



Q&A: How President Obama Can - and Must - Save the Lives of Girls & Women Raped in War by Lifting the Abortion Ban Attached to US Humanitarian Aid

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In the first five years of his term, President Barack Obama has demonstrated incredible global leadership by making the rights of girls and women central to his domestic and foreign policies. However, a ban imposed on all US foreign aid in 1973 continues today to force girls and women raped in armed conflict to bear the children of their rapists, casting a shadow on this progress.

Congress permits the use of foreign aid for abortions for rape, incest or to save the life of a woman or girl, but the Obama Administration has kept in place a Bush-era administrative order that eliminates those exceptions.

Since the US is the largest humanitarian aid donor worldwide, the US abortion ban has become the de facto medical policy in the majority of war zones where rape is often used as a weapon of war.

President Obama has the opportunity to strengthen his legacy as a champion for women and girls by overturning the US abortion ban on all foreign aid. Doing so would send the clear message to our allies and other humanitarian organizations that victims of rape should be able to choose whether to carry the child of their rapist.

The rape of girls and women in armed conflict is a case of unconscionable violence against women; the use of rape in armed conflict is characterized by a particular degree of viciousness, including gang rape and mutilation with instruments. Furthermore, girls and women raped in armed conflict are clearly considered to be victims of torture, which is supported by US policy. 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.

Denying girls and women who survive war rape the option of safe abortion services is both deadly and violates national law, international law, and UN Security Council Resolutions.

President Obama can and must act immediately by signing an Executive Order restoring the life, rape and incest exceptions to the foreign aid abortion ban and explicitly affirm that henceforth it will be the policy and practice of the US government to ensure the rights of girls and women raped in war under common Article 3 of the Geneva Conventions, including to comprehensive and non-discriminatory medical care.

The following Q and A presents additional background information.



1. WHY DOES PRESIDENT OBAMA NEED TO ISSUE AN EXECUTIVE ORDER?

An Executive Order is the appropriate vehicle for the President to make clear the U.S. position on violence against women in war and the ever increasing use of rape as a method of torture and intimidation. It will establish a new policy that holds that humanitarian aid can be used for comprehensive health services, including access to safe abortions, to girls and women raped in conflict and crisis.

The President should incorporate the rape, incest and life of the mother exceptions and make clear that when US humanitarian aid is used to provide medical care to girls and women raped in war that, henceforth, it is the policy and practice of the US to comply with the medical mandates of common Article 3 of the Geneva Conventions.

2. WHAT IS THE IMPACT OF THE US ABORTION BAN ON GIRLS AND WOMEN IMPREGNATED BY WAR RAPE?

Girls and women surviving war rape suffer debilitating injuries, including HIV infection, permanent reproductive damage and fistulas from brutal rape or forced childbearing, which cause permanent incontinence. **Rape survivors who become pregnant and are denied abortions face increased maternal morbidity and mortality, including death from illegal abortion, risky childbearing, and suicide.**

Tragically, up to 80 percent of rape victims in some armed conflicts are girls under age 18, with girls as young as eleven becoming pregnant. Since the bodies of young girls are not developed sufficiently for childbearing, girls “aged 15-19 are twice as likely to die during pregnancy and childbirth, and girls under 15 are five more times more likely to die, as compared with women aged 20 or older.”

3. HOW DOES THE CURRENT ABORTION BAN ON FOREIGN AID DIFFER FROM THE ABORTION RESTRICTIONS REQUIRED BY CONGRESS?

The abortion ban currently imposed on all foreign aid grantees by the Obama Administration eliminates the life, rape and incest exceptions allowed by Congress, and strictly restricts speech about abortion. The Congressional abortion restrictions on US foreign aid, which are all patterned after the first such restriction, the 1973 Helms Amendment, states:

“None of the funds made available to carry this part [Part 1 of the Foreign Assistance Act] may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.”

The phrase “abortions as a method of family planning” is interpreted to allow funding for abortions in cases of rape, incest, or endangerment of a woman’s life. The term “motivate” in the Helms Amendment is interpreted to prohibit virtually all public discussion of abortion. The interpretation and imposition of these regulations by the Obama Administration, which eliminates the phrase “as a method of family planning,” amounts to a full abortion ban with US foreign aid.

“In our culture if you’re taken by force [raped] you must stay with the man. You become his wife. The boy wanted me to leave and tried to force me back home but my mother refused. The community saw that I was pregnant and rejected me. After seven months my husband abandoned me. Then horrible things happened with I was having the baby. The baby died and I had a fisula [a hole between the vagina and rectum or vagina and bladder].”

Pamela, 17,
Democratic Republic of
Congo

4. WHAT IS THE DIFFERENCE BETWEEN THE HELMS AMENDMENT AND THE "GLOBAL GAG RULE" LIFTED BY PRESIDENT OBAMA?

The Global Gag Rule was an additional abortion restriction imposed on a small subset of US foreign aid grantees, which prohibited foreign NGOs receiving US foreign aid for family planning projects from engaging in any abortion-related activities, even when using their own private funds. When President Obama repealed the Global Gag Rule in 2009 he explicitly left in place the underlying abortion restrictions, including the Helms Amendment, which apply to all state and foreign aid appropriations.

The US abortion ban currently applies to all disbursements of foreign aid for any purpose, including bilateral aid to foreign countries and US organizations working overseas. The Global Gag Rule categorically excluded US citizens and foreign governments.

5. HOW DOES THE US ABORTION BAN AFFECT THE ABILITY OF OUR ALLIES TO HELP THESE VICTIMS?

Our allies' humanitarian aid policies explicitly support providing abortions for war rape victims and are openly opposed to the US abortion restrictions that compromise their aid.

The US and European countries are the largest donors of humanitarian aid internationally and they mainly fund the same organizations. These include the UN, International Committee of the Red Cross, International Rescue Committee, Merlin, International Medical Corps, and others. However, as our research shows, none of these organizations segregate their US funding from the funds it receives from other donor countries, allowing US abortion restrictions to contaminate the full funding pool, because grantees then apply US abortion restrictions to their entire pool of funds, regardless of the donor.

For example, the top ten recipients of UK humanitarian aid also receive US humanitarian aid with the abortion ban attached. Only one of the top ten UK grantees, the World Health Organization (WHO), segregates out its US funding from that of other donors in order to ensure the integrity of its abortion-related work.

6. DOES ANY HUMANITARIAN ENTITY CURRENTLY PROVIDE ABORTIONS FOR WOMEN RAPED IN WAR?

Yes, but this helps very few women.

Some conscientious doctors working in humanitarian medical settings quietly provide abortions for rape survivors, but such care depends on the courage of a provider, not on the medical needs of girls and women raped in armed conflict. The only humanitarian agency that has an explicit operational policy to provide abortions to girls and women war victims is Médecins Sans Frontières (MSF, or Doctors Without Borders). MSF does not accept any US funding, because to do so would compromise its ability to treat war victims.

7. IS THE DENIAL OF ABORTION CONSIDERED CRUEL TREATMENT OR TORTURE?

Yes. The Convention against Torture (CAT), which applies concurrently with international humanitarian law (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.

“American representatives explicitly came to me and asked me to remove the word abortion from our draft [final report of the meeting]... Even under an Obama administration, it is not possible to have an open discussion about abortion in international agencies and commissions. This stigmatisation, this censorship around the issue of abortion, is what is causing the enormous distortion of priorities in women's health today.”

- Richard Horton, Editor, The Lancet

8. HOW DOES THE US ABORTION BAN VIOLATE THE GENEVA CONVENTIONS?

A portion of US foreign aid goes directly or indirectly to help victims of armed conflict whose rights are governed by the Geneva Conventions. Under the Geneva Conventions, all persons “wounded and sick,” in armed conflict, which includes female war rape victims, have the absolute right to “the medical care and attention required by their condition.” This also requires “no distinction among them founded on any grounds other than medical ones,” and explicitly prohibits any discrimination based on sex, making clear that women and girls “shall in all cases benefit by [medical] treatment as favourable as that granted to men.”

President Obama is a strong supporter of the laws of war, stating that the US “must remain a standard bearer in the conduct of war.” President Obama explicitly sought to secure US compliance with common Article 3 of the Geneva Conventions through his 2009 executive orders on lawful interrogation techniques and on the treatment of detainees. **However, by continuing to enforce the US abortion ban on humanitarian aid for rape victims, President Obama is contravening the provisions of the Geneva Conventions that prohibits discrimination against female rape victims, as well as those that require all necessary medical care and the prohibitions on cruel treatment and torture.**

9. WHAT IS BEING DONE ABOUT THE ABORTION BAN?

Lawyers at the Global Justice Center (GJC) launched the “August 12th Campaign” in 2010 to end the routine denial of abortions for girls and women raped in armed conflict, in violation of their rights under the Geneva Conventions. A central goal of the campaign is to increase global awareness of the central force behind the “no abortion” policies in war zones - the abortion ban attached to all US humanitarian aid.

The Campaign has garnered support in two New York Times Editorials, as well as support from three countries (the UK, the Netherlands and Norway), the EU Parliament, the UN Security Council and over 3,500 organizations that have either as individuals or groups written to President Obama urging him to lift the abortion ban.

To date, the Administration has only formally responded to the calls of this Campaign once, on March 18, 2011, in response to the Norwegian government’s recommendation during the Universal Periodic Review that the US remove abortion restrictions on humanitarian aid. The State Department responded that the US could not remove the blanket abortion restrictions on humanitarian aid “due to currently applicable restrictions.”

About the Global Justice Center

The Global Justice Center (GJC) works for peace, justice, and security by enforcing international laws that protect human rights and promote gender equality. We promote “power, not pity” as we advocate a model for justice that embraces the following tenets:

- Gender parity in power and under the law is essential to global security, justice, and prosperity for all.
- Discriminatory political and legal systems that fail to enforce human rights or ensure equal protection to women must be challenged.
- Progressive interpretation and enforcement of international law is a powerful catalyst for social and structural change and is necessary to establish a global “rule of law.”

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"Exclusion of one medical service, abortion, from the comprehensive medical care provided to the “wounded and sick” in armed conflict, where such service is needed by only one gender, is not only a violation of their right to medical care, but also a violation of the prohibition on “adverse distinction” found in common Article 3, the Additional Protocols to the Geneva Conventions, and customary international law."

- Professor Louise Doswald-Beck