

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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March 4, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

I write on behalf of the Association of the Bar of the City of New York regarding United States compliance with its international obligations under international humanitarian law to provide non-discriminatory medical care to women and girls raped and impregnated in armed conflict, including their right to receive abortion services. The Association is an independent non-governmental organization with a membership of more than 22,000 lawyers, judges, law professors and government officials from New York City, throughout the United States and abroad. Founded in 1870, the Association has a long history of dedication to international and humanitarian law.

Rape has increasingly been recognized by the international community as a weapon in armed conflict, as evidenced by United Nations Security Council Resolution 1820, which acknowledges that “rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide.” Rape is used in situations of armed conflict to destroy communities through terror and humiliation. Women who are raped and impregnated in situations of armed conflict suffer a wide range of significant physical, psychological and social consequences, including increased rates of maternal mortality, and risk of resorting to non-sterile or unsafe methods of abortion. It is critical that women and girls who are raped and impregnated in situations of armed conflict receive appropriate and non-discriminatory medical care. Tragically, women who become pregnant as a result of rape in situations of armed conflict are routinely denied access to abortion as part of their medical care. Consequently, women and girls who wish to end an unwanted pregnancy are denied such treatment and are consequently forced to carry an unwanted child to term, perpetuating the physical and psychological effects of their injury.

The United States is the world's largest provider of humanitarian assistance to victims of armed conflict, the overwhelming majority of whom are civilians. Regrettably, U.S. policies which place restrictions on U.S. funds for abortion related services contribute to the routine denial of access to the full range of medically appropriate care for victims of rape, which includes access to abortion. The source for these restrictions is the Helms Amendment, originally enacted in 1973, which prohibits the use of federal funds for abortion services "as a method of family planning" and currently applies to all aid provided through the Foreign Assistance Act. The United States Agency for International Development (USAID) has interpreted the statute broadly in regulations and other guidance and statements and has in practice restricted funding for all abortion services. Restricting funding for abortion services where they are medically indicated, such as is the case for victims of rape in situations of armed conflict, goes beyond the statute since such services cannot be considered a method of family planning. USAID has also inserted such restrictions reflecting its interpretation in virtually all contracts with foreign governments, and humanitarian and non-governmental organizations. Concern over such restrictions was expressed in the recommendation that the US "remove its blanket abortion restrictions on humanitarian aid covering the medical care given women and girls who are raped and impregnated in situations of armed conflict" made by Norway as part of the Human Rights Council's Universal Periodic Review process.

USAID's current interpretation and implementation of the Helms Amendment goes beyond the statutory language, thus restricting the fundamental right of women who are victims of rape in a situation of armed conflict to non-discriminatory medical care and undermining U.S. efforts to meet its obligations under international law. The Association therefore recommends that you issue an executive order removing any restrictions on abortion funding imposed through regulations or other guidance or policies of government agencies from humanitarian assistance that conflict with or undermine U.S. compliance with its obligations under the Geneva Conventions and customary international law.

States have an obligation to provide non-discriminatory medical care to the wounded and sick under common Article 3 of the Geneva Conventions, Additional Protocols I and II and customary international law. Abortion services and counseling constitute medically appropriate treatment for survivors of rape who have been impregnated. In addition, rape in situations of armed conflict has been recognized as a method of torture, and the denial of abortion to women who become pregnant as a result of being raped has also been considered to constitute torture or cruel, inhuman or degrading treatment. Consequently, the denial of the full range of medically appropriate care to victims of rape in situations of armed conflict constitutes a violation of their rights under applicable international law.

The United States has an obligation under common Article 1 of the Geneva Conventions to "respect" and "ensure respect" for the Geneva Conventions. The obligation to respect and ensure respect means that the U.S. must not only ensure its own compliance with the requirements of the Geneva Conventions, it must also take action with respect to states that are perpetrating or supporting violations. Additional obligations arise under international law to the extent that rape and the denial of the medical option of abortion in a situation of armed

conflict amount to torture, a serious breach of a peremptory norm, or a constitutive act of genocide.

The application of the Helms Amendment restrictions to humanitarian assistance contributes to the widespread denial of abortion as a treatment for women and girls who are raped and impregnated in situations of armed conflict. Ending such restrictions in the context of armed conflict would significantly improve care for the wounded and sick as required by the Geneva Conventions and help to alleviate suffering for some of the most vulnerable victims of war crimes, who might otherwise be forced to exacerbate their wounds through seeking an unsafe abortion or bearing an unwanted child. I therefore respectfully request on behalf of the Association that you issue an executive order rescinding all restrictions on U.S. funds humanitarian assistance that would prevent abortion as medically indicated from being provided in situations of armed conflict.

Thank you for the opportunity to express our views on this important issue.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'S. W. Seymour', with a long horizontal flourish extending to the right.

Samuel W. Seymour

cc: Hon. Hillary Rodham Clinton, Secretary of State
Hon. Harold Koh, Legal Adviser of the Department of State
Hon. Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights & Labor
Hon. Rajiv Shah, Administrator, United States Agency for International Development