

## US Response to Challenges to Abortion Ban for War Rape Victims Opens Door for Executive Action

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September 2, 2015

### Statement by the Global Justice Center

On September 1, 2015, in its [response](#) to challenges to US abortion restrictions on foreign assistance, the Obama Administration signaled support for addressing the medical needs of girls and women raped and impregnated in armed conflict.

This support can be found in the US's positive response to [France's recommendation](#) at the Universal Periodic Review (UPR) of the US by the UN Human Rights Council (HRC) in May 2015 that the US: “[e]nsure that the US international aid allows access to sexual and reproductive health services for women victims of sexual violence in conflict situations.” The US, noting that it supports France’s recommendation in part, stated “[w]e support this recommendation’s principle: addressing the needs of women who have been victims of sexual violence in conflict situations.” In the introduction to the UPR reply, the US defined its use of the word “support”: “[w]e support or support in part these recommendations when we share their ideals, are making serious efforts to achieve their goals, and intend to continue doing so.”

This response signals a significant shift from the US response to a [similar recommendation](#) made by Norway at the 2010 UPR of the US asking for “[t]he removal of blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.” The [US's response](#) was that it did not support Norway’s recommendation “due to currently applicable restrictions.”

France’s recommendations, as well as those from four other countries that challenged American abortion restrictions on foreign assistance at the UPR, reflect the growing global concern about the denial of abortion services to girls and women raped in war as a result these restrictions. Furthermore, [France](#), [the UK](#) and the [Netherlands](#) have made clear foreign policy statements that the denial of abortions to female war victims violates international humanitarian law (IHL) since, as persons “wounded and sick in armed conflict,” female war rape victims are [entitled](#) to be provided all necessary medical care, including abortions, under common Article 3 of the Geneva Conventions.

Meanwhile, the rights of female victims of rape in armed conflict to non-discriminatory medical care under IHL was the catalyst for language in Security Council resolutions [2106](#) and [2122](#) in 2013, calling for humanitarian aid and funding to include the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination. The US voted in favor of those resolutions. The Secretary-General has [made clear](#) that such services must include access to abortion in accord with international humanitarian law.

**The US must now turn its support in “principle” of the needs of women raped in war into action to save the lives of these female war victims.** Accordingly, President Obama should issue an executive order clarifying that abortion restrictions on foreign assistance do not apply in cases of rape, life endangerment and incest, and affirming US support for the rights of girls and women raped in armed conflict to medical care governed by common Article 3 of the Geneva Conventions, including abortions, irrespective of any local abortion laws.

Grassroots support for executive action to lift the abortion restrictions continues to grow. In July 2015, 56 organizations from 22 countries wrote [an open letter](#) to President Obama urging him to issue such an executive order. The letter was signed by international human rights organizations including the GJC, Human Rights Watch, the ACLU, Amnesty International, as well as organizations from conflict countries directly affected by the U.S. abortion ban, including from Nigeria, Iraq and Syria, the DRC and South Sudan such as the West African Bar Association, the South Sudan Lawyers Association, the Nigerian Medical Women’s Association.

Daily headlines report the rampant use of rape and forced pregnancy as a tactic of war by groups such as ISIS and Boko Haram, in places such as Syria, Iraq and Nigeria. US abortion restrictions only serve to exacerbate the suffering of those women and girls who survive the brutality of war rape. President Obama has the ability and the duty to issue an executive order ensuring that US foreign assistance includes safe abortion services in cases of rape, life endangerment or incest, and in doing so, affirm the rights of female war rape victims to safe abortion under the Geneva Conventions.

### **Background:**

The GJC in 2011 launched their global campaign to ensure that female victims of rape in armed conflict—servicewomen and civilians alike—have access to abortion services as part of their right to comprehensive and non-discriminatory medical care under common Article 3 of the Geneva Conventions, irrespective of any national abortion laws and restrictions. GJC filed the first challenge to the US abortion restrictions as violating the Geneva Conventions rights of female war victims in their [shadow report](#) to the HRC in 2010 for the first UPR of the US. GJC also filed shadow reports with the [Committee against Torture](#) and [HRC](#) in 2014.

During the May 2015 UPR of the US before the UN Human Rights Council, five countries, the United Kingdom, the Netherlands, France, Norway and Belgium urged the US to ensure that girls and women can access the full range of sexual and reproductive services, including access to safe abortion. The US supported the recommendation made by France in part but did not support the rest of the recommendations, some of them limiting the provision of abortion services to local law or not referencing conflict situations. The Geneva Conventions only apply to situations of armed conflict.

The US has voted in favor for and supported UN Security Council Resolutions [2106 \(2013\)](#) and [2122 \(2013\)](#) both urging for humanitarian aid and funding to include the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination. [Reports](#) by the Secretary-General have [repeatedly](#) called on Member States to provide abortion services for female rape victims in accordance with international humanitarian law.

The Geneva Conventions have been US federal law supported by every presidential administration since 1957 and were affirmed by the US Supreme Court in 2006 as governing the lawfulness of other US laws related to armed conflict (*Hamdan v. Rumsfeld*).

Furthermore, the Obama Administration has made its commitment to upholding the laws of war clear including through the Department of Defense's 2015 [Law of War Manual](#), as well as President Obama's 2009 [Executive Order 13491](#) (Ensuring Lawful Interrogations): *"to ensure compliance with the treaty obligations of the United States, including the Geneva Conventions, and to take care that the laws of the United States are faithfully executed,"* and Executive Order 13492 (Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities): *"to ensure compliance with all applicable laws governing the conditions of such confinement, including common Article 3 of the Geneva Conventions."*