



United States of America

Submission to the United Nations Universal Periodic Review

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The **Global Justice Center** is a US-based human rights organization with consultative status to the United Nations (“UN”) that works to achieve sustainable justice, peace, and security by building a global rule of law based on gender equality and universally enforced international human rights laws.

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Universal Periodic Review – 36th Session

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Summary

During the United States’ (“US”) second-cycle Universal Periodic Review (“UPR”), multiple states made recommendations concerning US abortion restrictions on foreign assistance, including the Helms Amendment. The US has failed to take any action on these recommendations; in fact, in 2017 the Trump administration further entrenched and expanded the scope of these policies with the reinstatement of the Global Gag Rule (or “GGR,” officially termed “Protecting Life in Global Health Assistance”). It should be noted that when the GGR is in effect its repeal tends to be the sole focus of advocates and policymakers; however, it is important to highlight that the long-standing pernicious statutory restrictions, including the Helms Amendment, enable the GGR, cause their own unique harms, as well as compound those of the GGR, and their repeal must also be the subject of attention. 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 Cycles 1 and 2 of the UPR¹

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 how are raped and impregnated in situations of conflict.”² The US rejected this recommendation with the spurious reason of “currently applicable restrictions”³ following Cycle 1 and 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 six states—the Netherlands, United Kingdom, Norway, Belgium, France and Switzerland⁴—both in advanced questions and recommendations. Advanced questions focused on the impact of these restrictions on women raped in conflict, including the lack of exceptions for rape, life, and incest. Despite these clear questions submitted in advance, the US did not provide the requested information during the review.⁵ Recommendations focused on the need to ensure that US restrictions did not limit access without exceptions for rape, life endangerment and incest,

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including in humanitarian settings. The US government, without reason, rejected all but one of these restrictions.⁶

4. These restrictions have not only been the subject of concern for donor and recipient countries, but also human rights bodies and experts. The UN Working Group on the issue of discrimination against women in law and in practice expressed concern over the Helms Amendment following its mission to the US and recommended its repeal.⁷
5. Last year the UN Special Rapporteur on extrajudicial, summary or arbitrary executions examined the GGR as an example of a policy that impedes the work of those providing essential sexual and reproductive health services. She found that, “the global gag rule, flawed on evidentiary and public health grounds, imperils the work of health-care providers, interferes with their freedom to practise to the level of recognized professional standards and erodes the integrity of health systems and services.”⁸ She further stated that the GGR “imposes an unconscionable choice on providers who depend on global health aid to deliver essential services: to abandon the provision of legal, technically sound and life-saving services and no longer provide adequate, accurate and unbiased information, or to face potentially drastic reductions in funding that would mean shutting down life-saving services, firing staff and closing clinics.”⁹
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 raped in war. Worse yet, in 2017 the newly installed Trump administration, through its reinstatement and expansion of the GGR, has further entrenched these restrictions and expanded their scope beyond US funding.
7. In an egregious example of such censorship, in 2019 the Trump administration announced that it would cut US assistance to the Organization of American States (“OAS”) based on claims that its agencies are lobbying for abortions in violation of the Siljander Amendment.¹⁰ As a quasi-governmental body, OAS recommendations are expert guidance, not lobbying,¹¹ and essential to carrying out their mandate to ensure the fundamental human rights of women and girls living in member states. By misapplying the Siljander Amendment to justify decreasing contributions to the OAS on purely ideological grounds, the US is aiming to censor these expert bodies and the very content of human rights protections.
8. As explained in this submission, these actions compound US violations of international law, including under international humanitarian law, international human rights law, and Security Council resolutions.

Relevant US Policies

9. 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 apply 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 (“fNGO”) receives US global health assistance. That is, the GGR controls how fNGOs can spend non-US aid and applies to both direct funding and sub-grants.

10. 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.”¹² 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, governments, and public international organizations. The Helms Amendment is currently implemented as a total ban on abortion services without exceptions for rape, incest, or life endangerment.¹³
11. The related 1981 Siljander Amendment restricts abortion-related speech and political activity. Specifically, Siljander prohibits using US foreign assistance funds to lobby for or against abortion,¹⁴ and is broadly interpreted and implemented. Like Helms, Siljander applies to all foreign assistance and all categories of grantees.¹⁵
12. The GGR is imposed at the discretion of the US president and has been implemented and rescinded along political party lines since 1984. The version of the GGR enacted by the Trump administration exacerbates the GGR’s harm by vastly expanding the scope of affected funding. Whereas previous Republican presidents applied the GGR only to fNGOs that received US family planning assistance, President Trump expanded the GGR to apply to all fNGOs receiving US global health assistance, whether directly or as sub-grants.¹⁶ The 2017 expansion impacts over \$8 billion in US funding (compared to \$600 million when applied only to family planning assistance).¹⁷
13. While the GGR specifically applies to fNGOs (restricting US NGOs would violate US Constitutional guarantees to free speech), US-based NGOs are required to pass the restrictions on to their sub-grantees, rendering those organizations as agents of censorship and limiting the scope of their partnerships and ability to freely associate. Recently, the Trump administration announced that it would be expanding the GGR to restrict funds even further, by preventing US-based NGOs who receive US global health assistance from sub-granting their non-US money to fNGOs that provide abortion services with any funds. Before the restriction only applied to sub-grants of US funds.¹⁸

US Abortion Restrictions Violate US Obligations Under International Law

International Humanitarian Law (“IHL”)

14. The US is bound by IHL under the Geneva Conventions and customary international law.¹⁹ The US must “respect” and “ensure respect for” IHL, which includes providing non-discriminatory medical care to women and girls in conflict situations.²⁰ In addition to encompassing abortion services as non-discriminatory medical care, IHL also protects the procedure via its guarantee of humane treatment.²¹
15. The Helms Amendment violates the IHL mandate to provide comprehensive and non-discriminatory medical care by excluding abortion as a medical procedure uniquely and exclusively needed by women and girls, and in the humanitarian context, those raped and impregnated in war.²² Whereas rape is perpetrated against women and men in different ways and by different methods, the injuries suffered necessitate different medical care to achieve equal outcomes.

16. 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.²³ 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 war heightens. 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.²⁴ 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.²⁵
17. Because of narrow exceptions, the GGR does not directly apply to US humanitarian aid funding streams.²⁶ Nonetheless, the GGR may impact humanitarian programs in fNGOs who receive funds from both global health funding streams and humanitarian funding streams. Where this limits the provision of abortion services to pregnant war victims, it violates the IHL obligations detailed above.

UN Security Council Resolutions

18. 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.²⁷ The Security Council passed three resolutions (2106, 2122, and 2242) 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.²⁸ Recently, in Resolution 2467, the Council additionally recognized that "violations of the obligations on the treatment of victims can amount to serious violations of international law".²⁹
19. Similar to the analysis above for how the Helms Amendment and GGR violate IHL, these restrictions also violate these Resolutions by failing to provide non-discriminatory medical care.

Convention against Torture ("CAT")

20. CAT guarantees the right to be free from torture, or cruel, inhuman or degrading treatment.³⁰ States parties to CAT, including the US, are obligated to help "prevent acts that put women's physical and mental health at grave risk and that constitute cruel and inhuman treatment".³¹ As the CAT Committee has found, access to abortion, at least in certain circumstances, implicates the rights to be free from torture, cruel, inhuman or degrading treatment.³²
21. Because the Helms Amendment has been interpreted as a full ban on abortion services with US foreign aid, this policy violates CAT by forcing 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.³³ 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 pregnancies to term in violation of the object and purpose of CAT.
22. 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.

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

23. The US is obligated to uphold and protect all individual rights guaranteed by the ICCPR, and not interfere with the obligations of other States parties.³⁴ The Covenant protects access to abortion services under a variety of rights including the rights to non-discrimination under Article 3, life in Article 6, and freedom from torture, cruel, inhuman or degrading treatment under Article 7.³⁵ Most recently, the Human Rights Committee (“HRC”), in its General Comment on Article 6, affirmed that access to safe abortion is fundamental to the exercise of the right to life.³⁶ In addition to protecting abortion services, the ICCPR also provides essential protections for free expression/speech under Article 19³⁷ and free association (including the right of an association to carry out its statutory duties and access funding for its existence and purposes from domestic, foreign, and international sources) under Article 22.³⁸
24. 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 often resort to unsafe methods to terminate their pregnancies when denied access to safe abortion services,³⁹ putting their lives unnecessarily at risk.⁴⁰ It is estimated that 25 million unsafe abortions take place each year, and cause between 4.7% and 13.2% of maternal deaths annually.⁴¹ In addition, the Helms Amendment is implemented as a total ban with none of the ICCPR’s required exceptions (including 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 service and information limitations that result from Helms-related restrictions that 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.
25. Moreover, the Helms-related restrictions directly “impede political debate,” prevent the dissemination of information of “legitimate public interest,” including research regarding unsafe abortions and maternal mortality, and 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—in violation of ICCPR Article 19. While certain restrictions on the right to speech are permissible, the implementation of these restrictions fails all three prongs of the ICCPR’s validity test: the restrictions must be provided for by law; serve a legitimate aim; and be necessary and proportionate to that aim.⁴²
26. 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.⁴³
27. Like the Helms-related restrictions, the GGR’s limitation on service provision forces women to seek out unsafe methods or carry to term unwanted pregnancies with outcomes that are at odds with women’s fundamental rights under the ICCPR. Furthermore, while the GGR—unlike the Helms Amendment—has exceptions for rape, life endangerment and incest, 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.⁴⁴ The HRC’s 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.

28. The GGR also 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.⁴⁵ The impact of these restrictions is similar to, and intertwined with, the invalid restrictions on free speech and association described above.

Conclusion

29. 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. These restrictions place US aid grantees in the often untenable position 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 losing US funding with a similar impact. It is long past time for the US to repeal these regressive and harmful policies, direct their aid to pursue positive health outcomes for women, and to realize women’s fundamental rights under international human rights and humanitarian law.

Recommendations

- Repeal and/or end all abortion restrictions on foreign assistance, including the Helms and Siljander Amendments, as well as the Global Gag Rule.
- Conduct annual transparent and comprehensive reviews of the implementation and impact of US abortion restrictions, with public access to the methodology and submissions.
- Issue clear guidance on permitted and prohibited activities to allow grantees to regulate their conduct without onerous or overbroad procedures and with minimal risk.
- Ensure the broadest possible exceptions to abortion restrictions, including in cases of rape, life and health endangerment, incest, and fetal impairment, and clearly communicate these in writing to all grantees.
- Fully exempt humanitarian aid and allow such aid to be provided in line with IHL.

¹ The Global Justice Center submitted a detailed report with updates and analysis regarding the US’ actions since the previous UPR cycles in its UPR Mid-Term Submission to the UN Human Rights Council in February 2018. See Global Justice Center, United States of America: UPR Mid-Term Submission to the UN Human Rights Council (Feb. 2018), <http://www.globaljusticecenter.net/files/GJC.UPRFeb2018.pdf>.

² 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).

³ 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).

⁴ 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>.

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- ¹¹ Letter from 5 former U.S. members of the IACHR to Mike Pompeo, U.S. Sec'y of State (Feb. 13, 2019), https://theglobalamericans.org/wp-content/uploads/2019/02/Pompeo.IACHR_.2.13.19.pdf.
- ¹² 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).
- ¹³ Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women's Rights and Human Rights* (Jan. 2018), <http://globaljusticecenter.net/files/FAQAbortionRestrictions.pdf>.
- ¹⁴ Siljander Amendment, FY 2006 Appropriations Act, Pub. L. No. 109-102, "Child Survival and Health Programs Fund," 119 Stat. 2172.
- ¹⁵ USAID, USAID Guidance for Implementing the Siljander Amendment (Prohibition on Lobbying For or Against Abortion) (May 22, 2014), <https://www.usaid.gov/sites/default/files/documents/1864/USAID%20Guidance%20for%20Implementing%20the%20Siljander%20Amendment.pdf>.
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- ¹⁹ 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).
- ²⁰ 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>.
- ²¹ Common Article 3 to the four Geneva Conventions of 1949. 6 UNTS 31.
- ²² Akila Radhakrishnan et al., *Commentary, Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers*, REPRODUCTIVE HEALTH MATTERS, Nov. 2017.
- ²³ 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).
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- ²⁷ U.N. Charter art. 25.
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- ²⁹ S.C. Res. 2467, p. 3, U.N. Doc S/RES/2467 (Apr. 23, 2019).
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- ³¹ Committee against Torture, Concluding Observations: Peru, U.N. Doc. CAT/C/PER/CO/4, ¶23 (25 July 2006).
- ³² Concluding Observations of the Committee against Torture – Philippines, U.N. Doc. CAT/C/PHL/CO/3, ¶¶ 39-40, 2 June 2016; Concluding Observations of the Committee against Torture – Poland, U.N. Doc. CAT/C/POL/CO/5-6, ¶ 23, 23 December 2013; Concluding Observations of the Committee against Torture – Ireland, U.N. Doc. CAT/C/IRL/CO/1, ¶ 26, 17 June 2011; Concluding Observations of the Committee against Torture – Paraguay, U.N. Doc. CAT/C/PRY/CO/4-6, ¶ 22, 14 June 2011; Concluding Observations of the Committee against Torture – Nicaragua, U.N. Doc. CAT/C/NIC/CO/1, ¶ 16, 10 June 2009; Concluding Observations of the Committee against Torture – Peru, U.N. Doc. CAT/C/PER/CO/4, ¶ 23, 25 July 2006.
- ³³ Global Justice Center & OMCT, Submission to the Committee against Torture in relation to its examination of the United States of America’s Third to Fifth State Party Report: The United States’ Abortion Restrictions on Foreign Assistance Deny Safe Abortion Services to Women and Girls Raped in Armed Conflict (Nov. 2014), <http://globaljusticecenter.net/documents/OMCTGJC%20ShadowReport%20CAT%20UnitedStates%20FINAL.pdf>.
- ³⁴ ICCPR, art. 2(1), Dec. 16, 1966, 99 U.N.T.S 171.
- ³⁵ 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).
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- ³⁷ ICCPR, art. 19(2), Dec. 16, 1966, 99 U.N.T.S 171.
- ³⁸ Human Rights Committee, *Korneenko v. Belarus*, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006); 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).
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- ⁴⁴ USAID, Standard Provisions for Non-U.S. Nongovernmental Organizations, § RAA29(a)(II) (6)(i) (Oct. 4, 2017).
- ⁴⁵ USAID, Standard Provisions for Non-U.S. Nongovernmental Organizations, § RAA29(a)(10)(iii)(A)(I-IV) (Oct. 4, 2017).