

U.S. Restrictions on Free Speech & Association: How U.S. Anti-Abortion Policy Violates International Law

Since 1973 and the passage of *Roe v. Wade*, the United States has imposed restrictions on how foreign aid money is spent when it comes to abortion. These restrictions directly impact health care providers by reducing the services and information they can give. In fact, the restrictions are so far-reaching that they also limit the activities of experts and advocates when it comes to defending abortion rights. As a result, the U.S.—a country that prides itself on its democratic ideals—is continually violating the free speech and association rights of health care providers and advocates around the world.¹

How U.S. Abortion Restrictions Violate International Law

- ▶ Limit debate on issues of public interest and advocacy on human rights.
- ▶ Harm the democratic process of other countries by preventing the free and open discussion of abortion as a right and barring the discussion of legislative changes to make the right effective.
- ▶ Fail to provide sufficient clarity on which speech and activities remain allowed, creating a chilling effect on speech and activities that remain permissible.
- ▶ Do not pursue a legitimate aim such as national security or public health. The U.S. government itself does not see these restrictions as necessary to achieving a legitimate aim, as the Global Gag Rule is regularly removed and reinstated by U.S. presidents along party lines. In fact, the restrictions threaten women's health by decreasing access to necessary health care services and increasing unsafe abortion rates.²

International Law Protecting Speech & Association

The freedoms of speech and association are recognized as cornerstones of democratic societies. The debate and accountability they foster are essential to achieving a free and equal world. The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, guarantees the rights to freedom of speech and association. The U.S. ratified the ICCPR in 1992 and is legally bound by it.

Article 19 of the ICCPR: Everyone has the right to freedom of speech and to hold opinions without interference.

Article 22 of the ICCPR: Everyone has the right to freedom of association with others. This includes access to funding in order to carry out association activities.

Under the ICCPR, restrictions on speech and association are only allowed when they are provided by law, pursue a legitimate aim, and are necessary and proportionate.³ U.S. restrictions fail each part of this strict test and violate both the freedom of speech and association requirements of the ICCPR.

Timeline of U.S. Abortion Restrictions

1973: The Helms Amendment says that no U.S. funds “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.”

1981: The Siljander Amendment originally only prohibited lobbying for abortion, but has since been amended to prohibit U.S. funds from being “used to lobby for or against abortion.”

1985-2009 (intermittent): The Global Gag Rule prohibited family planning assistance from being provided to foreign NGOs to perform abortions as a method of family planning or to “actively promote abortion as a method of family planning,” which includes counselling or referring women for abortion or lobbying for abortion.

2017: President Trump extended the Global Gag Rule to apply to all global health assistance funds, impacting a significantly larger pool of funding than family planning assistance.

Case Study: Stifling Political Debate in Kenya

How U.S. Abortion Restrictions Violated Free Speech & Association

U.S. abortion restrictions prevented Kenya’s government and civil society from engaging in political speech about issues of public importance in their own country.

In the early 2000s, Kenya had a disproportionately high maternal mortality rate compared to neighboring countries—and unsafe abortions were linked to 35% of maternal deaths.⁴ After the Kenyan Constitution made abortion legal under certain circumstances, the Kenyan Ministry of Health sought to implement guidelines to increase access to safe abortions under the new law. When the Ministry of Health attempted to train healthcare providers on the new guidelines, the U.S. Agency for International Development (USAID) sent an email warning their grantees not to attend the informational sessions. The Ministry of Health withdrew the guidelines the following day.⁵

Timeline of Events

2010 – The Kenyan Constitution makes abortion legal where “in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.”⁶

2012 – The Kenyan Ministry of Health issues guidelines in order to help healthcare providers implement this new law and to increase access to quality abortion care where legal under the Constitution.

August 2013 – A study by the Ministry of Health deems it “critical” and “urgent” to implement these guidelines and to increase access to and information regarding contraceptives and safe abortion in order to reduce incidences of unsafe abortion.

December 2013 – USAID’s Kenya mission emails their Kenyan grantees advising them not to attend a meeting convened by the Ministry of Health because the meeting’s purpose—“to discuss a strategy to reduce maternal mortality in Kenya”—would likely include a reproductive health discussion and therefore attending the meeting fell under “restricted activities” of the Helms and Siljander Amendments.⁷

The Next Day – The Ministry of Health withdraws the 2012 guidelines and soon after directs providers to stop safe abortion trainings.

Today – While abortion access is still a constitutional right in Kenya when the woman’s life or health is in danger, there is little to no access to abortion services on the ground. Kenya’s maternal mortality rate remains one of the highest in the world.

For more information about how U.S. abortion restrictions impact free speech and association, read the Global Justice Center’s full [legal brief](#).

1. *US 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>.

2. 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/>; Mehlika Hoodbhoy, Martin Flaherty & Tracy Higgins, *Exporting Despair: The Human Rights Implications of U.S. Restrictions on Foreign Health Care Funding in Kenya*, 29 FORDHAM INT’L L.J. 1 (2005).

3. International Covenant on Civil and Political Rights arts. 19(3), 22(2), Mar. 23, 1976, 999 U.N.T.S. 171.

4. CTR. FOR REPRODUCTIVE RIGHTS, IN HARM’S WAY: THE IMPACT OF KENYA’S RESTRICTIVE ABORTION LAW 25 (2010), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/InHarmsWay_2010.pdf; REPUBLIC OF KENYA MINISTRY OF HEALTH, INCIDENCE AND COMPLICATIONS OF UNSAFE ABORTION IN KENYA: KEY FINDINGS OF A NATIONAL STUDY 25 (2013), <http://aphrc.org/wp-content/uploads/2013/11/Incidence-and-Complications-of-Unsafe-Abortion-in-Kenya-Key-Findings-of-a-National-Study.pdf>.

5. Laura Bassett, *Instruments of Oppression*, HUFFINGTON POST, <http://highline.huffingtonpost.com/articles/en/kenya-abortion/>.

6. Constitution, art. 26 (2010) (Kenya).

7. Ipas, *Briefing Note: The Helms Amendment and USAID Censorship and Intimidation in Reproductive Health in Kenya* (Feb. 28, 2014) (on file with author).