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CHANGE
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Censorship Exported: The Impact of Trump's Global Gag Rule on the Freedom of Speech and Association

Introduction

In January 2017, President Trump signed a presidential memorandum reinstating the Global Gag Rule (GGR), an onerous policy that not only limits the provision of abortion services as a method of family planning but also restricts a wide variety of speech about abortion, including information, certain types of research, and advocacy.

Two years on, the detrimental impacts of Trump's GGR on sexual and reproductive health, HIV and AIDS services, and maternal mortality are well documented. But the GGR, in conjunction with other US abortion restrictions on foreign aid, also violates the fundamental rights of individuals and organizations to free speech and association. This policy brief looks at the documented impacts of the GGR that have been observed over the past two years against the human rights framework protecting the fundamental freedoms of speech and association. This is an edited version of GJC and CHANGE's submission to the Human Rights Committee's 125th Session for the preparation of the US List of Issues Prior to Reporting.

US Abortion Restrictions on Foreign Assistance

There is both legislation and policy restricting sexual and reproductive rights, specifically abortion, in US foreign assistance. This section details the US policies that restrict abortion services and speech for women and girls overseas, such as those imposed by the US Congress—the Helms and Siljander Amendments—as well as the presidentially imposed GGR. The congressionally mandated restrictions dictate how US foreign aid can be spent and are applied to all foreign assistance funds. The GGR places additional limits on how funds from any donor can be spent if a foreign non-governmental organization (foreign NGO or fNGO) receives US global health assistance.

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."[1] 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.

Generally, the phrase "abortion as a method of family planning" is understood to permit abortions in situations where the pregnancy is the result of rape or incest, or where it threatens a woman's life. However, the Helms Amendment is currently implemented as a total ban on abortion services without exceptions for rape, incest, or life endangerment.[2]

The related Siljander Amendment also restricts abortion-related speech and political activity. Specifically, Siljander prohibits US foreign assistance funds from being used to lobby for or against abortion,[3] and is broadly interpreted and implemented. Like Helms, Siljander applies to all foreign assistance and all categories of grantees.

1. 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).
2. Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women's Rights and Human Rights* (January 2018), http://globaljusticecenter.net/files/FAQAbortionRestrictions.pdf.
3. Siljander Amendment, FY 2006 Appropriations Act, Pub. L. No. 109-102, "Child Survival and Health Programs Fund," 119 Stat. 2172.

While both the Helms and Siljander restrictions technically only limit abortion services and speech with US funds, unless grantees implement onerous and rigorous efforts to keep segregated funding accounts and practices, US abortion restrictions de facto also affect the funds provided by other donors. While certain larger and well-established organizations and agencies have such policies in place, many do not, which radically expands the reach of these restrictions beyond US funds.

The Helms Amendment has consistently been in place since 1973 and the Siljander Amendment since 1981. These restrictions are fundamental cornerstones of US foreign assistance and have been rigorously enforced and monitored by both Democratic and Republican presidential administrations; as a result, they have impeded efforts to realize women's fundamentally protected human rights to access safe abortion services for decades.

The GGR is a separate and additional abortion restriction that is currently attached to US global health assistance. At its most basic: where the congressional restrictions prohibit abortion services and speech with US foreign aid, the GGR further prohibits fNGOs from providing abortion services or engaging in abortion-related speech with funds from any source, including other donors.[4] That is, the GGR controls how fNGOs can spend non-US aid and applies to both direct funding and subgrants.

The GGR is imposed at the discretion of the US president and has been implemented and rescinded along political party lines since the Reagan administration. All Republican administrations since 1984 have reinstated the policy via presidential memorandum after previous Democratic administrations had withdrawn it. The constant back-and-forth between implementing and rescinding the GGR has created widespread confusion and service interruptions around the world. In addition, the GGR, coupled with the congressional restrictions, has had a chilling effect on abortion services and speech, which extends far beyond the direct reach of these policies. As a result, US grantees avoid even permitted services and speech due to fears of withdrawal or loss of US funding.

The version of the GGR put in place by the Trump administration exacerbates the GGR's ill effects by vastly expanding the scope of the funding affected. Whereas previous Republican presidents applied the GGR only to fNGOs that received US family planning assistance, under President Trump's expansion, the GGR now applies to all fNGOs receiving US global health assistance, whether directly or as sub-grants.[5] "Global health assistance" is broadly defined to include funding for health programs related to HIV, maternal and child health, nutrition, tuberculosis, malaria, global health security, family planning, and reproductive health.[6] "Assistance" includes "the provision of funds, commodities, equipment, or other in-kind global health assistance."[7] The 2017 expansion of the GGR to all global health assistance impacts over $8 billion in US funding (compared with $600 million when applied only to family planning assistance).[8]

These restrictions, taken together, form a potent combination to cause harm to women and girls around the world.

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

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

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

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

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

US Abortion Restrictions Violate Fundamental Guarantees of the Freedom of Speech and Association

One important rubric for evaluating the implementation and impact of US abortion restrictions on foreign assistance are international human rights standards by which the United States is bound, including the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, which monitors compliance with the ICCPR, will soon be reviewing the US government and the impact of the GGR will be under consideration.

This is because the ICCPR protects abortion access as a matter of numerous rights guarantees, including the right to non-discrimination under Article 3; the right to life in Article 6; and the right to be free from torture, cruel, inhuman or degrading treatment under Article 7.[9] In addition, the ICCPR provides robust protections for free speech and free association under its Article 19 and Article 22, which are the focus of this policy brief. These obligations are owed not only to individuals and NGOs, but also to other States Parties.[10]

US Abortion Restrictions Violate Article 19 and 22 on the Rights to Free Expression and Association

US abortion restrictions violate the essential protections of freedom of speech (Article 19), including the "freedom to seek, receive, and impart information and ideas of all kinds,"[11] as well as the freedom of association (Article 22), including the right of an association to carry out its statutory duties[12] and access funding for its existence and purposes from domestic, foreign, and international sources.[13] Specifically, the restrictions and their implementation fail to meet the test established by the Human Rights Committee for abridging the rights protected under Articles 19 and 22: the restrictions must be provided for by law; serve a legitimate aim; and be necessary and proportionate to that aim.[14] US restrictions on foreign assistance fail all three prongs of this test, as the analysis below on the GGR demonstrates.

The Global Gag Rule is Not Provided for by Law

The first condition of the ICCPR test for limiting fundamental rights to speech and association requires the restriction to be provided for by law. Per the Human Rights Committee, that requires that the policy must be written clearly, so those subject to it understand how to adapt and regulate their conduct, and it must be

9. 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); *see also* Human Rights Watch, Q&A: Human Rights Law and Access to Abortion (Jul. 24, 2017).

10. Human Rights Comm., General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (May 26, 2004), at 2.

11. International Covenant on Civil and Political Rights, art. 19(2), Dec. 16, 1966, 99 U.N.T.S 171.

12. Human Rights Committee, *Korneenko v. Belarus*, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (November 10, 2006).

13. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Human Rights Council, U.N. Doc. A/HRC/23/39 (April 24, 2013) at 8; *see also* 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).

14. International Covenant on Civil and Political Rights arts. 19(3), 22(2); Human Rights Comm., General Comment No. 34 on Article 19: Freedoms of Expression and Opinion, at 21, 22, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) (noting that restrictions must remain the exception to the human rights norm of freedom of expression, not putting "in jeopardy the right itself"); International Covenant on Civil and Political Rights arts. 4, 5 (derogation in times of public emergency and that the Covenant should not be interpreted as allowing activities aimed at the destruction of human rights or to permit restrictions upon fundamental rights existing in States Parties "pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent"); Universal Declaration of Human Rights arts. 29, 30 ("In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society").

consistent and transparent to avoid unfair discretionary implementation.[15] Impact reports from the first year of the Trump GGR rollout demonstrate that the policy is confusing, imprecise, and inconsistently implemented, leading to a chilling effect of self censorship, overinterpretation, and the dismantling of civil society networks.[16]

The International Women's Health Coalition (IWHC) conducted extensive interviews with civil society organizations throughout Kenya, Nigeria, and South Africa, and found that nearly all interviewees indicated confusion and lack of clarity around what the GGR prohibited and to whom it applied.[17] The confusion was consistent among top-level organization heads, staff, and providers at the patient level, with the majority expressing uncertainty about what constituted a provision or promotion of abortion.[18] Similarly, PAI impact reports in Uganda and Nigeria detail confusion about the language of the GGR in grant agreement standard provisions, and a lack of explanation or information from US funding agencies.[19]

Some organizations noted simply receiving a short email that the GGR would be included in the next standard provision. Other organizations only received an email with the new standard provision agreement attached and a note indicating it needed to be signed within the week, with no mention of the GGR.[20] The relevant provision appears buried on page 83 of the United States Agency for International Development (USAID) standard provision.[21] Such a short turnaround with minimal information makes it challenging for fNGOs to recognize they are implicated by the GGR, seek out information for what the policy means, and make an informed decision about whether or not to sign the new grant.[22] In Mozambique, a majority of interviewed fNGOs had received no communication at all from their aid agencies or primary funding partners, even when they had previously had consistent, scheduled contact.[23]

There are also instances where the GGR was erroneously included in grant provisions that did not fall under the umbrella of global health assistance. In one example, a group of fNGOs working in water, sanitation, and hygiene (WASH) received an aid award under "Development Assistance," but the grant included the GGR.[24] In that case, USAID claimed that the funding might include global health assistance aid in the future, so the GGR had been applied proactively, even though the current funding source did not permit it.[25] Other erroneous overinterpretations of the GGR's applicability were noted in regards to consultants, who had been asked to certify the policy even though it does not apply to individuals not associated with an organization.[26]

This confusion has led to a chilling effect where fNGOs over censor themselves in service and in advocacy. FNGOs have been especially expansive in their interpretations of this iteration of the GGR because of a perceived hostility on the part of the Trump administration towards women's health initiatives and sexual and reproductive

15. Global Justice Center, *US Abortion Restrictions on Foreign Aid and Their Impact on Free Speech and Free Association: The Helms Amendment, Siljander Amendment, and the Global Gag Rule Violate International Law* (March 2018) at 3.
16. Int'l Women's Health Coalition, Reality Check: Year One of the Global Gag Rule (2018), *available at* https://iwhc.org/wp-content/uploads/2018/05/GGR-Formatted-Report_FINAL.pdf.
17. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018) at 8.
18. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018).
19. PAI, *Access Denied: Nigeria* (March 2018) at 7, *available at* https://pai.org/wp-content/uploads/2018/03/Access-Denied-Nigeria-2.pdf; *see also* PAI, *Access Denied: Uganda* (March 2018) at 7, *available at* https://pai.org/wp-content/uploads/2018/03/Access-Denied_Uganda_March-2018.pdf.
20. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 30, *available at* http://www.genderhealth.org/files/uploads/change/publications/Prescribing_Chaos_in_Global_Health_full_report.pdf.
21. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 7.
22. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 30.
23. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 31.
24. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 33.
25. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 34.
26. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018).

health and rights (SRHR) programs.[27] One Nigerian organization ceased pursuing funding for adolescent girls programming out of fear of violating the GGR, exemplifying organizations' inabilities to make informed decisions about funding and operations.[28] In Kenya, providers publicly posted signs stating they did not provide abortion services because they mistakenly thought that was required under the GGR.[29]

One organization in Nigeria admitted to being cautious about assisting a patient complaining of stomach pain by transporting her to a nearby hospital, in fear it might be construed as providing abortion services.[30] In Uganda, organizations have halted misoprostol trainings for health care providers because it can be used to induce medication abortions.[31] Misoprostol, however, is on the World Health Organization's (WHO) list of essential medicines and has a wide range of uses, including treating post-abortion and post-partum hemorrhaging.[32] While post-abortion care is not prohibited under the GGR, many organizations are unaware of this, so the policy has had a chilling effect on organizations assisting in emergency, life-saving, post-abortion services.

Organizational networks and partnerships around SRHR and integrated health care systems have been weakened by the GGR. The International Centre for Reproductive Health in Mozambique (ICRH-M) told CHANGE how Trump's policy has weakened SRHR coalition networks by causing self-censorship, withdrawal from membership, and anxiety, tension, and friction within coalition meetings between compliant and non-compliant members.[33] Organizations throughout Kenya, Nigeria, and South Africa reported to IWHC that the GGR makes it harder to form and maintain partnerships with other organizations, even on projects unrelated to abortion services, and that the policy ostracizes reproductive health and abortion providers.[34] In South Africa, Ibis International has struggled to find a local partner to provide community services, noting an atmosphere of distrust, competition, and fragmentation within civil society as a result of the GGR.[35] PAI reported a trend among US-based NGOs, which are not subject to the GGR, of ceasing partnerships with local organizations, or redistributing funds away from regional partners and opening their own offices.[36] This diminishes grassroots, local ownerships over services, which has been a stated USAID goal in reproductive health programming, and destabilizes domestic health care initiatives.[37]

The vague and unclear language of the GGR, lack of communication, and inconsistent implementation has generated rampant confusion in fNGO SRHR networks. Further exacerbating the problem, the GGR has a zero-tolerance policy, mandating that any violation, even in good faith, will result in immediate funding termination.[38] This coupled with the threat that fNGOs may need to pay back funding if they violate the policy, with no clear protocol for when that would be the case, has created an atmosphere of extreme uncertainty and fear.[39] In just two years, the result has been a chilling effect of self-censorship, fracturing organization networks, and political

27. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 37.
28. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018), at 9.
29. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018).
30. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018).
31. PAI, *Access Denied: Uganda* (March 2018) at 8.
32. PAI, *Access Denied: Uganda* (March 2018).
33. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 37.
34. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018) at 16.
35. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018).
36. PAI, *Access Denied: Uganda* (March 2018) at 7.
37. PAI, *Access Denied: Uganda* (March 2018).
38. Department of State, *Protecting Life in Global Health Assistance: Six Month Review* (February 6, 2018), *available at* https://www.state.gov/f/releases/other/278012.htm. (While the 6 month review of the Policy included a recommendation for flexibility in responses to violations, updated policy provisions reflecting this recommendation have not been released.)
39. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 37.

silencing. The GGR, therefore, does not satisfy the "provided by law" requirement of the first prong in the ICCPR test for limiting the freedoms of speech and association.

The Global Gag Rule Does Not Serve a Legitimate Aim

Under the ICCPR and the Human Rights Committee's guidance, an aim is considered legitimate only when it relates to the protection of national security, public order, public health, morals, or the rights and reputations of others.[40] While abortion may be considered a moral issue, the promotion of national values does not constitute a legitimate aim according to the Special Rapporteur on the rights to freedom of peaceful assembly and association.[41] In addition, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has stated that "Public morality cannot serve as a justification for enactment or enforcement of laws that may result in human rights violations, including those intended to regulate sexual and reproductive conduct and decision-making. Although securing particular public health outcomes is a legitimate state aim, measures taken to achieve this must be both evidence-based and proportionate to ensure respect of human rights. When criminal laws and legal restrictions used to regulate public health are neither evidence-based nor proportionate, states should refrain from using them to regulate sexual and reproductive health, as they not only violate the right to health of affected individuals, but also contradict their own public health justification."[42]

Further, otherwise legitimate restrictions violate the ICCPR if they obstruct political debate or the dissemination of information relevant to the public.[43] The impact reports on the first two years of the Trump GGR demonstrate that the policy has restricted free speech or association while failing to meet the standard of a legitimate aim. The restrictions imposed by the GGR fail in the furtherance or protection of national security or public health while impeding political discourse and information dissemination.

While the express goal of the GGR is to protect life and decrease abortions, organizations on the ground have already seen the opposite effect in regards to HIV and AIDS and other infectious diseases, maternal mortality, and abortion rates. Health care services were becoming increasingly integrated, a progression that has been especially advantageous for rural communities and vulnerable groups. However, this means that abortion or reproductive health services do not occur in a vacuum, so policies hindering them effectively hinder a comprehensive array of medical programs, including HIV and AIDS prevention.[44] A 2018 quantitative study from The Foundation for AIDS Research (amfAR) and Johns Hopkins University surveyed 286 PEPFAR (the President's Emergency Plan for AIDS Relief, the US's largest global health program) prime implementing partners across 31 countries and found 33 percent of them were impacted by the GGR. Impact extended beyond information about abortion and included restricting information on HIV.[45]

In Uganda, the two largest sexual and reproductive health care providers, Marie Stopes International (MSI) and Reproductive Health Uganda (RHU),[46] are both unable to sign standard provisions containing the GGR, causing compliant smaller organizations to no longer refer patients to either MSI or RHU, even for HIV and AIDS

40. International Covenant on Civil and Political Rights, arts 19(3), 22(2).

41. Global Justice Center, *US Abortion Restrictions on Foreign Aid and Their Impact on Free Speech and Free Association: The Helms Amendment, Siljander Amendment, and the Global Gag Rule Violate International Law* (March 2018), at 7.

42. Interim Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, General Assembly, U.N. Doc. A/66/254 (Aug. 3, 2011) at 18, *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

43. Global Justice Center, *US Abortion Restrictions on Foreign Aid and Their Impact on Free Speech and Free Association: The Helms Amendment, Siljander Amendment, and the Global Gag Rule Violate International Law* (March 2018), at 4.

44. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018), at 10.

45. Sherwood, J., Roemer, M., Honermann, B., Sharp, A., Decker, M., Millett, G. Tracking the Impact of the Expanded Mexico City Policy on PEPFAR Implementing Partners. Poster session presented at: HIV Research for Prevention 2018; Madrid, Spain (October 21-25, 2018).

46. RHU is an affiliate of the International Planned Parenthood Association

services.[47] Similarly, in Mozambique, the International Planned Parenthood Federation (IPPF) affiliate Associação Moçambicana para o Desenvolvimento da Família (AMODEFA) is unable to comply with the GGR.[48] Two-thirds of AMODEFA funding from the United States goes to their work in preventing and treating HIV/AIDS, malaria, and tuberculosis. The IPPF as a whole is estimated to lose $100 million in US funding, which will hamper its ability to continually provide 725,000 HIV tests annually, or HIV treatment to 275,000 pregnant women.[49] As Mozambique's leading SRHR organization and a provider of integrated HIV prevention and care, AMODEFA lost 60 percent of its budget, 30 percent of its staff, and closed half of its 20 youth clinics providing integrated care as a result of the GGR. This caused an ongoing decrease, and in some places a discontinuation, of HIV prevention and treatment services. For example, AMODEFA stopped its integrated tuberculosis, malaria, HIV, and family planning program at the Nampula province clinic. At its Xai-Xai clinic for girls and young women under 24 years of age, AMODEFA went from providing 38,516 HIV services (including testing and counseling) from July-September 2017 to 5,089 from October-December 2017 due to the loss of funding.[50]

The GGR has had, and will continue to have, detrimental impacts on HIV and AIDS services throughout Africa. An Ethiopian NGO providing antiretroviral therapy (ART) expressed concern it would lose funding; an NGO in Uganda and Malawi stated that its clinics providing HIV and AIDS services and counseling to youths will shut down if they cannot find an alternate funding source; Mozambique has already seen a drop in community-based organizations providing in-home HIV treatments, which are vital to reaching rural communities; another Mozambique NGO has had to cease a successful pilot program mandating parental disclosure to children born with HIV; and AMODEFA clinics have already noted a steep drop in HIV services in just three months since the GGR was implemented.[51] The successful DREAMS initiative throughout sub-Saharan Africa, which seeks to reduce HIV infections among adolescent girls and young women, had seen marked success[52] prior to the GGR, but since losing funding due to the GGR AMODEFA has pulled back on the original five-year DREAMS plan and laid off over 536 of its original 600 community health workers.[53]

The GGR is also anticipated to increase rates of maternal mortality. In many countries, like Mozambique, abortion was initially legalized in an attempt to reduce high maternal mortality rates.[54] In South Africa, the legalization of abortion reduced maternal mortality by 91 percent, though the rate is still high as a result of stigma and lack of information and education.[55] The GGR undermines such local initiatives to increase comprehensive reproductive and sexual health care services and education to combat high maternal mortality and unsafe abortion deaths. In Uganda, where maternal mortality rates are high and 5.3 percent of deaths are caused by abortion complications, the fracturing of civil society groups has also hurt maternal mortality groups that contain compliant and non-compliant members now afraid to associate with each other.[56] The MSI affiliate in Zimbabwe faces a 50 percent cutback on services as a result of lost funding, including services that prevented 814 maternal deaths and 3,100

47. PAI, *Access Denied: Uganda* (March 2018), at 7.
48. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 29.
49. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 40.
50. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 40 - 78.
51. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 41.
52. Including a 25-40 percent reduction in new HIV infections
53. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 42.
54. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 57
55. A. M. Mbele, L. Snyman, and R. C. Pattison, *Impact of the Choice on Termination of Pregnancy Act on Maternal Morbidity and Mortality in the West of Pretoria*, South African Medical Journal = Suid-Afrikaanse Tydskrif Vir Geneeskunde 11, 96 (2006).
56. Uganda Ministry of Health, *Annual health sector performance report 2017/18* (2018), at 24, *available at* https://health.go.ug/content/annual-health-sector-performance-report-financial-year-201718. *See also* PAI, *Access Denied: Uganda* (March 2018), at 8.

child deaths the previous year.[57] Similarly, the IPPF estimates its lost funding will impede its ability to prevent 20,000 maternal deaths.[58]

Previous versions of the GGR failed to curtail abortion, and the current iteration is projected to be no different. Research from Ghana shows that when the policy was in place under George W. Bush, abortion did not decrease, and there was an increase in the likelihood that women living in rural areas would experience an abortion.[59] A study published in the WHO Bulletin found that during the GGR under the George W. Bush administration, women in sub-Saharan Africa who were in countries with high exposure to the GGR had two and a half times the odds of experiencing an induced abortion once the policy was reinstated compared to their counterparts in countries with low exposure.[60] In 2018, Yana Rodgers published a book on the GGR under the George W. Bush administration. Rodgers found that women in countries within Latin America and the Caribbean with a high exposure to the GGR had three times the odds of experiencing an induced abortion once the policy was reinstated compared to their counterparts in countries with low exposure.[61] While the GGR may force legitimate, trained providers to close up shop, "curtain clinics" pop up in their place. In Kenya, such clinics, run by untrained people without medical accreditation, provide back-alley abortions to desperate women and girls.[62] As a result of their lost funding and reduced services, MSI estimates that more than two million women will no longer have access to contraception services from a trained MSI provider, resulting in an extra 2.5 million unintended pregnancies, 870,000 unsafe abortions, and 6,900 avoidable maternal deaths.[63] The IPPF faces similar service cutbacks, estimated to hamper its work preventing 4.8 million unintended pregnancies and 1.7 million unsafe abortions.[64]

Ultimately, even if the GGR were considered to serve a legitimate aim, it would still be in violation of the ICCPR because in furthering that aim it has muted the spread of information relevant to the public and silenced advocacy and political debate. Organizations in states where abortion is legal have expressed a unique confusion over how to reconcile GGR restrictions with domestic law. In South Africa, for example, providers and NGOs are caught between their legal responsibilities to provide constitutionally protected abortion services and information, and the restrictions under the GGR.

Regardless of how liberal or conservative a state's abortion laws are, stigma almost always abounds. The GGR exacerbates this stigma by limiting discourse.[65] In South Africa, organizations are often on the front lines of education and training relating to abortions in conjunction with local governments; however, the GGR silences political discussion by prohibiting organizations from joining political discourse.[66] According to the IWHC, "interviewees also reported that the policy silences civil society organizations, making them less able to hold their governments accountable."[67] As a result, "the Global Gag Rule emboldens anti-choice groups while leaving fewer

57. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 39.

58. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 39.

59. Kelly M. Jones, International Food Policy Research Institute, *Evaluating the Mexico City Policy: How US Foreign Policy Affects Fertility Outcomes and Child Health in Ghana* (December 2011) at 4-5, *available at* http://www.poppov.org/~/ media/PopPov/Documents/events/6thAnnConf/jones2011-mexico-city-fertility.pdf

60. Eran Bendavid, Patrick Avila & Grant Miller, *United States aid policy and induced abortion in sub-Saharan Africa*, 89 Bull. World Health Organ. 873 (2011)

61. Yana van der Meulen Rodgers, The Global Gag Rule and Women's Reproductive Health: Rhetoric versus Reality (2018).

62. Melvine Ouyo & Alexa Henderson, *The Effects of the Global Gag Rule are Being Felt Everywhere*, Rewire, Jul. 2, 2018.

63. Marie Stopes International, *The Global Gag Rule: A World Without Choice* (2018), *available at* https://www.mariestopes.org/what-we-do/our-approach/policy-and-advocacy/the-mexico-city-policy-a-world-without-choice/

64. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 39.

65. Tlaleng Mofokeng, *Ending America's Global War on Reproductive Freedom*, The Irish Examiner, Jul. 4, 2018.

66. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018), at 14.

67. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018), at 16.

voices to counter their efforts."[68] This is seen as an imposition of US political ideology in the form of neocolonial bullying, where disparate power dynamics allow the US government to effectively hold local organizations hostage to its whims.[69]

The Global Gag Rule is Not Necessary or Proportionate to its Aim

The final prong of the ICCPR test to permit restrictions on fundamental freedoms requires the policy to be necessary and proportionate to its aim. This requires that there must be no other alternative approaches that do not violate fundamental freedoms, and that the policy must be directly related to the aim without being overbroad.[70] The aforementioned far-reaching impacts of the GGR on public health, related to prong two, are evidence of the policy's overbroad impact and indirect implementation, making it neither proportional nor necessary. However, the harm reaches even farther into rural and vulnerable communities, disproportionately impacting youth, LGBTQ people, sex workers, people living with disabilities, and refugees. Such expansive detrimental impacts are in no way necessary or proportionate to the aim of reducing abortion.

The fracturing of integrated health systems adversely impacts at-risk youth and rural communities. In Mozambique, AMODEFA was forced to close 10 of its 20 clinics providing integrated services to young people.[71] PAI in Nigeria also found that at-risk youth were disproportionately harmed by local clinics losing funding and having to cut back services.[72] In Zimbabwe, the organization Real Open Opportunities for Transformation Support (ROOTS), which focuses on initiatives to keep girls in school through SRHR education and comprehensive services, had to stop its programming.[73] People in rural communities similarly rely on integrated health care systems and education. Community health workers providing a vast array of services are often the main way people in rural areas access health care, and the GGR has forced many traveling providers to close up shop while limiting the number of larger clinics to which they can refer patients.[74] Consequently, rural communities are facing increasingly limited provider options, where they have any at all. In Uganda, 79 percent of the country lives in rural areas that rely on MSI or RHU, who are facing devastating funding cuts, to provide services that reach their communities.[75] When integrated health systems break down, it means people in impoverished rural communities have to travel large distances to access each individual health service they or their family need, which can be time and cost prohibitive.[76] Additionally, an AMODEFA clinic providing long-term contraception implants in the rural Xai-Xai clinic saw a huge reduction in services rendered following the implementation of the GGR. In three months, the clinic provided 3,392 fewer long-term contraceptive services, including only one implant removal, compared to 52 prior to the GGR, indicating women in rural communities are relying on expired contraceptives or removing them themselves.[77] That same clinic also provided 1,478 fewer STI-related services and 10,463 fewer gynecological services, including cancer screenings.[78]

Refugee communities and women in conflict are similarly devastated by the GGR. In Uganda, which hosts the most refugees of any sub-Saharan African country, RHU had needed to redirect services from refugee camps into

68. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018), at 18.
69. Int'l Women's Health Coalition, *Reality Check: Year One of the Global Gag Rule* (May 2018), at 14
70. Global Justice Center, *US Abortion Restrictions on Foreign Aid and Their Impact on Free Speech and Free Association: The Helms Amendment, Siljander Amendment, and the Global Gag Rule Violate International Law* (March 2018), at 5.
71. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 51.
72. PAI, *Access Denied: Nigeria* (March 2018).
73. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 41.
74. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 49.
75. PAI, *Access Denied: Uganda* (March 2018), at 6.
76. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 57.
77. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 49.
78. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018).

their urban and rural clinics.[79] Similar reductions were reported by PAI in Nigeria.[80] As the United States, Nigeria, and Uganda are all parties to the 1967 Protocol Relating to the Status of Refugees, the GGR may also impede states' abilities to fulfill obligations under the Refugee Convention to "accord refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded their nationals."[81]

The GGR also poses unique threats to LGBTQ individuals, disabled persons, and sex workers. These groups face marginalization in their countries and require unique health care. In Mozambique, AMODEFA faces losing 60 percent of its budget, and may need to cut back on research programs focusing on LGBTQ health care and close clinics that often serve as one of the few safe places for LGBTQ people.[82] Additionally, lesbian and bisexual women are often excluded from sexual and reproductive health education and services in broader contexts, so they rely on LGBTQ focused clinics. Similarly, transgender patients require specifically trained providers, many of whom have been forced to stop care as a result of the GGR.[83] People with disabilities similarly require specialized service, including SRHR services. In Mozambique, people with disabilities are subject to higher rates of sexual abuse and exploitation and are more likely to have HIV, and subsequently need specialized services from clinics that are closing as a consequence of the GGR.[84]

The GGR exacerbates barriers to health care already in place for sex workers, who regularly face ostracization and stigma. One organization stated that the GGR is forcing providers to cease offering services to sex workers because it is simply impossible for physicians to work with that community without discussing abortion.[85] ICRH-M in Mozambique works specifically with over 2,000 sex workers, but lost 40 percent of its funding in one month for failing to comply with the GGR. In a devastating outcome to sex workers, ICRH-M was forced to close its night clinic, which was one of the only safe places sex workers could access health care without stigma.[86] With the loss of the clinic also came a loss of trust with sex worker communities, which ICRH-M had developed slowly over 15 years.[87] A representative for ICRH-M lamented that there is no other organization in the area that can fill the niche void they have been forced to leave.[88]

The International Community Condemns Regressive US Policies

The impact of these restrictions has not gone without notice. In fact, the international community—human rights bodies and experts, other donor states, and recipient countries—have resoundingly condemned the GGR and urged the US government to take steps to repeal the policy and those that underlie it, such as the Helms and Siljander Amendments.

During the 2015 Universal Periodic Review (UPR) of the United States, six states challenged the imposition of the Helms Amendment without an exception for rape, with particular concern aimed at the impact of rape survivors in conflict zones.[89] Similarly, the United Nations (UN) Working Group on the issue of discrimination against women

79. PAI, *Access Denied: Uganda* (March 2018), at 7.
80. PAI, *Access Denied: Nigeria* (March 2018), at 7.
81. Convention Relating to the Status of Refugees art. 23, Jul. 28, 1951, 189 U.N.T.S. 137.
82. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 45.
83. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 45.
84. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 48.
85. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 47.
86. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 47.
87. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 47.
88. CHANGE, *Prescribing Chaos in Global Health: The Global Gag Rule from 1984-2018* (June 2018), at 47.
89. Report of the Working Group on the Universal Periodic Review of the United States of America, Human Rights Council, 30th Sess., U.N. Doc. A/HRC/30/12 (July 20, 2015), *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/159/71/PDF/G1515971.pdf

in law and in practice expressed concern over the Helms Amendment following its mission to the United States and recommended its repeal.[90]

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions recently 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."[91] She went on to state that "[t]he gag rule 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."[92]

As a result of the US government's failure to act on congressional abortion restrictions and the reinstatement of the GGR, other states, including many that have previously expressed concern to the US government about these policies during the UPR, have translated their concerns to action. Examples include the Dutch and Belgian-led "She Decides" campaign, which seeks to fill funding gaps in the field of global SRHR caused by US abortion restrictions, as well as individual efforts by countries like the United Kingdom and Canada to increase their support for family planning and SRHR. These efforts are essential to the ability of women and girls around the world to access the rights guaranteed to them under international human rights and humanitarian law. Meanwhile, the United States continues to impose its policies in blatant violation of its obligations under international law.

Conclusion

The Helms Amendment has been continually in place for 44 years, the Siljander Amendment for 37 years, and the GGR intermittently since 1984. 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 to lose US funding with a similar impact. It is long past time for the US to repeal these regressive and harmful policies that violate its human rights obligations, including under the ICCPR.

Suggested Questions for and Recommendations to the US Government

Questions

- → What communications are the US government providing to local partners and their subgrantees to ensure that they fully understand what is and is not permissible under US abortion restrictions?
- → What steps have the US Department of State and USAID taken to make clear that government-operated entities, like universities, are not subject to the policy?
- → How is the US government documenting the health impact of the policy on all funding streams including but not limited to HIV and AIDS; family planning and reproductive health; maternal and child health; key populations; adolescent girls and young women; people living with disabilities; people living in rural areas; integrated services; WASH; nutrition; Zika; infectious diseases; noncommunicable

90. Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America, Human Rights Council, 32nd Sess., U.N. Doc A/HRC/32/44/Add.2 (August 4, 2016), *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/172/75/PDF/G1617275.pdf.

91. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, General Assembly, U.N. Doc. A/73/314 (August 7, 2018), *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/252/85/PDF/N1825285.pdf

92. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, General Assembly, U.N. Doc. A/73/314 (August 7, 2018).

diseases; contraception; gender-based violence; pre-exposure prophylaxis, post-exposure prophylaxis, and prevention of mother-to-child transmission; and abortion advocacy, services, and stigma?

→ What steps has the US government taken to assess and understand the human rights implications of these restrictions?

Recommendations

→ Repeal and/or end all abortion restrictions on foreign assistance, including the Helms and Siljander Amendments, as well as the GGR.

→ Conduct annual transparent and comprehensive reviews of the implementation and the impact of US abortion restrictions, with public access to the methodology and submissions.

→ 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.

→ Issue clear guidance on permitted and prohibited activities to allow grantees to regulate their conduct without onerous or overbroad procedures and with minimal risk.

The Global Justice Center *is a US-based human rights organization with consultative status to the United Nations 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.*

The Center for Health and Gender Equity *is a US-based women's rights organization with consultative status to the United Nations that promotes sexual and reproductive health and rights as a means to achieve gender equality and empowerment of all women and girls, by shaping public discourse, elevating women's voices, and influencing U.S. and global policies. CHANGE's work is grounded in and driven by a human rights framework.*