

FORTY YEARS AND COUNTING

How the Helms Amendment Violates the Human Rights of Women and Girls in Developing Countries

By Dr. Jamila Taylor, Center for American Progress

“After receiving support from a gender-based violence prevention and response project after being raped, a young woman [about 16] came in to one of our supported clinics 9 months later to deliver, and the staff of our project were talking about how difficult it would be for her in her community due to the stigma of having a child from rape. Our post-rape kits only contain emergency contraception, which must be taken within 5 days, so evidently she did not come to seek help from our program in time.” – Health care worker, U.S.-funded project in the Democratic Republic of Congo

According to the World Health Organization, 25 million unsafe abortions occur each year.¹ Almost all unsafe abortions and related deaths happen in the global south, where black and brown women are most heavily impacted by poor maternal health outcomes. By limiting the availability of safe abortion services, the Helms Amendment leads to the preventable deaths and injuries of some of the world’s most vulnerable people and is a violation of their fundamental human rights. Although social norms and political contexts around reproductive health vary in countries receiving U.S. foreign aid, the policies exported by our government can have a lasting impact on those served by the programs we support.

The Helms Amendment was enacted in 1973. It prohibits the use of U.S. foreign assistance funds for the performance of abortion “as a method of family planning.”² For over forty years, this total ban on all abortion-related services and information has blocked access to abortion in developing countries. Exceptions for rape, incest, and life endangerment are legally permitted by the text of the amendment as those cases are not for the purpose of spacing births or family planning.³ These exceptions are recognized under almost all other abortion-related restrictions in national U.S. law and policy. Nevertheless, U.S.-funded programs operating abroad are directed by

the U.S. Agency for International Development and the U.S. Department of State to deny provision of abortion-related services under any circumstance, even the previously mentioned three.⁴

The United States is the single largest bilateral donor of funding for international family planning and reproductive health programs. At the same time, the United States has a history of exporting policies that disproportionately impact and disempower the people reached by the same programs. In addition to the Helms Amendment, the Mexico City Policy (also known as the Global Gag Rule) imposes barriers to vital reproductive health services. The policy is imposed by the Executive Branch and was originally put into place by President Ronald Reagan in 1984. It has historically denied foreign non-governmental organizations receiving U.S. funding for family planning from using their own,

Both the Helms Amendment and Mexico City Policy have caused hundreds of thousands to remain without access to reproductive health care.

non-U.S. funds to provide legal abortion, counsel or refer for abortion, or to lobby for the legalization of abortion. It was rescinded by President Clinton in 1993, subsequently



reinstated in 2001 by President George W. Bush, and rescinded again by President Obama in 2009. And in 2017, as one of his first executive actions, President Donald Trump reinstated and expanded the Mexico City Policy to deny all U.S.-funded foreign non-governmental organizations from doing any abortion-related work. Both the Helms Amendment and Mexico City Policy have caused confusion in countries where abortion is legal. According to the Center for Reproductive Rights, more than 60% of the world's population lives in countries where induced abortion is permitted either for a wide range of reasons or without restriction.⁵

Abortion is recognized as a human right in the international context. It is referenced in several intergovernmental consensus documents and international and regional human rights guidance, including United Nations conference consensus documents, United Nations Treaty Monitoring Committees' guidance to governments, African regional conference consensus documents, and regional human rights treaties. In 2005, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol, became the first human rights treaty to explicitly address the right to safe abortion.⁶ And notably in 2011, abortion was recognized in the report of the United Nations Special Rapporteur on the right to health — calling on countries to rescind criminal and restrictive laws related to abortion, comprehensive sexuality education, contraception, and conduct during pregnancy; and to ensure that abortion is safe, accessible, and of good quality.⁷ The Helms Amendment is clearly out of step with international standards and recognition of abortion as a human right.

U.S. foreign policy restrictions on abortion were factors in the decision to force a Congolese girl

to carry an unwanted pregnancy to term and experience the stigma and shame associated with bearing a child of rape. We can stop contributing to abortion stigma, injustice, and the disempowerment of women and girls in developing countries. We can stop contributing to preventable deaths and injuries due to unsafe abortion. Not only is this a matter of efficiency and effectiveness in how we use our foreign assistance, it is also a moral imperative. The Helms Amendment and Mexico City Policy must ultimately be repealed.

NOTES

1. World Health Organization, Preventing unsafe abortion, (January 2018), last accessed 2/27/18 at <http://www.who.int/mediacentre/factsheets/fs388/en/>.
2. The United States Foreign Assistance Act of 1961, as amended, Public Law 87-195.
3. President George W. Bush, Memorandum of March 28, 2001: Restoration of the Mexico City Policy, 66 Fed. Reg. 17303, at 17311.
4. Jamila Taylor and Aram Schvey, "Implementing Abortion-Related Activities Permitted by the Helms Amendment Restrictions on U.S. Foreign Assistance: Background and Recommendations," (May 10, 2012).
5. Center for Reproductive Rights, "Abortion Worldwide: 20 Years of Reform," (2014), last accessed 12/2015 at http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years_Reform_Report.pdf: 9.
6. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted on July 11, 2003 and entered into force on November 25, 2005; Maputo, Mozambique.
7. Anand Grover, Report by the U.N. Special Rapporteur on the right to health, (August 3, 2011), last accessed 12/2015 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement>.

