

## Q&A: How President Obama Can - and Must - Save the Lives of Women & Girls Raped in War

In the first six years of his term, President Barack Obama has demonstrated incredible global leadership by making the rights of girls and women central to his national and foreign policies. However, the abortion ban imposed on all US humanitarian aid by the Obama Administration, forcing girls and women raped in armed conflicts to bear the children of their rapists, casts 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 enforces 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.

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.

Every President since 1956 has support-

ed and enforced common Article 3 of the Geneva Conventions as binding US domestic law. Common Article 3 mandates that all persons “wounded and sick” in armed conflict be provided non-discriminatory and comprehensive medical care. This includes female war rape victims. This means that doctors treating war victims must provide any necessary medical care, including abortion services.

The US abortion ban is contrary to Security Council Resolution 2106 and 2122, which was co-sponsored by the Obama Administration. The UN Secretary General has made clear that the calls in these resolutions include safe abortion services in line with international humanitarian law.

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 medical care.

Pamela, 17,  
Democratic  
Republic of  
Congo

“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 while I was having the baby. The baby died and I had a fistula [a hole between the vagina and rectum or vagina and bladder].”

“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*

50%  
of war rape  
victims are  
children



### **1. What does President Obama need to say in an Executive Order?**

An executive order is the appropriate vehicle for the President to address issues of US compliance with the Geneva Conventions, as demonstrated by the President's executive orders on lawful interrogation methods and the treatment of detainees. The President must restore the life rape and incest exceptions to the abortion ban on foreign aid which are permitted by Congress and make clear that when US humanitarian aid is used to provide medical care to girls and women raped in war that it is the policy and practice of the US to fully comply with the medical mandates of common Article 3. This requires that such care be non-discriminatory and comprehensive and thus include abortions when medically appropriate. An executive order will assure our allies that the US is firmly committed to protecting the rights of women raped in war.

### **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 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 Obama Administration's abortion ban on foreign aid differ from the abortion restrictions required by Congress?**

The abortion restrictions currently imposed on all foreign aid grantees by the Obama Administration eliminates the life, rape and incest exceptions allowed by Congress, and strictly restrict speech about abortion. . The Congressional restrictions on abortion 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.



#### 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 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.”

The US abortion ban attached to humanitarian aid for female war rape victims violates the Geneva Conventions in three ways:

- Failing to provide abortions as part of medical care for girls and women raped in war violates the universal categorical care and protection guarantees of international humanitarian law, including providing comprehensive medical care for persons protected by the Geneva Conventions.
- Denying abortions to girls and women impregnated by war rape violates the prohibition on discrimination based on gender under international humanitarian law. Although the medical treatment for female victims of rape may be different from that of male victims of rape, “the outcome for each gender” must be the same and biological differences cannot be used to justify less favorable treatment for women.
- Since pregnancy aggravates the serious, sometimes life-threatening injuries to girls and women from brutal rape in war, the failure to provide abortion to survivors of war rape violates the prohibition against torture or cruel treatment under common Article 3 of the Geneva Conventions.

Although the provision of medical care to war victims is primarily the duty of the state in conflict, donor countries directly provide or fund a large share of such humanitarian aid, making donor country compliance with the Geneva Conventions critical.



## 6. Is common Article 3 of the Geneva Conventions binding US Law?

Yes. The US government, as acknowledged by every President since 1956, must comply with common Article 3 of the Geneva Conventions in all circumstances. Furthermore, as emphasized in all US military manuals, the US recognizes the provisions of common Article 3, and those additional protections for persons “wounded and sick” in armed conflict in the 1977 Additional Protocols to the Geneva Conventions as binding customary international law.

## 7. Does President Obama support US compliance with the Geneva Conventions?

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.

## 8. 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 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.



## 9. Does any humanitarian entity currently provide abortions for women raped in

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.

## 10. What is being done about the abortion ban?

Lawyers at the Global Justice Center (GJC) launched its “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 four 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 he lift the abortion ban with an executive order.

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.”



The U.S. government’s failure to accept Norway’s recommendations has, since 2011, resulted in the denial of comprehensive medical care to war rape survivors in conflicts around the world and censored billions of dollars in humanitarian and development aid.

*It’s time for President Obama to act.*

## About 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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