



## **United States of America**

Submission to the UN Universal Periodic Review

Ninth Session of the UPR Working Group of the Human  
Rights Council

November 2010

## **Executive Summary**

In this submission, the Global Justice Center provides information under Sections A, B, C and D, as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:

- a. Under section A the Global Justice Center sets out its serious concerns over the far reaching effects of U.S. censorship of foreign aid under the Helms Amendment.
- b. Section B highlights how the censorship portion of the Helms Amendment constitutes a violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
- c. Section C highlights how the censorship portion of the Helms Amendment constitutes a violation of the United States' obligations under international humanitarian law.
- d. In Section D, the Global Justice Center makes a number of recommendations for action by the U.S. to address these areas of concern.

### **A. Framework of the United States Law Relevant to This Submission**

1. The U.S. government plays an invaluable role in supporting the rule of law and governance reform globally. In countries that are transitioning out of debilitating conflicts, U.S. aid ensures a strong grounding for democracy and rule of law development which is critical for global peace and human security. The Obama Administration is laudably prioritizing foreign aid and critical initiatives that ensure women's political participation. However, in its censorship of abortion speech, the Helms Amendment impedes the development of gender equality required by progressive international treaties, causing the U.S. to violate its own human rights obligations and the Geneva Conventions, which constitute fundamental principles of customary international law from which no derogation is ever permitted.

2. In 1973, Congress enacted the "Helms Amendment," which covers Part 1 of the Foreign Assistance Act (FAA). The Helms Amendment states, "None of the funds made available to carry out subchapter I of this chapter may be used to pay for the performance of abortions as a method of family planning..." Further, the Helms Amendment contains a provision that prohibits abortion speech ("Helms Gag"), which states that none of the funds can be used to "motivate or coerce any person to practice abortions."<sup>i</sup>

3. USAID applied the Helms Gag to "information, education, training, or communication programs..." about abortion, thereby covering political speech.<sup>ii</sup> This broad interpretation of the scope of the Helms Gag was codified in 1978.<sup>iii</sup>

4. Subsequently, USAID issued policy determinations that explicitly applied the Helms Gag to contracts with foreign governments, US and foreign private organizations (including universities, law schools, health and human rights groups), and international non-governmental organizations such as CARE and IRC.<sup>iv</sup> The Helms Gag covers funds dispersed under the U.S. Millennium Challenge Act, the National Endowment for Democracy, the Global Health Initiative, S.E.E.D., contributions to the United Nations (including UNFPA, UNDP, UNIFEM, and UNICEF), and a multitude of other related initiatives (see Appendix C). While its presence in contracts does not impact all programs, the very fact of its inclusion has a chilling effect on any abortion speech.

5. The Helms Amendment is the underlying federal statutory authority for the Mexico City Policy, commonly referred to as the "Global Gag Rule," which was an extension, by executive order, of the Helms Amendment to cover the private funds of US non-profit grantees conducting family planning overseas (see Appendix B). Since the Global Gag Rule is an executive order, President Obama unilaterally lifted it in January 2009, however, the Helms Amendment restrictions remain intact.

6. Thirty-seven years after it first appeared, the Helms Gag has expanded to now cover all State and Foreign Aid Appropriations which, for 2010, totals about **\$49 billion dollars** (see Appendix C). Further, since US foreign aid monies are routinely commingled with funds from other governments, as well as private corporate or foundation sources, the Helms Gag can act as a viral agent censoring other people's money.

7. This Global Justice Center submission argues that the Helms Gag, as a condition to all grants, contracts or donations of foreign aid appropriated funds, violates international human rights and international humanitarian law. This submission only addresses the censorship in USAID and State Department rule of law and democracy projects (including under the Millennium Challenge Act), and U.S. funded humanitarian aid projects in conflict areas. We do not address the Helms Amendment prohibition in the context of funding abortions or U.S. funded population and family planning projects.

8. The Global Justice Center argues that the Helms Gag:

- a. restricts the right to freedom of expression of U.S. citizens, violating U.S. obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and
- b. limits relief and aid to female rape victims in conflict, violating U.S. obligations to the global community to “ensure respect” for international humanitarian law, including non-discriminatory treatment of persons protected under the Geneva Conventions.

### **B. The Helms Gag Constitutes a Violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights**

9. The U.S. has allocated significant funding for rule of law and democracy programs abroad, which assist in domestic integration of crucial international human rights treaty obligations.<sup>v</sup> Human rights instruments include the right to abortion, at least in some circumstances, either explicitly or in jurisprudence from the treaty monitoring bodies for the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol on the Rights of Women in Africa.<sup>vi</sup> The Helms Gag undermines the integrity of rule of law programs because U.S. funded organizations and foreign governments are chilled in discussing the invalidity of criminal abortion statutes. Effectively, these organizations are prohibited from using the complete framework of international human rights treaty obligations in their reform efforts.

10. The Helms Gag violates the right to free speech, enshrined in Article 19 of both the Universal Declaration on Human Rights (UDHR) and the ICCPR, which we consider together in this submission. Having ratified the UDHR and the ICCPR, the U.S. has a positive legal obligation to protect all rights guaranteed under those treaties<sup>vii</sup> and a negative obligation to not restrict those rights. Specifically, article 19(3) of the ICCPR provides that restrictions on the right to freedom of expression must be provided by law and necessary to protect those interests identified in article 19(3)(b).<sup>viii</sup> In a resolution co-sponsored by the U.S.,<sup>ix</sup> the Human Rights Council (HRC) underscored the importance of freedom of expression and stated that it is “one of the essential foundations of a democratic society,” that it “is instrumental to the development and strengthening of effective democratic systems,” and called upon all states to respect and ensure respect for the right.<sup>x</sup>

11. The Helms Gag has been applied to limit free expression of both U.S. organizations and foreign NGOs. For example, in 1982, *International Family Planning Perspectives*, a publication by the U.S.-based Alan Guttmacher Institute, reported on the mortality rate of unsafe abortions in Bangladesh and on legalization of abortion in Tunisia. USAID, who was funding the publication, de-funded it based on its determination that the content qualified as “motivating” abortion law reform prohibited by Helms. The issue went to court and USAID conceded that the abortion language was neutral, rather than “advocacy,” as it contained only “neutral epidemiological research.”<sup>xvi</sup>

12. States Parties to the UDHR and ICCPR are required to guarantee the right to freedom of expression both within their borders and to anyone within the “power or effective control” of a state party.<sup>xvii</sup> The Human Rights Committee (CCPR) has consistently held that in special circumstances, persons may fall under the jurisdiction of a state party even when outside that state’s territory.<sup>xviii</sup> Although the U.S. has maintained that the ICCPR has no extraterritorial reach, the extent of U.S. foreign aid implicitly extends the country’s territory in economic terms to recipient countries. Given that U.S. contributions eclipse resources in poor countries, the U.S. has enhanced responsibility under international law.<sup>xix</sup>

13. The extraterritorial reach of the Helms Gag is evidenced in the Congressional Hearing on radio in Africa, where a senior USAID official<sup>xx</sup> admitted that the Helms Gag precluded any USAID funded radio shows or programs in Africa from discussing local laws regarding abortion or abortion law reform. Accordingly, the Helms Gag directly violates the right of free expression of African radio to “impart information and ideas of all kinds.”<sup>xxi</sup> The use of foreign aid to create circumstances that completely ban a particular category of speech related to legal reform is in clear violation of U.S. obligations to respect and protect the freedom of expression under the ICCPR and UDHR.

14. Finally, the U.S. cannot use the Helms Amendment, particularly administrative interpretations of its scope, as a justification for non-compliance with its obligations under the ICCPR and UDHR. To the contrary, governments, where possible, should interpret local laws to be consistent with international standards. The Vienna Convention and the ILC articles on State Responsibility hold that a state may not rely on the provisions of its internal law to justify the failure to comply with its international obligations.<sup>xxii</sup> The Legal Adviser to the U.S. Department of State further stated, “...treaties do not give rise directly to individually enforceable rights in U.S. courts, the United States is bound under international law to implement all of its obligations under these treaties and take these obligations very seriously.”<sup>xxiii</sup> The Helms Gag cannot be relied upon by the U.S. as a justification to abrogate its obligations enshrined in the ICCPR and the UDHR.

### **C. Denying Effective Access to Information about Abortion to Victims of Gross Violations of International Humanitarian Law Violates the United States' Obligations Under the Geneva Conventions**

15. Common Article 3 of the Geneva Conventions, which applies to internal and international armed conflicts and has acquired the status of customary international law,<sup>xxix</sup> sets out the minimum standards of humanity that are binding on parties to armed conflicts. It states that “persons not taking part in hostilities shall be treated humanely, violence to life and outrages upon personal dignity shall be prohibited, and the wounded and sick shall be cared for.”<sup>xxx</sup>

16. Rape in the context of armed conflict is considered a violation of Common Article 3 and customary international law.<sup>xxxi</sup> The Committee on Torture, in its concluding observations to Nicaragua, recognized that forcing a rape victim to carry out a pregnancy that is the result of rape, can serve to extend the injuries caused by the original violation, stating that “this situation [pregnancy] entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.”<sup>xxxii</sup> Therefore women who have been raped and are pregnant or risk pregnancy are entitled to non-discriminatory medical care for conflict related injuries under Article 3, which for women means the option of an abortion. This is reflected in the WHO standard for the clinical treatment of rape victims<sup>xxxiii</sup> and accords with Rule 110 of the ICRC compendium of customary international humanitarian law,<sup>xxxiv</sup> which states that “the wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.” Accordingly, the Helms Gag serves to erect a barrier to effective relief for rape victims by inhibiting their access to requisite medical care, including abortions, which can constitute a violation of Common Article 3.

17. Further, the obligations of Common Article 1 of the Geneva Conventions require the U.S. “to respect and to ensure respect for the present Convention in all circumstances.”<sup>xxxv</sup> The meaning of “to ensure respect” is that the U.S. must do everything in its power to ensure universal compliance, which includes a negative obligation to neither encourage a party to an armed conflict to violate IHL nor to take any actions that would assist in such violations.<sup>xxxvi</sup> Providing humanitarian aid in conflict situations is considered a “best practices” example of how states not party to the conflict can further “ensure respect” under the mandate of Common Article 1.<sup>xxxvii</sup> However, when the U.S. undertakes to provide humanitarian aid, the provision of such aid must comport with IHL, not undermine its provisions.

18. A clear example of how the Helms Gag violates the “ensure respect” mandate is in Sudan, where even though abortion is legal for rape victims, access to information about abortion is obstructed by the Helms Gag, which covers U.S. aid granted for both government and private projects. Consequently, the U.S. is thwarting the Sudanese government’s ability to ensure that rape victims have access to abortion, which violates Sudan’s national laws and the Geneva Conventions.

19. The Helms Gag also censors humanitarian organizations working in conflict areas that would normally discuss the option of abortion to women and girls raped and impregnated. Aid groups fear that education and dissemination of information about abortion services for rape victims may result in the revocation of U.S. funding. This inevitably causes a lack of information on abortion to rape victims. Whether services are offered on a more selective “don’t ask” basis is difficult to discern, but in any event this would leave the care offered to the courage of the providers, not the medical needs of the victims. The experience of the Global Justice Center staff in researching this report overwhelmingly confirms the fear of speaking about abortion by USAID recipients – in fact, no one would talk on the record.

20. Since victims impregnated as a result of rape in armed conflict are exclusively women, discriminatory treatment violates the strictures of UN Security Council Resolution 1325, which calls for the recognition of the special needs and human rights of women in conflict and a gender perspective in post-conflict processes.<sup>xxviii</sup> There is ample evidence that the use of rape in conflict causes long lasting injuries to women. These include impregnation, “unwanted children,” stigmatization and alienation of the victim, which can further the destructive effect of rape on the community.<sup>xxix</sup> By not providing abortion, U.S. funded services can unwittingly facilitate the full extent of the injuries which are intended by the use of rape as a weapon of war, particularly in genocidal situations.

#### **D. Recommendations**

21. As stated on the State Department website, the United States strives to “[h]old governments accountable to their obligations under universal human rights norms and international human rights instruments,” and “[p]romote greater respect for human rights, including freedom from torture, freedom of expression, press freedom, women’s rights, children’s rights, and the protection of minorities.” In order to fulfill these noble goals, the Global Justice Center recommends that the United States takes the following steps:

- a. Congress repeals the Helms’ Amendment to the Foreign Assistance Act, ending thirty-seven years of censoring abortion speech. The U.S. acknowledges that the Helms Amendment violates the ICCPR, CEDAW, and other international speech and equality guarantees and announces a campaign to reverse the effects of the Helms Gag, including at the United Nations.
- b. The U.S. announces that the Helms Gag has constituted a violation of international humanitarian law, and has interfered with the obligations of foreign countries under their own constitutions and/or under international treaties or protocols, thereby undermining international equality guarantees.

**Appendix to Global Justice Center  
Universal Periodic Review Submission on the United States**

- A. Helms Amendment timeline of the expansion of censorship
- B. Organizational chart of funding censored by the Helms Amendment
- C. Excerpts from contracts mandating Helms Censorship between USAID/Millennium Challenge Corporation and the government of the Republic of Rwanda
- D. Excerpts from contracts mandating Helms Censorship between United States/USAID and the Islamic Republic of Afghanistan
- E. Endnote citations to references within the text of the submission

## Appendix A: Helms Amendment timeline of the expansion of censorship

**Helms Amendment Timeline: 1973-2010**  
**How the Helms Gag on Abortion Speech Expanded to Cover**  
**All U.S. Foreign Funds**

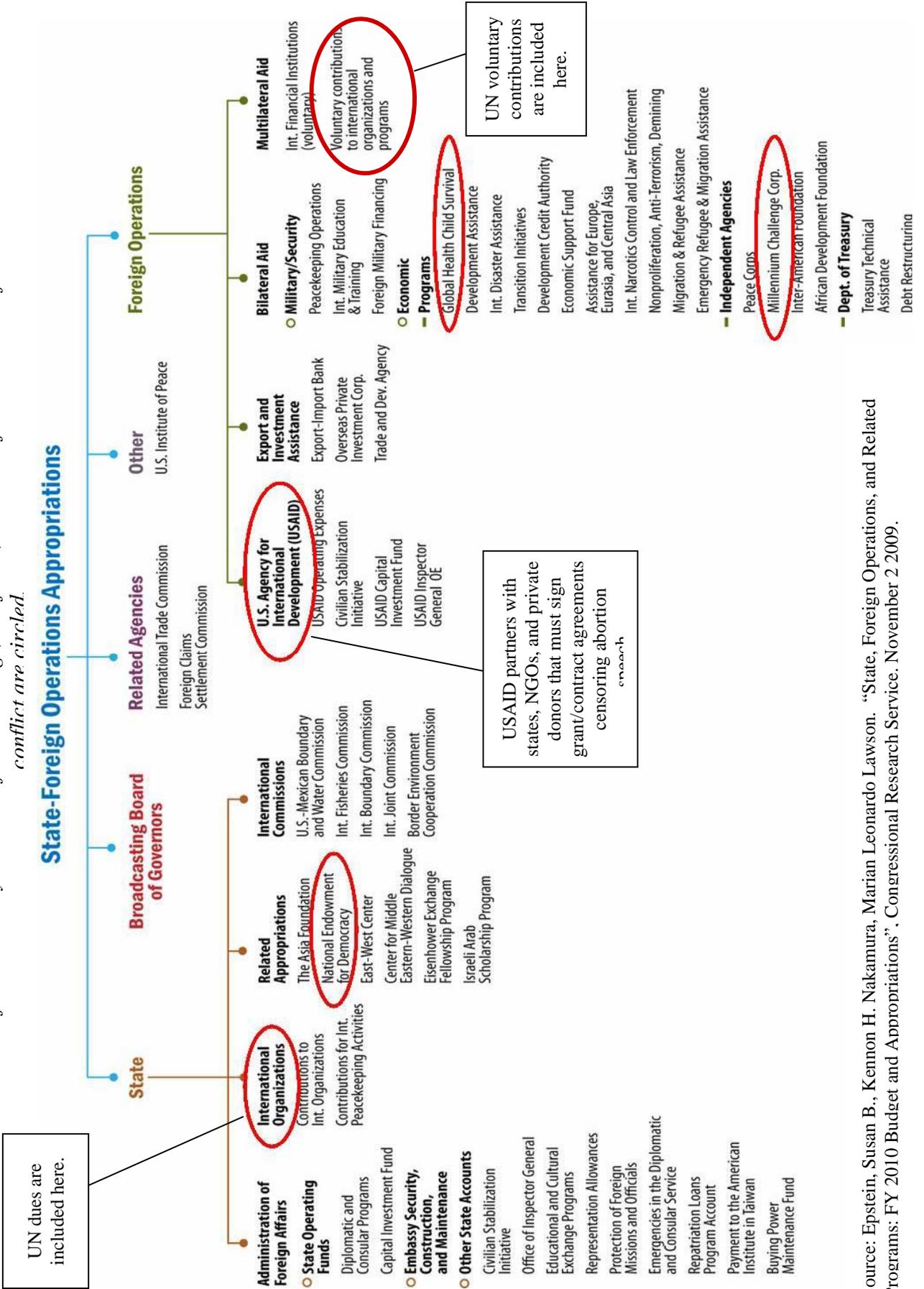
<b>1973</b>	<p><b>First U.S. abortion-related restrictions on foreign aid</b></p> <p>The U.S. inserts the Helms Amendment into the Foreign Assistance Act, including speech censorship (the “Helms Gag”): “None of the funds made available to carry out <i>this part</i> [Part 1 of the Foreign Assistance Act] shall 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.” Emphasis added. Helms Amendment to the Foreign Assistance Act, Section 104(f)(1), 22 U.S.C. §2151(b)(f)(1)(1973).</p>
<b>1974</b>	<p><b>USAID interprets “motivating” in the Helms Gag to cover any discussion about abortion</b></p> <p>USAID includes “information, education, training, or communication programs” as motivating abortion.  USAID, Policies Relative to Abortion-Related Activities (June 10, 1974).</p>
<b>1978</b>	<p><b>US codifies censorship of broad scope of political speech deemed to be “motivating” abortion</b></p> <p>48 C.F.R. 752.7016(b) (1978).</p>
<b>1982</b>	<p><b>USAID de-funds US-based international professional journal for violating Helms Gag</b></p> <p>After determining that research on abortions in Tunisia and Bangladesh violated the Helms Gag, in an ensuing lawsuit, USAID conceded that the journal articles were “neutral on abortion...and not abortion advocacy.” <i>Alan Guttmacher Institute v. McPherson</i>, 616 F. Supp. 195 (S.D.N.Y. 1985), <i>aff’d</i>, 805 F.2d 1088 (2nd Cir. 1986).</p>
<b>1982</b>	<p><b>USAID mandates Helms gag in contracts with foreign governments and in all sub grants</b></p> <p>All USAID funded population contracts and grants agreements with private and voluntary organizations (PVOs) and with host governments incorporate language to prohibit use of USAID funds for abortion-related activities; PVO sub grant agreements also incorporate such prohibitions.” USAID, Policy Paper on Population Assistance (September 1982).</p>
<b>1985</b>	<p><b>USAID, under Executive Order, expands the Helms Gag to all private funds of nonprofit groups overseas that give family planning assistance (Global Gag Rule)</b></p> <p>By Executive Order, Global Gag Rule (Mexico City Policy) expands Helms Amendment to ban foreign nongovernmental organizations from performing or promoting abortion using funds generated from any source as a condition for receiving USAID family planning assistance.</p>
<b>1986</b>	<p><b>US Congress begins inserting Helms Gag language into annual State-Foreign Appropriations</b></p> <p>Although the Helms Amendment to the FAA remained in place as federal law, beginning in 1986, Congress additionally put Helms gag language in appropriations bills. <u>P.L. 99-190</u> 1986 - Sec. 541</p>
<b>1993</b>	<p><b>US AID, under Executive Order, lifts the Global Gag Rule, leaving the Helms gag intact</b></p>
<b>1996</b>	<p><b>USAID testifies to Congress that the Helms Gag prohibits US-funded overseas radio groups from any speech regarding abortion laws</b></p> <p>“No USAID funded programs are aimed at changing local laws regarding abortion. The Helms Amendment of 1973 prohibits such support...USAID does not support activities to address laws regarding abortion in any country; consequently we do not monitor the status of abortion laws.” <i>Role of Radio in Africa</i>. Hearing before the Subcommittee on African Affairs of the Committee on Foreign Relations, March 28, 1996. <i>Role of Radio in Africa: Hearing before the Subcomm. On African Affairs of the S. Comm. on Foreign Relations</i>, 14<sup>th</sup> Cong. 2 (1996) (Statement of Carol A. Peasley, Deputy Assistant Administrator for Africa, USAID).</p>
<b>2002</b>	<p><b>USAID, under Executive Order, reinstates the Global Gag Rule expansion of the Helms Gag</b></p>

- 2002 Congress expands scope of the Helms Gag to cover all State-Foreign Appropriations**
- The Helms Amendment originally covered programs under Part 1 of the FAA (see 1973 supra); beginning in 2002, Congress expanded this by changing the appropriations language to cover all foreign aid:
- “...none of the funds made available under this Act [meaning the entire state and foreign appropriations act] may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions...” P.L. 107–115, 2002 - Sec. 518. Emphasis added.
- 2002 Congress passes the Millennium Challenge Act with Helms gag in its charter**
- Purpose of MCC is “to provide such assistance in a manner that promotes economic growth and the elimination of extreme poverty and strengthens good governance, economic freedom, and investments in people.” Millennium Challenge Act, Sec. 605(e)(f), Pub. L. 108-199, Div. D. (2003).
- 2007 Congress reaffirms that Helms Gag applies to all State-Foreign Appropriations**
- Subsection (f) of new section 518 makes the provisions of that section applicable to foreign operations funds appropriated for fiscal year 2007 and for any subsequent fiscal year.” *Report from the Committee on Appropriations, Department of State, Foreign Operations, and Related Programs Appropriations Bill Pub. L. 109-227* (2007).
- 2008 USAID clarifies that the Helms Gag is mandatory in all of its contracts**
- Contracts include democracy and rule of law projects and humanitarian aid in conflict situations. “A portion of the restrictions relative to family planning is applicable to all foreign assistance activities. The clause now contains standard language to state those restrictions – this base clause is **mandatory** for all contracts.” Acquisition & Assistance Policy Directive (AAPD 08-01), dated June 12, 2008: Voluntary Population Planning Activities – Updated Requirements and Clause. *See also*:
- Mandatory Standard Provisions for Non-U.S., Nongovernmental Recipients. A Mandatory Reference for ADS Chapter 303. Revision date 01/23/09.
  - Mandatory Standard Provisions for U.S., Nongovernmental Recipients. A Mandatory Reference for ADS Chapter 303. Revision date 01/23/09.
  - Contracting with a Foreign Governmental Organization. An Additional Help for ADS Chapter 303.
- 2009 Congressional Research Service confirms Helms gag applies to State-Foreign Appropriations**
- “Prohibition on use of funds for abortions pertained to every program funded by the Continuing Appropriations measure.”. p.5. Dianne E. Rennack, Lisa Mages, Susan G. Chesser, CRS Report for Congress , Foreign Operations Appropriations: General Provisions (April 30, 2009). Emphasis added.
- 2009 USAID, under Executive Order, lifts the Global Gag Rule again, leaving the Helms gag intact**
- “Mexico City Policy and Assistance for Voluntary Population Planning,” Memorandum for the Administrator of the United States Agency for International Development.
- 2010 USAID website clear that the Helms Gag applies to all foreign assistance funds**
- “No foreign assistance funds may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions.” USAID, Family Planning Guiding Principles and U.S. Legislative and Policy Requirements. [http://www.usaid.gov/our\\_work/global\\_health/pop/restrictions.html](http://www.usaid.gov/our_work/global_health/pop/restrictions.html)
- 2010 Approximately \$49 billion in State-Foreign Appropriations censored by Helms gag**
- See Appendix B - for chart showing all of the U.S. organizations censored by the Helms gag. Conference Agreement of Subcommittee on State, Foreign Operations, and Related Programs, Summary: FY 2010 State and Foreign Operations (December 8, 2009).

## Appendix B: Organizational chart of funding censored by the Helms Amendment

# All Funds in State Department Foreign Appropriations are Censored by the Helms Amendment

Funds for democracy and rule of law trainings, UN funds, and aid to female victims of conflict are circled.



Source: Epstein, Susan B., Kennon H. Nakamura, Marian Leonardo Lawson. "State, Foreign Operations, and Related Programs: FY 2010 Budget and Appropriations". Congressional Research Service. November 2 2009.

**Appendix C: Excerpts from contracts mandating Helms  
Censorship between USAID/Millennium Challenge  
Corporation and the government of the Republic of  
Rwanda**

1. Contract cover

USAID/Rwanda Assistance Agreement No. 696-AG-696-MCC-X7-08-00001

MILLENNIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM  
ASSISTANCE AGREEMENT  
BETWEEN THE  
UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF RWANDA  
TO  
STRENGTHEN POLITICAL RIGHTS, CIVIL LIBERTIES AND VOICE AND  
ACCOUNTABILITY

2. USAID financial disbursement to Afghanistan

**V. Financial Plan**

The financial plan (the "Financial Plan") for the Program is set forth below. Changes may be made to the Financial Plan in writing by the Authorized Representatives without formal amendment to this Agreement, if such changes do not cause USAID's contribution to exceed the amount specified in Section 3.1 of this Agreement.

Component 1: Strengthen the Judicial Sector	\$5,645,000
Component 2: Strengthen Civic Participation	\$15,860,000
Component 3: Promote Civil Rights and Liberties	\$3,225,000
<b>USAID Contribution in U.S. Dollars</b>	<b>\$24,730,000</b>

3. Helms Gag in contract

~~Section F.2 Voluntary Family Planning. The Parties agree that all USAID funds provided under this Agreement shall be used in accordance with applicable United States policy and statutory requirements relating to voluntary family planning projects, and that none of the USAID funds provided under this Agreement, or goods or services financed by such funds, may be used for~~

~~(a) the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions;~~

~~(b) the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations; or~~

## Appendix D: Excerpts from contracts mandating Helms Censorship between United States/USAID and the Islamic Republic of Afghanistan

1. Contract cover

**Strategic Objective Grant Agreement (SOAG)**

**SOAG Principal Text**

USAID Grant Agreement No. SOAG-306-06-00 for  
USAID Strategic Objective No. 306.006

STRATEGIC OBJECTIVE GRANT AGREEMENT  
BETWEEN THE  
UNITED STATES OF AMERICA  
AND  
THE ISLAMIC REPUBLIC OF AFGHANISTAN  
FOR  
THE STRATEGIC OBJECTIVE OF A DEMOCRATIC GOVERNMENT WITH BROAD  
CITIZEN PARTICIPATION

Dated: September 19, 2005

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2. United States financial contribution

Section 3.1. USAID Contribution.

(a) The Grant. To help achieve the Objective set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee under the terms of the Agreement not to exceed FOUR MILLION TWO HUNDRED SEVENTY THOUSAND United States ("U.S.") Dollars (\$4,270,000) (the "Grant").

3. Gender Equity provision

(d) Gender Equity. Gender-equity elements are to be built into every aspect of the activities under this Agreement. Strategies and activities will take into account an analysis of how they affect both men and women, girls and boys, and it make extra efforts to improve the status of women in many communities and institutions.

4. Helms Gag in contract

Section F.2. Voluntary Family Planning. The Parties agree that all USAID funds provided under this Agreement shall be used in accordance with applicable United States policy and statutory requirements relating to voluntary family planning projects,

and that none of the USAID funds provided under this Agreement, or goods or services financed by such funds, may be used for:

(a) the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions;

## Appendix E: Endnote citations to references within the text of the submission

- <sup>i</sup> Helms Amendment to the Foreign Assistance Act, Section 104(f)(1), 22 U.S.C. §2151(b)(f)(1)(1973).
- <sup>ii</sup> USAID, Policies Relative to Abortion-Related Activities (June 10, 1974).
- <sup>iii</sup> 48 C.F.R. 752.7016(b) (1978).
- <sup>iv</sup> See USAID, Acquisition & Assistance Policy Directive 08-01 (June 12, 2008; USAID, Mandatory Standard Provisions for Non-U.S., Nongovernmental Recipients, ADS Ch. 303 (01/23/09); USAID, Mandatory Standard Provisions for U.S., Nongovernmental Recipients, ADS Chapter 303 (01/23/09), USAID, Contracting with a Foreign Governmental Organization, ADS Chapter 303 (01/23/09).
- <sup>v</sup> USAID, A Guide to USAID's Bureau for Democracy, Conflict and Humanitarian Assistance (DCHA)/Office of Democracy and Governance Activities (March 2010), available at: [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/DG\\_Activities\\_March\\_2010.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/DG_Activities_March_2010.pdf)
- <sup>vi</sup> Center for Reproductive Rights, Bringing Rights to Bear (2008), available at: <http://reproductiverights.org/en/press-room/bringing-rights-to-bear-anew-2008-update>.
- <sup>vii</sup> International Covenant on Civil and Political Rights art. 2(1) (Mar. 23, 1976).
- <sup>viii</sup> International Covenant on Civil and Political Rights art. 19(3) (Mar. 23, 1976) and Universal Declaration of Human Rights, G.A. Res. 217A, art. 29(2) (Dec. 12, 1948).
- <sup>ix</sup> Harold Hongju Koh, Legal Advisor, U.S. Department of State, Address at the Annual Meeting of the American Society of International Law: The Obama Administration and International Law (Mar. 25, 2010).
- <sup>x</sup> Human Rights Council, Res. 12/16, U.N. Doc. A/HRC/RES/12/16 (Oct. 12, 2009).
- <sup>xi</sup> Alan Guttmacher Institute v. McPherson, 616 F. Supp. 195 (S.D.N.Y. 1985), aff'd, 805 F.2d 1088 (2nd Cir. 1986).
- <sup>xii</sup> USAID, Top Vendors for 2009, available at: <http://www.usaid.gov/policy/budget/money/>.
- <sup>xiii</sup> See Human Rights Committee, Concluding Observations to the United States, U.N. Doc. CCPR/C/79/Add.50 (1995) - *The Committee does not share the view expressed by the Government that the Covenant lacks extraterritorial reach under all circumstances. Such a view is contrary to the consistent interpretation of the Committee on this subject, that, in special circumstances, persons may fall under the subject-matter jurisdiction of a State party even when outside the State's territory.*
- <sup>xiv</sup> In fact, this interpretation of America's responsibility would be consistent with previously expressed political commitments by the U.S., such as in the context of the ICPD Programme of Action.
- <sup>xv</sup> *Role of Radio in Africa: Hearing before the Subcomm. On African Affairs of the S. Comm. on Foreign Relations*, 14<sup>th</sup> Cong. 2 (1996) (Statement of Carol A. Peasley, Deputy Assistant Administrator for Africa, USAID).
- <sup>xvi</sup> International Covenant on Civil and Political Rights art. 19(2) (Mar. 23, 1976).
- <sup>xvii</sup> See Vienna Convention on the Law of Treaties art. 27 (1969) and International Law Commission, *Draft Articles on Responsibility of States for the Internationally Wrongful Acts* art. 32 (2001).
- <sup>xviii</sup> Harold Hongju Koh, Memo For Executive Branch Agencies on U.S. Human Rights Treaty Reports, United States Department of State, available at: <http://www.state.gov/documents/organization/137293.pdf>.
- <sup>xix</sup> See Prosecutor v. Kunarac, Case No. IT-96-23, Trial Judgment, para. 406 (Feb. 22, 2001).
- <sup>xx</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3 (Aug. 12, 1949).
- <sup>xxi</sup> This is recognized in Article 4 of the ICTR Charter which granted the tribunal the authority to prosecute crimes that constituted a violation of Common Article 3 of the Geneva Conventions, which included rape, Statute of the ICTR, available at: <http://www.un.org/ict/statute.html>. Further, under international humanitarian law, the standard for establishing torture differs from that under international human rights law. See Prosecutor v. Kunarac, Case No. IT-96-23, Trial Judgment, para. 465-497 (Feb. 22, 2001). For example, the requirement of state action under the Convention Against Torture does not exist under IHL, where often the perpetrators are armed factions. The ICTY Trial Chamber defined the elements of torture under customary international law as follows: "(i) the infliction, by act or omission, of severe pain or suffering, whether physical or mental. (ii) The act or omission must be intentional. (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person." Id. at para. 497.
- <sup>xxii</sup> Committee against Torture, Concluding Observations on Nicaragua, 42nd Session, para.16 (April 2009).
- <sup>xxiii</sup> World Health Organization, Clinical Management of Rape Survivors (2004), available at: [http://www.who.int/hac/network/interagency/news/manual\\_rape\\_survivors/en/index.html](http://www.who.int/hac/network/interagency/news/manual_rape_survivors/en/index.html).
- <sup>xxiv</sup> Louise Doswald-Beck and Jean-Marie Henckaerts, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW – VOL. 1: RULES 400 (International Committee of the Red Cross) (2003).

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<sup>xxv</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 1 (Aug. 12, 1949).

<sup>xxvi</sup> Luigi Condorelli, Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests, International Committee of the Red Cross, March 31, 2000.

<sup>xxvii</sup> See Vincent Chetail, The Contribution of the International Court of Justice to International Humanitarian Law, ICRC (Jun. 2003) stated, "...[the] International Law Commission Draft Articles on State Responsibility (Article 16), which attributes responsibility to a State that knowingly aids or assists another State in the commission of an internationally wrongful act. It was generally agreed that this forms a legal obligation under common Article 1. It was not considered an obligation to reach a specific result, but rather an "obligation of means" on States to take all appropriate measures possible, in an attempt to end IHL violations."

<sup>xxviii</sup> S.C. Res.1325, U.N. Doc. S/RES/1325 (2000).

<sup>xxix</sup> See Human Rights Watch, *The Prosecutions of Sexual Violence in the Congo War* at 66 – "On top of the physical and psychological traumas, rape victims in the DRC also face a real risk of stigmatization and rejection by their family and community, who may feel deeply dishonored and humiliated. In a society where a woman's value is closely linked with virginity, marriage and child bearing, the victim's suffering is often subordinate to the dishonor and frustration inflicted upon the husband, the family and the whole community."