it in absence of any real opposition. EU countries donate to help victims of armed conflict through various ways, including through the UN, to groups like the ICRC or UNFPA or, to directly to groups working on the ground in conflict area. All these funds are commingled with US funds on the ground and thus compromised.

The main humanitarian players who would object to this policy are mostly censored from doing so. For example, the US provides 25% of ICRC’s budget
meaning that the latter is not allowed to voice any concerns regarding how the US’ “no abortion” restrictions also “contaminates” the funding they receive from the EU.

24. How does the US ban affect ECHO funding?

The European Commission’s Humanitarian Aid department (ECHO) does not implement humanitarian projects itself but funds actions that are implemented through partner relief organizations. This includes around 200 European non-governmental relief organizations (NGOs), specialized UN agencies (like UNICEF, WFP, OCHA), and members of the Red Cross/Crescent movement. All these ECHO-funded partner organizations are directly or indirectly subject to the “no abortion” prohibition on UN funds and, to our knowledge, no organization segregates out the U.S. funds in order to ensure that rape victims in conflict get comprehensive care for their injuries, including abortions.

25. Is there a principle on the purpose and aim of EU humanitarian aid?

Yes, the EU’s humanitarian assistance, which is distinct from longer-term development aid or foreign policy instruments, is based on and governed by the humanitarian principles of humanity, impartiality, independence and neutrality, all of which are contravened by US abortion restrictions.