August 12, 2011

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

Dear President Obama,

As professionals in such fields as international law, global health, and women's health and human rights, we note with deep appreciation your remarks upon acceptance of the Nobel Peace Prize that the United States must remain a "standard bearer" in adherence to the laws of war. In furtherance of these principles, we urge you to issue an Executive Order lifting US abortion restrictions on humanitarian aid for girls and women raped and impregnated in situations of armed conflict.

This is a matter of utmost urgency. Every day rape is used as an illegal and deadly weapon of war targeting women and girls in situations of armed conflicts globally. Rape is a war crime that accomplishes the aims of war criminals; all rape victims suffer significant, sometimes deadly, physical, psychological, and social consequences.

Horrific health and life consequences are heightened for rape victims who consequently become pregnant. Yet, these victims are singled out for incomplete medical care, since abortions are deliberately excluded from the range of medical and surgical services provided in U.S. funded humanitarian medical aid settings.

U.S. abortion restrictions on foreign aid, which started in 1973 with the Helms Amendment to the Foreign Assistance Act, have now expanded through administrative and appropriations measures to prohibit all abortions provided through humanitarian aid with no exceptions in cases of rape or to protect a mother's life. This goes far beyond the required statutory language.

We urge you to consider the following points and lift the abortion restrictions on U.S. humanitarian aid directed to victims in conflict:

1. <u>The Denial of Abortions for Women and Girls Impregnated by Rape in Armed Conflict is Inhuman and Cruel</u>

    a. Rape used as a weapon is endemic to armed conflicts - it is estimated that between 250,000 and 500,000 women were raped during the Rwandan genocide in 100 days. Approximately 20,000 children were born as a result of these rapes. Local health centers in South Kivu, Democratic Republic of Congo (DRC) have estimated that approximately 40 women are raped in the region every day.

    b. Although a few courageous doctors and agencies provide abortion services for rape victims in areas of armed conflict, these are episodic and provider

dependent. Major providers of medical humanitarian services routinely exclude the option of abortion to females raped in armed conflict.

c. Women and girls raped and impregnated in armed conflict, who are denied safe abortions where requested to face three insufferable choices:(1) undergoing an unsafe and dangerous abortion; (2) carrying to term an unwanted pregnancy increasing her risk of maternal mortality; or (3) suicide.

d. Denying abortions to raped women and girls results in increased maternal mortality and compounds the physical, psychological, and social consequences of rape. For example:

    i. a study by the Harvard Humanitarian Initiative and Oxfam found that "[i]n their narrative descriptions of violence, women described sadness, anger, fear, anxiety, shame and misery as a result of the sexual assault…these emotions appeared to be augmented by pregnancy resulting from rape;

    ii. a study by the Harvard School of Public Health and Physicians for Human Rights found that "unwanted pregnancies through rape (and gang rape) and the conditions imposed by war (malnutrition, anemia, malaria, exposure, stress, infection, disease), increase the risks defined by [the] baseline maternal mortality rate."

e. Children born of rape also suffer. They are often recognized as "children of the enemy." In Rwanda, children born of rape are known as "enfants mauvais souvenirs," or "children of bad memories." Where women are forced to carry to term unwanted pregnancies, their babies are often subject to abandonment, rejection by the mother and/or the community, and infanticide.

2. <u>International Humanitarian Law supports providing abortions to rape victims in armed conflicts.</u>

a. Common Article 3 of the Geneva Conventions dictates the baseline standards with which all persons "not taking part in hostilities" must be treated. It mandates that the "wounded and sick," which includes women and girls raped in armed conflict, be guaranteed the right to non-discriminatory medical care, the right to humane treatment, and the right to be free from torture and cruel, inhuman and degrading treatment. These guarantees under Common Article 3 are subverted when women are denied access to abortions.

b. The fundamental principle to <u>care for the wounded and sick</u> requires administration without <u>distinction,</u> except to give priority to those in most urgent need of care. As rape is perpetrated against women and men in different ways and by different methods, the injuries suffered necessitate different forms of medical care. Denying abortions to females raped in armed conflict – while male and non-pregnant female rape victims theoretically receive all necessary medical care – is patently discriminatory.

c. Common Article 3 prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture . . . [and] outrages upon personal dignity, in particular, humiliating and degrading treatment." There is increasing legal authority that the denial of abortions for victims of rape constitutes torture. For example:

   i. The Committee on Torture found that the denial of abortions in the context of rape can constitute cruel, inhuman and degrading treatment, in response to Nicaragua's 2009 state report to the Committee on Torture;

   ii. The Human Rights Committee concluded in the 2005 case of K.L. v. Peru that denial of abortion to a woman whose life was endangered by a pregnancy constituted a violation of Article 7 of the International Covenant on Civil and Political Rights (prohibiting torture and cruel and inhuman treatment).

   iii. The Inter-agency Working Group on Reproductive Health in Crises (IAWG), in its 2010 Inter-agency Field Manual on Reproductive Health in Humanitarian Settings, notes that "denial of access to safe abortion services to women who have become pregnant as a result of rape and human trafficking violations can constitute torture or cruel, inhuman or degrading treatment."

The primary obligation to provide complete, non-discriminatory medical care to victims of armed conflict rests with parties to the conflict. As the largest donor of humanitarian aid globally, however, the U.S. should ensure that its aid comports with the core tenets of international humanitarian law. The U.S. restriction on the use of foreign aid funds for abortions has enormous influence on how humanitarian aid is provided. For example, a report on access to abortions in Sudan and Chad found that: "the question of access to safe abortion as an option for victims of rape is not openly discussed in any health facility receiving international humanitarian assistance in Darfur, Chad or elsewhere...Humanitarian agencies seem to assume it is not essential to provide abortion services or accurate information for victims of rape in camp or internally displaced person settings. It is likely that US government anti-abortion policies have contributed to reluctance to provide safe abortion services."

Humanitarian aid should relieve human suffering, not prolong it. As a matter of morality and law, women and girls must not be forced to carry to term unwanted pregnancies resulting from the rape with no option of an abortion. This is inconsistent with domestic laws and policies on abortions, and should not be the premise for foreign aid.

Accordingly, we urge you to issue an Executive Order lifting the Helms Amendment and all other abortion restrictions as applied to on U.S. humanitarian aid for girls and women raped in armed conflict.

The Association of the Bar of New York wrote to you in March calling for the removal of abortion restrictions on humanitarian aid. In support of their efforts we also suggest that your Administration:

1. Revise USAID guidelines to remove these restrictions from humanitarian aid and promptly notify all grant recipients.
2. Monitor aid recipients, including states and humanitarian actors, to ensure that abortions are included in the services provided to women and girls raped in armed conflict.
3. Review all existing U.S. abortion restrictions on foreign assistance to ensure that the restrictions are consistent with U.S. obligations under international human rights and humanitarian law, including guarantees of free expression and speech.

As you eloquently stated in your Nobel Prize acceptance speech, "Our actions matter and can bend history in the direction of justice." We now ask you to bend history and direct justice for girls and women raped in armed conflict.

Thank you,

Lawrence O. Gostin	Georgetown University Law Center, Professor of Global Health
Chi Adanna Mgbako	Leitner Center for International Law and Justice Fordham University School of Law, Director Walter Leitner International Human Rights Clinic
Jane H. Aiken	Georgetown University Law Center, Professor of Law, Director, Community Justice Project
Sandra L. Babcock	Northwestern Law, Clinical Professor of Law, Director, Center for International Human Rights
Caroline Bettinger-Lopez	University of Miami School of Law, Associate Professor of Clinical Education
Oscar A. Cabrera	Georgetown University Law Center, Professor of Law, Deputy Director O'Neill Institute for National and Global Health Law
Arturo J. Carrillo	George Washington University Law School, Director International Human Rights Clinic
Rebecca Cook	University of Toronto, Chair in International Human Rights Law
Margaret Drew	University of Cincinnati College of Law, Director of Clinics and Experiential Learning
Susan Deller Ross	Georgetown University Law Center, Professor of Law; Director, International Women's Human Rights Clinic
Ruth Faden	Johns Hopkins University School of Public Health, Philip Franklin Wagley Professor of Biomedical Ethics and Director of the Johns Hopkins Berman Institute of Bioethics
Gertrude Fester	University of Western Cape, Associate Professor Women and Gender Studies
David P. Fidler	Indiana University School of Law, Professor of Law

Colleen Flood	University of Toronto Faculty of Law, Research Chair in Health Law and Policy
Lance Gable	Wayne State University Law School, Assistant Professor of Law
James Hodge	Arizona State University College of Law, Lincoln Professor of Health Law and Ethics at the Sandra Day O'Connor College of Law and Fellow, Center for the Study of Law, Science, and Technology
Peter D. Jacobson	University of Michigan School of Public Health, Professor of Health Law and Policy in the Department of Health Management and Policy
Kathleen Kelly Janus	Stanford Law School
Robyn Martin	University of Hertfordshire's Centre for Research in Primary and Community Care, Professor
Benjamin Mason Meier	University of North Carolina Chapel Hill School of Global Public Health, Assistant Professor of Global Health Policy
Robin Mason	Dalla Lana School of Public Health and Department of Psychiatry, University of Toronto, Research Scientist
Janice Du Mont	University of Toronto Dalla Lana School of Public Health, Research Scientist
Karen Musalo	University of California, Hastings College of the Law, Clinical Professor of Law and Director, Center for Gender and Refugee Studies
Katrina Pagonis	Hamline University School of Law, Professor of Law
Wendy Parmet	Northeastern University School of Law, Associate Dean
Rudy Van Puymbroeck	Georgetown University Nursing and Health Studies, Adjunct Associate Professor
Ronald C. Slye	Seattle University School of Law & University of the Witwatersrand, Professor of Law
Dabir H. Tehrani	Heriot-Watt University, Institute of Petroleum Engineering, Professor
Brigit Toebes	University of Aberdeen School of Law, Lecturer

Cc:
Secretary of State, Hillary Clinton
Legal Advisor to the State Department, Harold Koh