



Global Justice Center

Human Rights Through Rule of Law

Global Justice Center's Submission

to

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Call for contributions: Violence and its impact on the right to health

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The Global Justice Center (GJC) is an international human rights organization, with consultative status to the United Nations, dedicated to advancing gender equality through the rule of law. We combine advocacy with legal analysis, working to ensure equal protection of the law for women and girls.

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The following is responding specifically to question 2 regarding how the legal framework defines, punishes, and provides redress for the relevant types of violence.

Denial of abortion is deeply entwined with violence as everything from risk factor to lack of redress. Indeed, the denial of abortion is itself a form of structural violence.¹ Additionally, access to abortion bears a cyclical relationship with direct violence. Lack of access places people at greater risk for violence.² Meanwhile, experiencing direct violence often increases the need and demand for abortion services.³ This is especially true in situations of conflict and mass violence.

This section outlines the international standards to which *any* State must adhere in the context of mass or systemic sexual and gender-based violence (“SGBV”). They establish a minimum framework to actively ensure the right to health.

Access to abortion is necessary to meaningfully redress and prevent SGBV

The denial of abortion is an act of structural violence.⁴ It strips pregnant people of their rights, can cause severe physical and psychological harm, and prevents them from meeting their basic needs for healthcare. It is also inextricably linked to direct forms of SGBV, as both an outcome and a driver. There is an implicit logic that an increase in forced sex would yield an increase in unwanted pregnancies and demand for abortion access. Individually, denial of abortion reduces economic stability and independence, leaving people vulnerable to exploitation. Denial of abortion is also a form of discrimination⁵ and inequality⁶, which are both root causes of societal instability, mass violence, and violence against women.⁷

A primary goal of international law is to avoid irreparable harm⁸ and to “restore the victim to the original situation before the gross violations of international human rights law or serious

¹ See, e.g. Michele Eggers, *Embodying Inequality: The Criminalization of Women for Abortion in Chile*, UCONN Doctoral Dissertations, 1059 (2016); Rishita Nandagiri, Ernestina Coast and Joe Strong, *COVID-19 and Abortion: Making Structural Violence Visible*, 46 Int'l. Persp.on Sexual and Reproductive Health and Rts. 83 (2020); Gianna Dejoy, *State Reproductive Coercion as Structural Violence*, 10 Colum. Soc. Work Rev. 36 (2019).

² Caterina Muratori, *The Impact of Abortion Access on Violence Against Women*, U of Reading (2021).

³ Laura A. McCloskey, *The Effects of Gender-based Violence on Women's Unwanted Pregnancy and Abortion*, 89(2) Yale J. Biol. Med. 153 (2016).

⁴ Dejoy, *supra* note 1.

⁵ Committee on the Elimination of Discrimination against Women, General Recommendation 24 (1999) on women and health, para. 11.

⁶ Rep. of the Working Group on the issue of discrimination against women in law and in practice, ¶ 35, U.N. Doc. A/HRC/38/46 (2018)

⁷ Rep. of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, ¶ 16, U.N. Doc. A/HRC/17/26 (May 2, 2011). U.N. Secretary-General, *Conflict-Related Sexual Violence: Rep. of the Secretary-General* ¶ 2, U.N. Doc. S/2021/312 (Mr. 30, 2021).

⁸ Eva Rieter, Preventing Irreparable Harm. Provisional Measures in International Human Rights Adjudication(2010), available at: <https://corteidh.or.cr/tablas/r23872.pdf>

violations of international humanitarian law occurred.⁹ Forcing a person to carry an unwanted pregnancy to term resulting from SGBV denies them restitution for that harm. The Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence recommends access to safe abortion services as an administrative reparation program to respond to the immediate needs of survivors, particularly in the context of conflict and widespread violence.¹⁰

Repairing harm is a baseline, but reparations “cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential.”¹¹ Justice and accountability also bear a role in prevention, including through guarantees of non-repetition.¹² Among other necessary measures, legislation is required to provide people who become pregnant as a result of rape, with the choice of safe and legal abortion.¹³

Access to abortion must be provided as a matter of right under international humanitarian law

The role of international human rights law (“IHRL”) in ensuring the right to abortion is well-documented¹⁴; however, international humanitarian law (“IHL”) also protects that right. While IHRL applies in all circumstances, IHL is unique to conflict and is the *lex specialis*, displacing conflicting national law.¹⁵

Rape and sexual violence in conflict is endemic; deployed as a systemic tactic of war.¹⁶ This in turn yields higher pregnancy rates and demand for abortion. For example, healthcare providers in Tigray reported that abortion is a primary service sought by sexual violence survivors.¹⁷ One clinic reported that 69 out of 173 women and girls reporting sexual violence were pregnant, and all but four of them elected to get an abortion.¹⁸ Physicians treating Rohingya refugees noted similar patterns.¹⁹ Their patients said they chose abortion because the pregnancy resulted from rape.²⁰

⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, ¶ 19, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).

¹⁰ U.N. Secretary-General, Reparations for Conflict-Related Sexual Violence: Guidance Note of the Secretary-General, p. 14 (June 2014) [hereinafter SG Guidance Note].

¹¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, ¶ 31, U.N. Doc. A/HRC/14/22 (Apr. 23, 2010).

¹² G.A. Res. 60/147, *supra* note 9 at para. 23.

¹³ SG Guidance Note, *supra* note 10 at p. 20.

¹⁴ *See, e.g.* Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254 (2011), paras. 21, 65; Committee on Economic, Social and Cultural Rights, General Comment 22, para. 40.

¹⁵ For more information, *see* Akila Radhakrishnan, Elena Sarver, and Grant Shubin, *Protecting safe abortion in humanitarian settings: overcoming legal and policy barriers*, 25(51) Reproductive Health Matters 40 (2017).

¹⁶ *See, e.g.* S.C. Res. 1888, U.N. Doc. S/RES/1888 (2009).

¹⁷ Human Rights Watch, *‘I Always Remember That Day’: Access to Services for Survivors of Gender-Based Violence in Ethiopia’s Tigray Region* (2021), https://www.hrw.org/sites/default/files/media_2021/11/ethiopia1121_web_0.pdf

¹⁸ *Id.*

¹⁹ Physicians for Human Rights, *Sexual Violence, Trauma, and Neglect: Observations of Health Care Providers Treating Rohingya Survivors in Refugee Camps in Bangladesh* (Oct. 22, 2020), https://phr.org/our-work/resources/sexual-violence-trauma-and-neglect-observations-of-health-care-providers-treating-rohingya-survivors-in-refugee-camps-in-bangladesh/?utm_term=hero.

²⁰ *Id.*

Conflict creates additional challenges to pregnant people's health outcomes. Pregnancy may exacerbate injuries sustained during rape, and conditions of war such as malnutrition, malaria, exposure, stress, and infection further increase the risk of maternal mortality.²¹

Those impregnated by rape in armed conflict are “wounded or sick” and entitled to rights and protections,²² including the provision of “medical care and attention required by their condition”²³ without adverse distinction on the basis of sex. The right does not mean that medical treatment must be identical. Instead, medical outcomes for the sexes must be the same and can be achieved through differential treatment.²⁴ For pregnant people in armed conflict, necessary medical care includes the provision of abortion services. For example, the condition of a person raped by a stick requires surgery or some other procedure, and the condition of a person raped and impregnated requires the option of an abortion. IHL also prohibits cruel treatment and torture.²⁵ The denial of abortion services has been explicitly determined to cause serious mental and physical suffering constituting torture and other cruel, inhuman and degrading treatment in certain contexts.²⁶

Protecting access to abortion is essential to State and international responses to SGBV. To do so effectively, abortion must be reckoned with in all of the ways that it relates to violence and under all available legal frameworks.

The following responds specifically to question 3 concerning violence perpetrated or condoned by the State.

We work in both the United States and Myanmar, where legal and policy prohibitions on abortion deny necessary care to SGBV victims and harm all pregnant people who seek abortion care. As detailed above, denial of abortion is a form of violence, and States that deny abortion care violate their international legal obligations

United States

One example of such State violence is the increasing number of restrictive, dangerous abortion bans across the US. Since the US Supreme Court recognized a constitutional right to abortion in 1973,²⁷ many states have passed laws seeking to erode this right. Recently, states like

²¹ Radhika Coomaraswamy, *Preventing Conflict Transforming Justice Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325*, UN Women (2015), https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/globalstudywps_en_web.pdf.

²² Int'l Comm. of the Red Cross. Commentary of 2016 on convention (I) for the amelioration of the condition of the wounded and sick armed forces in the field (Geneva, 12 August 1949). 2016.

²³ Common Article 3 to the Geneva Conventions; Additional Protocol I to the Geneva Conventions, art. 10; Additional Protocol II to the Geneva Conventions, art. 7.

²⁴ Common Article 3 to the Geneva Conventions; Additional Protocol I to the Geneva Conventions, art. 10; Additional Protocol II to the Geneva Conventions, art. 7.

²⁵ Common Article 3 to the Geneva Conventions.

²⁶ See Report of the Sp. Rapp. on torture, ¶ 46, U.N. Doc. A/HRC/22/53 (1 Feb. 2013); see also CAT Concluding Observations: Peru, ¶ 23; Committee against Torture, Concluding Observations: Chile, ¶ 7(m), U.N. Doc. CAT/C/CR/32/5 (14 June 2004); Human Rights Committee, General Comment No. 28, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

²⁷ *Roe v. Wade*, 410 U.S. 113 (1973).

Mississippi and Texas have passed increasingly restrictive laws - banning abortion at 15 and 6 weeks of pregnancy, respectively - with the aim of directly challenging this right.²⁸

Restricting and banning abortion is linked to an increase in unsafe abortions and risk of maternal mortality.²⁹ As stated in our amicus brief to the US Supreme Court with Human Rights Watch and Amnesty International:³⁰ “Unsafe abortions kill an estimated 22,800 to 31,000 women annually, representing about 7.9% of all maternal deaths worldwide.”³¹ “Even when unsafe abortion does not lead to death, pregnant individuals can suffer significant complications such as hemorrhages, infections, sterility, and trauma.”³² “Studies show that a woman denied abortion care is at increased risk of poverty, physical health impairments, and intimate partner violence.”³³

Accessing abortion and reproductive healthcare is already difficult for particular populations, many of whom live in states with limited access.³⁴ These abortion bans will likely have a detrimental impact on marginalized populations, including people of color, people living in poverty, young people, people living in rural environments, people with disabilities, immigrants, and LGBTQ people.³⁵

²⁸ Guttmacher Institute, *Roe v. Wade in Peril: Our Latest Resources*, <https://www.guttmacher.org/abortion-rights-supreme-court>.

²⁹ See Dovile Vilda et al., *State Abortion Policies and Maternal Death in the United States, 2015–2018*, *Am. J. Pub. Health* 111, no. 9, 1696-1704 (Sept. 1, 2021), <https://doi.org/10.2105/AJPH.2021.306396>.

³⁰ Brief of Amici Curiae Human Rights Watch, Global Justice Center, and Amnesty International in Support of Respondents, *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, (U.S. Sept. 20, 2021), https://globaljusticecenter.net/files/Dobbs_Amicus_920.pdf.

³¹ WHO, *Maternal Mortality* (Sept. 19, 2019), <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality> (reporting approximately 295,000 women dying during pregnancy and childbirth in 2017); Lale Say, et al., *Global Cause of Maternal Death: A WHO Systematic Analysis*, 2 *Lancet Glob. Health* 323, 331 (June 2014), <https://www.thelancet.com/action/showPdf?pii=S2214-109X%2814%2970227-X> (estimating rate of maternal mortality from unsafe abortion as between 7.9 and 13%).

³² Alia Januwalla, *Human Rights Law and Abortion in El Salvador*, *Health & Human Rts. J.* (Aug. 26, 2016), <https://www.hhrjournal.org/2016/08/human-rights-law-and-abortion-in-el-salvador/>.

³³ Joshua Lang, *What Happens to Women Who Are Denied Abortions?*, *N.Y. Times* (June 12, 2013), https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortions.html?_r=0; see also *Turnaway Study: Long-Term Study Shows That Restriction Abortion Harms Women*, ANSIRH, https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf (last visited Jan. 14, 2022).

³⁴ Elizabeth Nash, *State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century* Guttmacher Institute (Dec. 16, 2021, updated Jan. 5, 2022), <https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century>.

³⁵ United States: UN experts denounce further attacks against right to safe abortion and Supreme Court complicity, United Nations Human Rights Office of the High Commissioner (Sept. 14, 2021), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27457&LangID=E>; Elizabeth Nash et al., *Mississippi Is Attacking Roe v. Wade Head On—the Consequences Could Be Severe*, Guttmacher Institute (Aug. 17, 2021), <https://www.guttmacher.org/article/2021/08/mississippi-attacking-roe-v-wade-head-consequences-could-be-severe>; *The Disproportionate Harm of Abortion Bans: Spotlight on Dobbs v. Jackson Women’s Health*, Center for Reproductive Rights (Nov. 29, 2021), <https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-disproportionate-harm/>; Neelam Bohra, “Left out of the conversation”: Transgender Texans feel the impact of state’s restrictive abortion law, *Texas Tribune* (Dec. 21, 2021), <https://www.texastribune.org/2021/12/21/texas-abortion-law-transgender-pregnancy/>.

The US should take proactive steps in line with its international obligations to protect abortion rights rather than restrict them.

Myanmar

Myanmar's legal prohibition on abortion also perpetuates State violence. Under Myanmar's Penal Code, which dates to 1861, abortion is criminalized and only permitted where performed to save a woman's life.³⁶ As Frontier Myanmar has reported, "With 282 fatalities per 100,000 pregnancies, Myanmar's maternal death rate is the second-highest in Southeast Asia and twice the regional average. Officially around 10 percent are caused by induced abortions, but experts say the reality is likely higher...."³⁷ International experts have called for the decriminalization of abortion, and recommend that abortion services be provided at the very least in "cases of incest, rape or fetal impairment or to safeguard the life or health of the woman."³⁸ A State party to the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), Myanmar has been called on to legalize abortion in the cases listed above, but also "to decriminalize abortion in all other cases."³⁹

Additionally, Myanmar's Penal Code imposes penalties on women and doctors.⁴⁰ The CEDAW Committee has stated, "laws that criminalize medical procedures only needed by women" constitute a "barrier[] to women's access to appropriate health care."⁴¹ These legal provisions obstruct women's right to non-discriminatory access to health care services in violation of CEDAW.⁴² Similarly, laws preventing doctors from providing abortions, in this case by making them subject to prosecution, impede women's protected rights by limiting their access to abortion services. The CEDAW Committee has recommended States parties "[c]losely monitor sentencing procedures and eliminate any discrimination against women in the penalties provided for particular crimes..."⁴³ Efforts to liberalize the law were underway, but the February 1, 2021 military coup halted reform,

³⁶ Myanmar's Penal Code Article 312 reads: "Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation.-- A woman who causes herself to miscarry is within the meaning of this section."

³⁷ Caroline Henshaw, Deadly secret: The illegal abortions killing Myanmar's women, Frontier Myanmar, May 2, 2017, <https://www.frontiermyanmar.net/en/deadly-secret-the-illegal-abortions-killing-myanmars-women/>.

³⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, Jan. 5, 2016, ¶43; UN Human Rights Office of the High Commissioner (OHCHR), "Unsafe abortion is still killing tens of thousands women around the world" – UN rights experts warn, Sept. 27, 2016.

³⁹ CEDAW Committee, Concluding Observations on the combined fourth and fifth periodic reports of Myanmar, CEDAW/C/MMR/CO/4-5, July 25, 2016, ¶39(b).

⁴⁰ Myanmar's Penal Code Article 313 reads: "Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

⁴¹ CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention (Women and Health), A/54/38/Rev.1, 1999, chap. I, ¶14, <http://www.refworld.org/docid/453882a73.html>.

⁴² UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, art. 12, <http://www.refworld.org/docid/3ae6b3970.html>.

⁴³ CEDAW Committee, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, Aug. 3, 2015, ¶51(m).

leaving pregnant people in Myanmar with limited options under the junta. Myanmar must take steps to decriminalize abortion under its legal system and repeal any accompanying penalties for women and doctors.

In addition to the criminalization of abortion, the Myanmar military (Tatmadaw) has long perpetrated violence with impunity, including systematic sexual violence against ethnic populations. The United Nations International Fact-Finding Mission on Myanmar reported “verified cases of women, men and girls being subjected to abduction, rape, including gang rape, sexual torture, sexual slavery and other forms of [SGBV] in Kachin and Shan States. In Rakhine State, where [SGBV] was committed on a massive scale during the Tatmadaw’s “clearance operations” of 2016 and 2017, the Mission documented gang rapes, rapes and other forms of sexual violence. Hundreds of Rohingya women and girls were raped, with 80 per cent of the rapes corroborated by the Mission being gang rapes. The Tatmadaw was responsible for 82 per cent of these gang rapes.”⁴⁴ As stated above, adequate health care, including sexual and reproductive health services, is not available to those who suffered from these crimes and must be made available as a priority.

The following responds specifically to question 6 concerning the United States budget devoted to international aid.

The US is the largest donor of foreign aid in the world,⁴⁵ and yet its policies, in particular the Helms and Siljander amendments, restrict the use of US foreign aid from being used for abortion. These policies have been in place for decades and are unaffected by the repeal of the Global Gag Rule, which affects other donor funds. As previously noted, the denial of abortion is a form of violence, and these policies perpetuate this harm around the world, far outside the borders of the US. Both amendments are regularly included in annual appropriations measures and apply to all foreign assistance⁴⁶ and can be applied to a range of grantees from US non-governmental organizations (“NGOs”), foreign NGOs, foreign governments, and public international organizations.⁴⁷ The Helms Amendment (“Helms”) was first enacted in 1973 as an amendment to the Foreign Assistance Act of 1961, and provides that no US 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.”⁴⁸ The Siljander Amendment (“Siljander”), introduced in 1981 into the Foreign

⁴⁴ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, ¶14, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019).

⁴⁵ Emily M. Morgenstern & Nick M. Brown, Foreign Assistance: An Introduction to U.S. Programs and Policy, Congressional Research Service, p. 2 (updated Jan. 10, 2022), <https://crsreports.congress.gov/product/pdf/R/R40213>.

⁴⁶ USAID, USAID Guidance for Implementing the Siljander Amendment (Prohibition on Lobbying For or Against Abortion) (May 22, 2014), <https://www.usaid.gov/sites/default/files/documents/1864/USAID%20Guidance%20for%20Implementing%20the%20Siljander%20Amendment.pdf>; Kaiser Family Foundation, The U.S. Government and International Family Planning & Reproductive Health: Statutory Requirements and Policies (May 13, 2021), <https://www.kff.org/global-health-policy/fact-sheet/the-u-s-government-and-international-family-planning-reproductive-health-statutory-requirements-and-policies/>.

⁴⁷ Global Justice Center, FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women’s Rights & Human Rights 2 (Jan. 2018), https://globaljusticecenter.net/files/FAQ_Abortion_Restrictions.pdf.

⁴⁸ Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 104(f)(1), 75 Stat. 424, as amended by the Foreign Assistance Act of 1973 (P.L. 93-189).

Assistance and Related Programs Appropriations Act, prohibits US foreign assistance funds from being “used to lobby for or against abortion.”⁴⁹ Given how long these policies have been in place, the far-reaching impact has significant and deadly consequences globally.

These restrictions cause harm in a number of ways. For one, Helms severely restricts the provision of abortion services and has been interpreted and applied as a total ban, with no exceptions for rape, incest and life endangerment.⁵⁰

The COVID-19 pandemic has further exacerbated the harms of restricting abortion access. For example, “[p]eople in Nepal are experiencing increased rates of gender-based violence, including rape, which is likely to lead to further increases in demand for abortion services.”⁵¹ Commentaries have discussed the “compounded barriers to abortion from the impacts of US foreign policy and COVID-19.”⁵²

Additionally, these policies have an insidious, detrimental impact of shutting down free speech on abortion. Helms and Siljander apply to and limit a broad range of abortion-related expression, including information, research, technical assistance, and advocacy⁵³ that can be legally provided by doctors, health professionals, experts, and advocates. They prohibit US funding recipients from expressing any ideas that “motivate” or “lobby” for abortion.⁵⁴ These confusing policies and extremely vague terms are “generally not well understood, particularly in the field,”⁵⁵ and their over-implementation and overly broad interpretations have contributed to a chilling effect on speech.⁵⁶ For example, Helms (as a congressional prohibition on funds that are administered by

⁴⁹ Foreign Assistance and Related Programs Appropriations Act 1982, Pub. L. No. 97-121, 95 Stat. 1657 (Dec. 29, 1981) (“SEC. 525. None of the funds appropriated under this Act may be used to lobby for abortion.”); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, Pub. L. No. 109-102, 119 Stat. 2175, “Child Survival and Health Programs Fund” (“Provided further, That none of the funds made available under this Act may be used to lobby for or against abortion”); Luisa Blanchfield, Cong. Research Serv., R41360, Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy 5 (Updated Aug. 21, 2020), <https://fas.org/sgp/crs/row/R41360.pdf>.

⁵⁰ Rebecca Dennis, The Helms Amendment: You Should Have Been Gone by Now, PAI (July 30, 2020), <https://pai.org/resources/the-helms-amendment-you-should-have-been-gone-by-now/>.

⁵¹ Patty Skuster et al., Relics of imperialism: US foreign policy on abortion in the COVID era, 28 Sexual and Reproductive Health Matters, 75-78 (Oct. 13, 2020), <https://doi.org/10.1080/26410397.2020.1824319>.

⁵² *Id.*

⁵³ USAID, *Standard Provisions for Non-US Non-governmental Organizations - A Mandatory Reference for ADS Chapter 303*, pp. 28, 80, <https://www.usaid.gov/sites/default/files/documents/303mab.pdf>.

⁵⁴ Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 104(f)(1), 75 Stat. 424, as amended by the Foreign Assistance Act of 1973 (P.L. 93-189); Foreign Assistance and Related Programs Appropriations Act 1982, Pub. L. No. 97-121, 95 Stat. 1657 (Dec. 29, 1981); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, Pub. L. No. 109-102, 119 Stat. 2175, “Child Survival and Health Programs Fund”; Luisa Blanchfield, Cong. Research Serv., R41360, Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy 5 (Updated Aug. 21, 2020), <https://fas.org/sgp/crs/row/R41360.pdf>.

⁵⁵ Ipas, *Memorandum on the Application of Abortion-Related Restrictions on U.S. Foreign Assistance, to Scott Radloff, Director, Office of Population and Reproductive Health*, USAID, at 3 (Nov. 2, 2011).

⁵⁶ Akila Radhakrishnan & Kristina Kallas, If These Walls Could Talk, They Would Be Censored, at 8-11; Akila Radhakrishnan et al., Commentary, Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers, *Reproductive Health Matters*, Nov. 2017, at 40, 40-47; Sneha Barot, Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment, *Guttmacher Inst.* (Sept. 13, 2013), <https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment>.

federal agencies under the direction of the President) technically permits exceptions for rape, incest and life endangerment, however it is currently implemented and unnecessarily over enforced as a total ban on abortion speech and services without exceptions.⁵⁷ Studies on the impact of Helms have found it leads to the “avoidance of abortion-related service provision, information and counseling; censorship; and reduced access to life-saving equipment and supplies.”⁵⁸ Siljander too has been broadly interpreted and implemented, but only to target pro-abortion action.⁵⁹ Further, Helms and Siljander directly impede political debate and information access by preventing free and open discussion on abortion. 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.⁶⁰

These restrictions affect a large number of populations. The impact is particularly egregious in conflict situations, where pregnant people suffer countless traumas and heightened dangers as a result of pregnancy during war, including pregnancy resulting from rape. As stated above, the denial of abortion services results in extended and intensified physical and mental suffering, constituting cruel and inhuman treatment in certain contexts.

There is international concern over these restrictions and their impact, and the US was urged in its Universal Periodic Review (“UPR”) to take action on its restrictions on foreign assistance. The Netherlands called on the US to “repeal the Helms Amendment...and, in the interim, allow United States foreign assistance to be used, at a minimum, for safe abortion in cases of rape, incest and life endangerment.”⁶¹ During the UPR adoption, the United Kingdom specifically addressed its “hope that the US can go further and clarify its interpretation of the Helms Amendment, and ensure universal access to safe abortion care.”⁶² The US supported UPR recommendations relating to sexual and reproductive health and rights, but has more to do in order to implement them, for example by removing its abortion restrictions on foreign aid, such as Helms and Siljander, and issuing guidance on permitted Helms exceptions.⁶³

⁵⁷ Kaiser Family Foundation, *The Mexico City Policy: An Explainer*, (Jun. 1, 2017), <https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/>.

⁵⁸ Ipas and Ibis Reproductive Health, *US Funding for abortion: How the Helms and Hyde Amendments harm women and providers at 6* (Mar. 2016).

⁵⁹ For more explanation, see Global Justice Center, *Silencing Progress The Siljander Amendment and Global Censorship of Abortion Speech* (Jan. 2021), https://globaljusticecenter.net/files/20200121_SiljanderFactsheet_FINAL.pdf.

⁶⁰ Laura Bassett, *Instruments of Oppression*, Huffington Post, <http://highline.huffingtonpost.com/articles/en/kenyaabortion/>; Ipas, *Briefing Note: The Helms Amendment and USAID Censorship and Intimidation in Reproductive Health in Kenya* (Feb. 28, 2014) (on file with author).

⁶¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review United States of America*, A/HRC/46/15, Dec. 15, 2020, p. 22.

⁶² Julian Braithwaite, *United Kingdom Ambassador to the WTO and UN in Geneva, UN Human Rights Council 46: UK statement for the Universal Periodic Review Adoption - United States of America* (Mar. 17, 2021), <https://www.gov.uk/government/speeches/un-human-rights-council-46-uk-statement-for-the-universal-periodic-review-adoption-united-states-of-america>.

⁶³ Letter from 145 organizations to President Biden (Apr. 29, 2021), https://globaljusticecenter.net/files/UPR_Biden_Letter.pdf.