



## Lift the Ban: The Impact of US Abortion Restrictions on Kidnapped Nigerian Schoolgirls

When almost 300 Nigerian schoolgirls were recently kidnapped by local terrorist organization *Boko Haram*,<sup>1</sup> the United States sent military and foreign aid to help rescue the victims and combat the threat posed by the militants.<sup>2</sup> However, while the US support includes provisions for the victims' protection and care,<sup>3</sup> the abortion ban attached to US foreign aid bars the option of safe termination of pregnancies resulting from rape<sup>4</sup> – in spite of the armed group's announced intent to marry some of the schoolgirls and sell others into sex slavery.<sup>5</sup>

In Nigeria, a major state-recipient of US foreign aid, girls and women are routinely raped as a tactic of war. This phenomenon is not unique to domestic terrorist organizations like *Boko Haram*, but is also practiced by the country's military and police forces.<sup>6</sup> When these rape victims, many of whom are young girls, become pregnant, the US abortion ban limits the services available to them and forces them to bear the children of their rapists. US policy thus increases the morbidity and mortality of girls and women who are impregnated by war rape.<sup>7</sup>

Recently, the Office of the Prosecutor of the International Criminal Court found that the situation in Nigeria constitutes a non-international armed conflict. Accordingly, the situation is governed by international humanitarian law, including the Geneva Conventions.<sup>8</sup> Therefore, in Nigeria's armed conflict, international humanitarian law and the Geneva Conventions reign supreme, trumping any contrary national laws and providing absolute minimum standards for the behavior of each party to the conflict and each State party providing foreign aid.<sup>9</sup>

Common Article 3 of the Geneva Conventions affords all "wounded and sick" persons in armed conflict comprehensive and non-discriminatory health care. This treatment necessarily includes providing access to *life and health-saving abortions for servicewomen and civilians raped in armed conflict*. In addition, common Article I requires States "respect and ensure respect" for the Conventions, both among themselves and other State Parties.

The US abortion ban, therefore, not only denies girls and women war rape victims the medical care they need, but additionally violates the US's absolute obligations towards war victims under the Geneva Conventions to provide non-discriminatory health care and its duty to "respect" the Conventions' essential provisions.

In addition to violating international humanitarian law, the US abortion restriction undermines Nigeria's domestic laws.

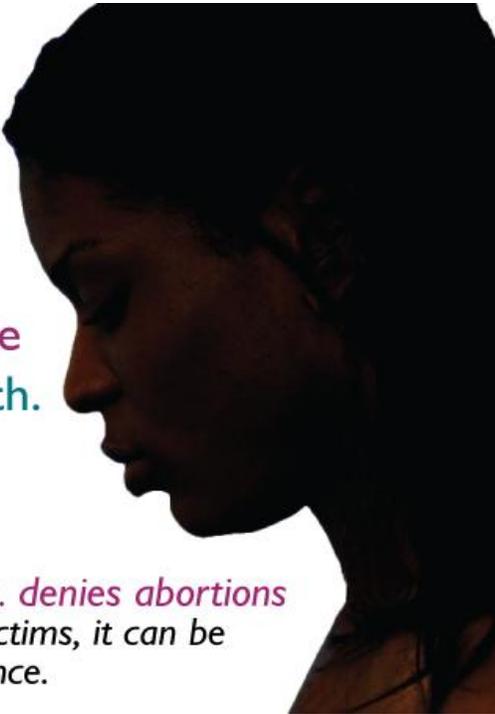
Neither of Nigeria's two geographically distinct penal codes explicitly permits abortion in cases of rape. Still, the south has interpreted its law to permit abortions to preserve the life, or physical or mental health of the mother. In cases such as the Boko Haram kidnapping, women impregnated by war rape face life-threatening pregnancies resulting from serious physical injuries from rape or gang rape, risk of suicide, and the incapacity of many young girls' bodies to carry a baby to term safely. The presence of armed conflict amplifies these risks due to decreased access to and isolation resulting from detentions and internal displacement.

Therefore, each time a war rape victim faces a life-endangering pregnancy and desires an abortion, the US abortion ban denies the medical care they need, violates the Geneva Conventions, and blocks implementation of Nigerian law.

The Security Council has passed two Resolutions requiring donor States, including the US, to ensure access to comprehensive and non-discriminatory medical care, including access to safe abortion services.<sup>10</sup> Specifically, 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>11</sup> Security Council Resolution 2122 complements 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>12</sup> These Resolutions underscore the fact that the ban on abortions placed on US foreign aid is illegal and inhumane. Comprehensive sexual health and reproductive services, including the right to access safe abortions, are absolutely essential for the well-being and livelihood of victims of war rape, including the kidnapped Nigerian girls.

The abducted Nigerian schoolgirls deserve no less than the absolute protections afforded to them by domestic and international law.



War rape victims are more likely to die in childbirth.

When the U.S. *denies abortions* to war rape victims, it can be a death sentence.

## Recommendations

### To the United States:

President Obama should issue an Executive Order that makes clear US foreign aid can be used to provide abortions in cases of rape, life endangerment, and incest. In the case of women raped in war, the Executive Order must affirm and ensure their rights to comprehensive and non-discriminatory medical care under common Article 3 of the Geneva Conventions.

### To Other Donor Governments:

Establish a clear policy, including by incorporating into humanitarian aid policies, that safe abortion services can be provided with their funds for girls and women raped in war and affirm that this right is protected as a part of their rights to comprehensive and non-discriminatory medical care under common Article 3 of the Geneva Conventions. This policy should also indicate that the provision of safe abortion services is governed by the Geneva Conventions, which trump restrictive local laws and permit the provision of safe abortion services alongside any other medical care they may require;

Segregate their foreign aid from US foreign aid, since the US abortion restrictions apply to the entire funding pool and therefore preclude other donor States' funds from providing comprehensive and non-discriminatory medical care to rape victims; and

Call on President Obama to issue an Executive Order that makes clear US foreign aid can be used to provide abortions in cases of rape, life endangerment, and incest and the rights of war rape victims to comprehensive and non-discriminatory medical care under common Article 3 of the Geneva Conventions.

### To the United Nations:

Ensure that UN entities and Member States comply with the mandates in Security Council Resolutions 2106 and 2122 that require the provision of comprehensive reproductive care for survivors of sexual violence, including the termination of pregnancies resulting from rape.



<sup>1</sup> See UN Security Council, *Security Council Al-Qaida Sanctions Committee Adds Boko Haram to Its Sanctions List*, UN Doc. SC/11410 (May 22, 2014), available at <http://www.un.org/News/Press/docs/2014/sc11410.doc.htm>.

<sup>2</sup> See *Boko Haram: The Growing Threat to Schoolgirls in Nigeria and Beyond*, Hearing Before the H. Comm. on Foreign Affairs, 113<sup>th</sup> Cong. (2014) (statement of Sarah Sewall), available at <http://translations.state.gov/st/english/texttrans/2014/05/20140521299542.html#axzz33ajvTyt3>.

<sup>3</sup> *Id.*

<sup>4</sup> See Sneha Barot, *Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment*, 10 *Guttmacher Policy Rev.* 3 (2013).

<sup>5</sup> See AFP News Agency, *Boko Haram Video Claims to Show Missing Nigerian Schoolgirls*, available at <http://www.youtube.com/watch?v=A9sJnldKRg8>; see also UNFPA Kenya, *Abduction of Nigerian Girls Demands Global Response* (May 6, 2014), available at [http://countryoffice.unfpa.org/kenya/2014/05/07/9644/abduction\\_of\\_nigerian\\_girls\\_demands\\_global\\_response/](http://countryoffice.unfpa.org/kenya/2014/05/07/9644/abduction_of_nigerian_girls_demands_global_response/).

<sup>6</sup> See Amnesty International, *Document – Nigeria: Torture in Nigeria: In Summary: Stop Torture Country Briefing* (May 2014), <http://www.amnesty.org/en/library/asset/AFR44/005/2014/en/88a3b56d-2953-43c7-bafa-e54e656aaa07/afr440052014en.html>; This Day Live, *Rights Commission, FIDA Condemn Rape by Soldiers* (January 17, 2013), <http://www.thisdaylive.com/articles/rights-commission-fida-condemn-rape-by-soldiers/136592/>; see also Open Society Justice Initiative, *Criminal Force – Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force* (2010), at p. 74.

<sup>7</sup> See UNICEF West and Central Africa, *Leading and Underlying Causes of Maternal Mortality*, available at [http://www.unicef.org/wcaro/overview\\_2642.html](http://www.unicef.org/wcaro/overview_2642.html).

<sup>8</sup> International Criminal Court, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the abduction of schoolgirls in Nigeria* (May 8, 2014), available at [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-08-05-2014.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-08-05-2014.aspx); see also, International Committee of the Red Cross, *Annual Report 2013 – Nigeria*, available at <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-nigeria.pdf>.

<sup>9</sup> I JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW*, 495 (2005). Rule 139, Compliance with International Law, “Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control”.

<sup>10</sup> S.C. Res. 2106, ¶19, U.N. Doc. S/RES/2106 (June 24, 2013); S.C. Res 2122, recitals, U.N. Doc. S/RES/2122 (Oct. 18, 2013).

<sup>11</sup> S.C. Res. 2106, ¶19, U.N. Doc. S/RES/2106 (June 24, 2013).

<sup>12</sup> S.C. Res 2122, recitals, U.N. Doc. S/RES/2122 (Oct. 18, 2013).

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