

Illegal US Abortion Restrictions:

Key Points for the Universal Periodic Review of the United States

Introduction

During the United States' (US) second-cycle Universal Periodic Review (UPR), multiple states made recommendations concerning US abortion restrictions on foreign assistance, including the Helms Amendment. In addition to donor and recipient countries, these restrictions have also been the subject of concern for human rights bodies and experts. **The US has failed to take any action on these state recommendations; in fact, in 2017 the Trump administration further entrenched and expanded the scope of these policies with the reinstatement of the Global Gag Rule (GGR).**

The restrictive abortion policies include those imposed by the US Congress – the Helms and Siljander Amendments (Helms-related restrictions) – as well as the Presidentially imposed GGR. The restrictions impact different pools of money: the Helms-related restrictions dictate how US foreign aid can be spent and apply to all foreign assistance funds, while the GGR limits how funds from any donor can be spent if a foreign non-governmental organization receives US global health assistance. These restrictions not only ignore the US's own obligations under international law, but violate a broad array of women's rights, deny them essential services, and put their lives and well-being at risk.

The Global Justice Center's full [submission](#) highlights continuing concerns over these US policies which impose blanket prohibitions on abortion services and speech, in violation of US obligations under international humanitarian law, international human rights law, customary international law, and UN Security Council Resolutions. **It is long past time for the US to repeal these regressive and harmful policies, direct their aid to pursue positive health outcomes for women, and to realize women's fundamental rights under international human rights and humanitarian law.**

Questions for the US Government

- **What steps has the Government taken to ensure women and girls, including those raped and impregnated in conflict situations, are ensured access to non-discriminatory medical care, including safe abortion, to which they are entitled under international humanitarian law and international human rights law?**
- **What measures has the Government taken to ensure it is in line with its obligations under international law, including under the ICCPR and CAT, with respect to the right to abortion care?**
- **What is the impact of these abortion restrictions on free speech and how do they comport with the test mandated by the ICCPR?**

Recommendations for the US Government

- **Repeal and/or end all abortion restrictions on foreign assistance, including the Helms and Siljander Amendments, as well as the Global Gag Rule.**
- **Conduct annual transparent and comprehensive reviews of the implementation and impact of US abortion restrictions, with public access to the methodology and submissions.**
- **Issue clear guidance on permitted and prohibited activities to allow grantees to regulate their conduct without onerous or overbroad procedures and with minimal risk.**
- **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.**
- **Fully exempt humanitarian aid and allow such aid to be provided in line with IHL.**

Further Information: US Abortion Restrictions Violate US Obligations Under International Law

International Humanitarian Law (IHL)

- The US is bound by IHL under the Geneva Conventions and customary international law and must “respect” and “ensure respect for” IHL.
- The Helms Amendment violates the IHL mandate to provide comprehensive, non-discriminatory medical care by excluding abortion as a medical procedure uniquely and exclusively needed by pregnant persons, including those raped and impregnated in war.

United Nations Security Council Resolutions

- As a member of the United Nations (UN), the US is bound by the UN Charter and must therefore “accept and carry out” decisions of the Security Council. The Security Council passed three resolutions under the Women, Peace and Security agenda requiring donor states – including the US – to ensure access to comprehensive, non-discriminatory medical care and access to safe abortion services.
- US abortion restrictions violate these resolutions by failing to provide non-discriminatory medical care.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

- CAT guarantees the right to be free from torture, or cruel, inhuman or degrading treatment. States parties to CAT, including the US, are obligated to help “prevent acts that put women’s physical and mental health at grave risk and that constitute cruel and inhuman treatment.”
- Because the Helms Amendment has been interpreted as a full ban on abortion services with US foreign aid, this policy violates the object and purpose of CAT by forcing women and girls raped and impregnated in war to carry their pregnancies to term and suffer serious physical and mental health consequences as a result.
- Additionally, despite the technical exceptions for rape, incest, and life endangerment in the GGR, its application in practice results in a de facto ban on abortions in violation of CAT.

International Covenant on Civil and Political Rights (ICCPR)

- The US is obligated to uphold and protect all individual rights guaranteed by the ICCPR, and not interfere with the obligations of other States parties. The Covenant protects access to abortion services under a variety of rights including the rights to non-discrimination under Article 3, life in Article 6, and freedom from torture, cruel, inhuman or degrading treatment under Article 7. In its General Comment on Article 6 the Human Rights Committee (HRC) affirmed that access to safe abortion is fundamental to the exercise of the right to life. In addition, the ICCPR also provides essential protections for free expression/speech under Article 19 and free association under Article 22.
- The Helms Amendment is implemented as a total ban with none of the ICCPR’s required exceptions. Helms-related restrictions result in service and information limitations that force women to resort to unsafe methods in violation of ICCPR-protected rights.
- Helms-related restrictions also impede political debate, prevent the dissemination of information, and censor the speech of actors and recipients of US aid in violation of the ICCPR’s protection of free speech. Additionally, the Helms-related restrictions impede the ability of non-governmental organizations to freely associate by curbing access to resources they need to exist and operate as an organization.
- Similarly, the GGR’s limitation on service provisions forces women to seek out unsafe methods or carry to term unwanted pregnancies with outcomes that are at odds with women’s fundamental rights under the ICCPR.
- The GGR also prohibits the “active promotion” of abortion as a method of family planning. Prohibited activities include but are not limited to: counseling; providing advice that abortion is an available option; and lobbying a foreign government to legalize or make abortion available. The impact of these restrictions is similar to the invalid restrictions on free speech and association described above.