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Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment

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Forty years ago, in the wake of *Roe v. Wade,* Congress enacted the Helms amendment to restrict U.S. foreign aid from going toward abortion. Specifically, the policy prohibits foreign assistance from paying for the "performance of abortion as a method of family planning" or to "motivate or coerce any person to practice abortions." Just on its face, the law is extreme and harmful. But its damaging reach has extended even further through the chilling impact it has had—on lawful abortion-related activities in particular, as well as more generally on U.S. sexual and reproductive health programs overseas. As such, supporters of women's reproductive health are eager to see the law overturned altogether. However, given the impossibility of repealing this long-standing abortion restriction in the current political climate, there are steps that the administration can take in the interim to mitigate the impact of the Helms amendment.

In *Roe's* Aftermath

The Supreme Court's momentous 1973 decision recognizing a constitutional right to abortion in *Roe v. Wade* nationalized the issue of abortion, galvanized the existing antiabortion movement and led antiabortion activists to mobilize at the federal government level as never seen previously. That year, lawmakers introduced an unprecedented number of measures to cut off access to abortions domestically and globally. Their two-pronged strategy focused on overturning *Roe* through constitutional amendment and, alternatively, at least reducing the availability of legal abortions by cutting off all federal government support for abortion care, including through U.S. foreign aid. The constitutional amendment route failed to gain traction, but antiabortion forces found success in defunding abortion and excluding it from federal health programs. An early victory for the antiabortion forces came with the 1973 passage of the Helms amendment to the Foreign Assistance Act—a provision named for its sponsor, the late, stridently antiabortion Sen. Jesse Helms (R-NC).

While the debate over the Helms amendment raged in Congress, the Nixon administration's U.S. Agency for International Development (USAID) issued a statement to Congress expressing its strong opposition.[1] USAID protested that following an era of decolonization, this new restriction was at odds with the fundamental philosophy of U.S. population assistance policy, because of its seemingly imperialistic and hypocritical overtones. Moreover, even at that time, programmatic and technical experts from within and outside the U.S. government considered the provision of safe abortion services to be an integral component of any broader program involved with reproductive health care. The agency also implied that the effect of removing safe abortion from the range of options provided to women with unintended pregnancies—an option just legalized for U.S. women nationwide—could amount to a form of coercion. The Foreign Assistance Act, USAID wrote, "explicitly acknowledges that every nation is and should be free to determine its own policies and procedures with respect to population growth and family planning. In contradiction of this principle, the amendment would place U.S. restrictions on both developing country governments and individuals in the matter of free choice among the means of fertility control…that are legal in the U.S."[1]

The Helms amendment took effect at the end of 1973. Historically, it followed the first federal abortion restriction, which was enacted in 1970 under the domestic family planning program, and preceded its domestic analogue, the Hyde amendment, first enacted in 1976 (see related article, page 2). The passage of the Helms amendment spurred the enactment of several other prohibitions in the foreign assistance realm, including bans on federal funding for biomedical research and on lobbying for or against abortion. (Congress also clarified the Helms amendment in the early 1990s to say that information and counseling about all pregnancy options, including legal abortion—consistent with local country law—is a permissible activity within USAID-funded programs.)

Restrictions on U.S. development and humanitarian programs have also come in the form of executive policy, most notably the Mexico City policy, also known as the global gag rule. This policy is important to the story of the Helms amendment because of the additional ways it has burdened access to safe abortion care for women in developing countries beyond Helms. The presidential order—first instituted in 1984 by President Ronald Reagan—prohibited foreign nongovernmental organizations (NGOs) that receive U.S. family planning assistance from using non-U.S. funding to provide abortion services, information, counseling or referrals and from engaging in advocacy to promote abortion. Since Reagan, the policy has been implemented by every Republican president and revoked by every Democratic president, including Barack Obama. While the Helms amendment limits the use of U.S. foreign aid dollars directly, the gag rule went far beyond that by disqualifying foreign NGOs from eligibility for U.S. family planning aid entirely by virtue of their support for abortion-related activities subsidized by non-U.S. funds.

Addressing the Harms of Unsafe Abortion

Because of the Helms amendment and related abortion restrictions, the U.S. government has limited its ability to fully address the problems of unsafe abortion and maternal mortality and morbidity. Every year, millions of women suffer serious injuries from unsafe abortion, and 47,000 of them die—almost all in the developing world.[2] Unsafe abortion is a significant driver of maternal mortality: It is responsible for 13% of maternal deaths worldwide and represents one of the four major causes of pregnancy-related mortality and morbidity (see "Unsafe Abortion: The Missing Link in Global Efforts to Improve Maternal Health," Spring 2011).[3] In certain regions, such as Africa or Central and South America, almost all abortions are unsafe, defined by the World Health Organization (WHO) as an abortion performed by an individual without the necessary skills, or in an environment that does not conform to minimum medical standards, or both.[2,3]

Consequently, WHO identifies safe abortion care as one of seven necessary packages of interventions to ensure quality reproductive, maternal, neonatal and child health care.[4] In its technical and policy guidance on safe abortion, WHO notes that imposing abortion bans does not stop nor necessarily even lower abortion rates.[3] In fact, research shows that the abortion rate in Africa and Latin America (29 and 32 per 1,000 women aged 15–44, respectively), where abortion is illegal under most situations in most countries, is actually much higher than in Western Europe (12 per 1,000), where abortion is broadly legal.[2] Rather, the major impact of criminalizing abortion is to force women to undergo unsafe and clandestine procedures to terminate their unwanted pregnancies, which results in death and disability (see "Access to Safe Abortion Services in the Developing World: Saving Lives While Advancing Rights," Fall 2012).

There are at least three ways to reduce the incidence of unsafe abortion and its consequences: First is the provision of family planning services to prevent unintended pregnancy, the root cause of most abortions. Second is access to safe abortion care to prevent women from having to resort to unsafe abortion. And, last is the availability of emergency or postabortion care for the treatment of incomplete or unsafe abortion. The United States supports the first and last prongs. Indeed, it is the leading donor in the field of international family planning and reproductive health, and funds programs in more than 40 countries—the majority of which permit abortion under at least

one or more circumstances (see chart).[5,6] Yet, the U.S. government is ineffectively and incompletely addressing unsafe abortion by failing to support the middle prong: safe abortion services.

Climate of Hostility

Helms and the related abortion restrictions do not merely interfere with the U.S. government's ability to address unsafe abortion and maternal mortality and morbidity. These restrictions, collectively, have resulted in a perception that U.S. foreign policy on abortion is more onerous than the actual law. Organizations such as Ipas, an NGO that supports safe abortion access, have documented the chilling impact of Helms and other U.S. abortion restrictions abroad. Specifically, they point to a pervasive atmosphere of confusion, misunderstanding and inhibition around other abortion-related activities beyond direct services. Wittingly or unwittingly, both NGOs and U.S. officials have been transgressors and victims alike in the misinterpretation and misapplication of U.S. anti-abortion law.

For example, USAID has adopted an overly restrictive interpretation of the amendment as requiring a ban on the purchase of equipment and drugs to aid in postabortion care, such as manual vacuum aspiration (MVA) kits to treat incomplete abortions and misoprostol to treat postpartum hemorrhage. This decision has contributed to shortages in life-saving resources, and to an incomplete and inconsistent approach to addressing unsafe abortion injuries. On the one hand, USAID provides training on the treatment of complications of unsafe abortion through MVA use; on the other hand, the agency will not actually purchase the equipment to make treatment a reality.

For their part, whether through misinterpretation or self-censorship, NGOs are needlessly refraining from providing abortion counseling or referrals in health facilities for women with unwanted pregnancies, including those who have been sexually assaulted; incorporating abortion information in Web sites, training materials and other publications; participating in discussions and meetings on unsafe abortion; and partnering or identifying with NGOs that openly support abortion access.[7]

Country Abortion Law and U.S. Aid

Abortion is permitted in the majority of countries where the United States is providing family planning and reproductive health assistance.

	Country	Abortion legal
Africa	Benin	Sometimes
	Burkina Faso	Sometimes
	Ethiopia	Sometimes
	Ghana	Sometimes
	Guinea	Sometimes
	Kenya	Sometimes
	Liberia	Sometimes
	Mali	Sometimes
	Mozambique	Sometimes
	Niger	Sometimes
	Rwanda	Sometimes
	Sudan	Sometimes
	Togo	Sometimes
	Zambia	Sometimes
	Zimbabwe	Sometimes
	Malawi	Life only
	Nigeria	Life only
	Tanzania	Life only
	Uganda	Life only
	Angola	Never
	Congo, Dem. Rep.	Never
	Madagascar	Never
	Mauritania	Never
	Senegal	Never
Asia	Cambodia	Broadly
	Nepal	Broadly
	India	Sometimes
	Pakistan	Sometimes
	Afghanistan	Life only
	Bangladesh	Life only
	Timor-Leste	Life only
	Philippines	Never
Latin America and the Caribbean	Bolivia	Sometimes
	Guatemala	Life only
	Haiti	Never
	Honduras	Never
Middle East, Euraisa and Europe	Albania	Broadly
	Armenia	Broadly
	Azerbaijan	Broadly
	Georgia	Broadly
	Ukraine	Broadly
	Jordan	Sometimes
	Yemen	Life only

Note: This list includes only countries that receive funding directly from USAID headquarters.
Sources: references 5 and 6.

Mitigating the Harm

Because of the harm, both direct and indirect, of the Helms amendment and related abortion restrictions, legislative repeal of these provisions is the long-term goal of advocates of women's reproductive health and rights. In the short term, however, the administration has the power to moderate the impact of Helms in a small but significant way without the involvement of Congress, by allowing foreign aid funding to be used for abortion services—where legal—for women who experience rape, incest or a life-threatening emergency.

Access to abortion services is especially critical for survivors of sexual violence and is, in fact, considered by international and medical authorities to be an integral aspect of a comprehensive response for rape victims. A new WHO report that highlights the global epidemic of violence against women, including sexual violence, strongly urges a more active and holistic response to this problem from the health sector.[8] Complementary clinical and policy guidelines released with the report call for the provision of comprehensive sexual and reproductive health services for sexual violence survivors, including, when appropriate, emergency contraception to prevent pregnancy; HIV postexposure prophylaxis to prevent infection; STI prophylaxis and treatment; and abortion, when allowed under national law.[9]

Among the most vulnerable victims of sexual assault and those in most dire need for comprehensive health services are women raped in armed conflict and other crises. Despite increasing international attention over the last 15 years to the plight of these women, such sexual crimes continue with impunity and without adequate response for survivors. In his most recent annual report on sexual violence in conflict, the United Nations (UN) Secretary General states that safe abortion access must be part of any multisectoral response for women impregnated through rape.[10] Similarly, the authoritative field manual on the provision of reproductive health services in crisis settings, developed by a UN interagency collaboration, delineates a set of minimum interventions and service delivery guidelines to be put in place, including the provision of safe abortion care to the extent allowed by law.[11] It notes that the lack of access by those in crisis to "comprehensive abortion care is a denial of their equal rights and protection as mandated under international human rights law."

The administration possesses the power to render the U.S. policy on abortion overseas a little more humane, at least in these types of dire circumstances. A fair reading of the language of the law prohibiting payment for "abortion as a method of family planning" would allow support for abortion in certain cases. Indeed, the 1985 rules issued by the antiabortion Reagan administration originally implementing the Mexico City policy confirms this understanding, by stipulating that the phrase excludes "abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act)."[12] More recently, the George W. Bush administration affirmed this interpretation in its legal guidelines on execution of the global gag rule.[13] Hence, a true application of this language would mean that, at the very least, the Helms amendment allows foreign aid for abortions for rape, incest and life endangerment cases—and could arguably include abortions for health reasons.

Moreover, as a political matter, a correct reading of the Helms amendment would bring it in line with the federal status quo on abortion restrictions, as well as the current political consensus among both Congress and the American electorate. Specifically, almost all federal programs that restrict abortion funding—including Medicaid, the Indian Health Service, health care for women in federal prison and the Federal Employees Health Benefits Program—make explicit exceptions for the extreme cases of rape, incest and life endangerment. And, most recently, the military's TRICARE insurance program was added to this list: Congress passed the defense authorization bill in December 2012 with an amendment authored by Sen. Jeanne Shaheen (D-NH) that garnered bipartisan support to expand abortion coverage for women in the military and female dependents to cases of rape and incest.

Notably, the Helms amendment is among the few remaining abortion restrictions that do not meet this federal minimum standard. (The other conspicuous exception is the legislative ban affecting abortion coverage for Peace Corps volunteers, which some members of Congress are trying to rectify.) Moreover, it is the only one that can be fixed through administrative action, and there is a strong argument to be made that aligning the Helms amendment with other federal programs should not be such a heavy political lift. Indeed, even some of the fiercest antiabortion actors in Congress have conceded that insisting on abortion bans that do not allow exceptions for rape, incest and life endangerment cases is politically untenable. The rationale for a revised and corrected policy on Helms implementation stands on solid ground on all accounts—from a public health, legal and even political basis.

Catching Up

NGO partners in global health who have experience with the U.S. government's family planning and reproductive health program are ready and eager to help implement a revised policy on Helms. Some of these NGOs currently provide or advocate access to safe abortion services with other donor funding, and from their work on the front lines of serving some of the world's poorest women in distress, witness the need for a more humane U.S. abortion policy abroad. Although other donors, such as the United Kingdom, the Netherlands, Sweden and Norway, are taking the lead in tackling the problem of unsafe abortion and promoting comprehensive reproductive health care, they do not have the reach—and therefore, the impact—of U.S. global health assistance. Moreover, their contributions do not release the United States from its own responsibilities to implement a global health program that is evidence-based, comprehensive and responsive to real women's needs.

A reinterpreted policy would, at a minimum, bring the U.S. abortion policy overseas up to the same standard applied to other federal programs and would represent parity for women receiving U.S.-supported reproductive health services overseas compared with those receiving services domestically. But, beyond that, a policy change could send an important signal to other governments, donors and NGOs that the United States recognizes that there is a role for safe abortion in promoting women's reproductive health. No matter how limited the U.S. involvement in abortion activities resulting from a slightly softened interpretation of the Helms law, the fact that there would be some movement could help reduce stigma around abortion. It could help thaw the chilling effects of and diminish the hostile climate toward abortion long associated with the United States. This would represent a modest but critical step in reforming U.S. abortion policy overseas, so that it is a legally accurate interpretation of the law, reflects the minimum standpoint on abortion restrictions among policymakers and the public, and serves the very real needs of women in the developing world.

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