

# Exporting Censorship: How U.S. Anti-Abortion Policy Violates International Laws on Freedom of Speech and Association

U.S. abortion restrictions on foreign aid impact the freedoms of speech and association and prevent women from accessing necessary healthcare, limit democratic debate, and restrain other countries from complying with their human rights obligations. In short, they violate international law.

## U.S. Restrictions and International Law

The freedoms of speech and association are central to the democratic process and among the most fundamental human rights. Protected by Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), these rights cannot be obstructed by governments unless restrictions pass a strict three-part test. The ICCPR requires that any restrictions on speech or association: (1) are provided by law; (2) have a legitimate aim; and (3) are necessary and proportionate to achieving that aim.<sup>1</sup>

U.S. abortion restrictions on foreign aid fail every part of the ICCPR's test. Instead, the Helms Amendment, Siljander Amendment, and Global Gag Rule (see the Global Justice Center's [FAQ](#) for an explanation of these restrictions)<sup>2</sup> limit the provision of abortion services around the world and prevent individuals, organizations, doctors, and human rights advocates from speaking about abortion rights to patients, governments, and the public. Drawing from the Global Justice Center's [brief](#),<sup>3</sup> the following examples demonstrate how these restrictions violate international law.

## Freedom of Speech Under the ICCPR

Article 19 of the ICCPR ensures the “freedom to seek, receive, and impart information and ideas of all kinds” through any manner or medium, and limits restrictions on speech to those that satisfy the aforementioned three-part test.

### Example: The Helms Amendment Violates Freedom of Speech

#### ICCPR Requirements

⚖️ Restrictions are “provided by law,” when they are accessible to the public, are formulated with precise language that allows those affected to regulate their conduct, and do not allow for “unfettered discretion” by their implementers.<sup>4</sup>

⚖️ The only “legitimate” aims for restricting fundamental rights under the ICCPR are to respect the rights or reputations of others or to protect national security, public order, public health or morals. Speech restrictions cannot “impede political debate” or withhold “information of legitimate public interest that does not harm national security[.]”<sup>5</sup>

⚖️ Restrictions are not “necessary” if there are less intrusive ways to achieve the aim, if the restrictions are not directly connected to achieving the aim, or if the harm caused by the restriction is disproportionate to the interest protected.<sup>6</sup>

#### Helms Amendment Violations

✘ **Provided by Law:** U.S. agencies have interpreted and applied the Helms Amendment's language broadly, which has resulted in unfettered discretion when determining compliance. Specifically, USAID has attempted to censor publications that report neutral statistics on maternal mortality, unsafe abortions, and abortion legalization in other countries—speech that falls outside the scope of the Helms Amendment.<sup>7</sup>

✘ **Legitimate Aim:** Helms directly impedes political debate and information access by preventing free and open discussion on a particular human right. For example, USAID's Kenya mission prevented Kenyan grantees from attending a 2013 government-convened meeting because the discussion of “a strategy to reduce maternal mortality in Kenya” fell “under restricted activities” of the Helms and Siljander Amendments.<sup>8</sup>


✘ **Necessary and Proportionate:** The Helms Amendment applies to all foreign assistance and is therefore not proportionate in the least. As a result, the U.S. censors speech on abortion in countries where the U.S. is involved in other types of foreign assistance but not family planning assistance, which is overbroad and unconnected to any legitimate aim.


## Freedom of Association and the Right to Access Funding


Article 22 of the ICCPR guarantees the right to freely associate with others and protects associations' right to access funding,<sup>9</sup> which is essential to associations' existence and effectiveness. International law recognizes that associations have the right to seek funding from domestic, foreign, and international sources alike.<sup>10</sup> Like those on freedom of speech, restrictions on the freedom of association are only permitted where they satisfy the ICCPR's three-part test.

### Example: The Global Gag Rule Violates Freedom of Association


#### ICCPR Requirements


 Restrictions are “provided by law” when they are accessible to the public, understandable, and are applied consistently to ensure fairness and transparency.<sup>11</sup>

 Article 22 recognizes the same legitimate aims as Article 19, and neither the protection of national values nor the protection of aid “effectiveness” are considered “legitimate.”<sup>12</sup>

 Restrictions are not “necessary in a democratic society” if there are less intrusive ways to achieve the aim, if the restrictions are not directly connected to achieving the aim, or if the harm is disproportionate to the interest protected.

#### Global Gag Rule Violations

 **Provided by Law:** Despite requests for clarification and persistent confusion among grantees, the U.S. government continues to advise on compliance with the Gag Rule on a “case-by-case basis,” which lacks fairness and transparency.<sup>13</sup>

 **Legitimate Aim:** President Reagan first implemented the GGR in 1984, claiming that “the United States does not consider abortion an acceptable element of family planning programs....”<sup>14</sup> The United States' recent attempts to justify the Gag Rule and similar restrictions on the basis of aid effectiveness and government policy priorities<sup>15</sup> likewise fail the requirements of international law.

 **Necessary and Proportionate:** The U.S. government does not even consistently deem the GGR “necessary”—it is a political policy reinstated and rescinded along partisan lines. It is also ineffective in achieving any aim—a 2011 study found that the GGR actually increased abortion rates in sub-Saharan Africa as organizations supporting family planning and contraceptive access were forced to reduce programming.<sup>16</sup>

## U.S. Abortion Restrictions Violate Free Speech and Association Rights

By censoring abortion-related speech, public debate, legislative reform, advocacy, and funding, U.S. abortion restrictions “violate the key democratic principles of ‘pluralism, tolerance, and broadmindedness.’”<sup>17</sup> Hypocritically, the U.S. domestically recognizes the right to abortion as a fundamental right and yet, through these restrictions, prevents other countries from recognizing and protecting it as such. By constraining abortion-related activities, speech, and financial resources, the U.S. has violated its fundamental obligations under international law to ensure free speech and association.

These violations are not merely theoretical—because of U.S. policy women and girls all over the world are denied their right to access safe abortion services. At a time when women's rights and their defenders face intersectional discrimination and attack, it is imperative that all governments, international organizations, and civil society insist on the provision of essential abortion services as a matter of right.

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

2. FAQ: How U.S. Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women's Rights & Human Rights, GLOBAL JUSTICE CTR. (Jan. 2018), <http://globaljusticecenter.net/files/FAQAbortionRestrictions.pdf>.

3. U.S. Abortion Restrictions on Foreign Aid and Their Impact on Free Speech and Association: The Helms Amendment, Siljander Amendment and the Global Gag Rule Violate International Law, GLOBAL JUSTICE CTR. (Mar. 2018), <http://www.globaljusticecenter.net/files/US-Abortion-Restrictions-Brief.pdf>.

4. Human Rights Comm., General Comment No. 34, ¶ 25.

5. Human Rights Comm., General Comment No. 34, ¶¶ 28, 30.

6. Human Rights Comm., General Comment No. 27, ¶ 14.

7. See Alan Gutmacher Inst. v. McPherson, 805 F.2d 1088 (2d Cir. 1986) (“AGI II”); Akila Radhakrishnan & Kristina Kallas, *If These Walls Could Talk, They Would Be Censored: U.S. Restrictions on Pro-Choice Speech*, Reproductive Laws for the 21st Century Papers, Ctr. for Women Pol'y Studies 8-11 (June 2012).

8. Laura Bassett, *Instruments of Oppression*, HUFFINGTON POST, <http://highline.huffingtonpost.com/articles/en/kenya-abortion/>; Ipas, Briefing Note: The Helms Amendment and USAID Censorship and Intimidation in Reproductive Health in Kenya (Feb. 28, 2014) (on file with author).

9. 2013 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, ¶¶ 16-17.

10. Factsheet: Civil Society's Ability to Access Resources, FORMER U.N. SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION (May 2015), <http://freeassembly.net/wp-content/uploads/2015/05/Funding-report-factsheet-final.pdf>.

11. 2012 Report of the Special Rapporteur on the Situation of Human Rights Defenders, ¶¶ 64, 66-67.

12. 2013 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, ¶¶ 30, 40-41.

13. *Protecting Life in Global Health Assistance Six Month Review*, U.S. DEP'T OF STATE (Feb. 6, 2018), <https://www.state.gov/f/releases/other/278012.htm>; Background Briefing: Senior Administration Officials on Protecting Life in Global Health Assistance, U.S. DEP'T OF STATE (May 15, 2017), <https://www.state.gov/r/pa/prs/ps/2017/05/270879.htm>.

14. Policy Statement of the United States of America at the United Nations International Conference on Population (Second Session), Mexico City, Aug. 6-14, 1984, <https://abortion.procon.org/sourcefiles/MexicoCityPolicy1984.pdf>.

15. See, e.g., D.K.T. Int'l, Inc. v. U.S. Agency for Int'l Dev., 477 F.3d 758, 762 (D.C. Cir. 2007); Agency for Int'l Dev., v. Alliance for Open Soc'y Int'l, Inc., 133 S. Ct. 2321, 2331 (2013); Planned Parenthood Fed. of Am., Inc., v. Agency for Int'l Dev., 915 F.2d 59, 65 (2d Cir. 1990).

16. Eran Bendavid, Patrick Avila, & Grant Miller, *United States Aid Policy and Induced Abortion in Sub-Saharan Africa*, WORLD HEALTH ORG. BULLETIN, Sept. 27, 2011, <http://www.who.int/bulletin/volumes/89/12/11-091660/en/>.

17. 2013 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, ¶ 41.