Factsheet: The Global Gag Rule and Human Rights

Under the Global Gag Rule, the U.S. is turning its back on the human rights of women and girls around the world. Denying access to abortion does not stop women and girls from seeking abortion services, it just makes the procedure less safe and contributes to maternal mortality. The Global Gag Rule undermines fundamental human rights to life, health, equality, information, privacy and expression.

What is the Global Gag Rule?

On January 23, 2017, in one of his first actions as President, Donald Trump reinstated and expanded the Mexico City Policy, now officially known as “Protecting Life in Global Health Assistance” (and referred to as the “Global Gag Rule” or the “GGR” throughout this document). Under this policy, nongovernmental organizations (NGOs) incorporated outside the United States and receiving U.S. global health assistance funds for grants or cooperative agreements are prohibited from using this money or any of their own funds from any other sources to perform or actively promote abortion as “a method of family planning.” The prohibition includes providing referrals and counselling for women seeking an abortion as “a method of family planning” or advocacy to make abortion safe and legal as “a method of family planning.” The GGR states that the only abortions that are not considered “a method of family planning” are those in the cases of rape or incest, or if the life of the pregnant woman would be endangered if the fetus were carried to term. Non-U.S. NGOs receiving U.S. government health assistance funds will now be required to certify that they do not perform or actively promote abortion as a method of family planning as a condition of receiving assistance from the U.S. government.

Non-U.S. NGOs are placed in the difficult position of losing vital funds that support a range of health services they provide, or accepting the funds but undermining their patients’ well-being by not being able to provide the full range of lawful sexual and reproductive health services and information. Complying with the GGR may also undermine compliance with national laws related to the provision of health care, such as guaranteeing referrals and ensuring evidence-based counselling. The current GGR applies to a wide range of global health assistance provided by the U.S. government, impacting funds for contraception, safe motherhood, treatment of HIV/AIDS, Zika, Ebola and other infectious diseases - affecting $8.8 billion in U.S. foreign aid.

The rule does not directly apply to U.S. NGOs, presumably because such an application would violate the U.S. Constitution. If U.S. NGOs engage in abortion-related activities, as long as such activities are not supported with U.S. funds, they will continue to remain eligible for global health assistance from the U.S. government. However, U.S. NGOs that receive global health assistance are required to enforce the GGR on their non-U.S. NGO partners.

Human Rights

Equality, Health, Life, Privacy, Information, Expression
UNDERMINING HEALTH AND HUMAN RIGHTS

Public health and U.N. human rights bodies have long recognized that denying women and girls access to abortion does not stop women from seeking abortion services, it just makes the procedure less safe and contributes to maternal mortality. The GGR undermines access to a vital component of women’s reproductive health care and has a chilling effect on access to other sexual and reproductive health services, and curtails advocacy on liberalization where abortion is legally restricted. By doing so, it inhibits women’s access to trained providers who offer safe and legal procedures and accurate information about their options and their rights. The GGR proliferates misinformation and heightens stigma related to sexual and reproductive health care, leading to greater mistrust in the health system. Ultimately, the GGR puts women’s health and human rights at risk.

Health Impact

While the U.S. is far from meeting the Official Development Assistance target of 0.7% of Gross National Product set by the Organization for Economic Cooperation and Development, it is still the single largest donor country to global health efforts. Thus, the GGR is expected to have far-reaching impacts on sexual and reproductive health and other health initiatives across the globe. This undermines U.S. commitments to the International Conference on Population and Development (ICPD) Programme of Action and hinders progress on the Sustainable Development Goals set by the 2030 Agenda.

214 million women of reproductive age in developing regions have an unmet need for contraception, accounting for 84% of all unintended pregnancies in developing regions. If these women had access to contraception, the number of unintended pregnancies, unplanned births and abortions would drop by nearly three quarters. That in turn would mean fewer maternal deaths due to unsafe abortion, which range in the tens of thousands per year, mostly in countries with restrictive access. This is especially critical for adolescents who are at greater risk of pregnancy-related death and complications.

Concern on the part of service providers of violating GGR regulations creates a chilling effect on access to all sexual and reproductive health services. For example, under the previous GGR, there is evidence of service providers mistakenly refusing patients access to emergency contraception. In addition, because contraception is frequently provided after safe abortion services are performed, elimination of abortion access in clinical care decreases opportunities for women and girls to obtain contraceptives, which results in more unintended pregnancies.

Human Rights Impact

Under the GGR, the U.S. is not only turning its back on its commitments to public health and the Sustainable Development Goals, it is also undermining human rights, particularly the rights of women and girls. The United States played a central role in developing the Universal Declaration of Human Rights (UDHR), the foundational document providing a road map to the rights of individuals everywhere and from which all modern human rights treaties and their obligations, including sexual and reproductive rights, derive. The UDHR was driven, in part, by the U.S. and the U.S. has subsequently ratified several human rights treaties that include reproductive rights.

Sexual and reproductive health and rights are made up of a range of human rights, including those listed below. By ratifying human rights treaties, States become obligated to respect, protect and fulfill these rights. The right to sexual and reproductive health specifically requires that ‘international assistance should not impose restrictions
on information or services existing in donor States…
[and] donor States should not reinforce or condone legal,
procedural, practical or social barriers to the full enjoyment
of sexual and reproductive health that exist in the recipient
countries.18

The GGR, by inhibiting access to comprehensive sexual
and reproductive health services and information, and by
barring advocacy on abortion law reform, undermines these
human rights. International human rights standards also
require states to ensure that everyone, particularly those
directly affected, have an opportunity to be meaningfully
involved in the design and development, implementation,
monitoring and review of SRHR laws, policies and programs.
Participation on a non-discriminatory basis requires
attention to the involvement of marginalized groups, such as
women and adolescents, who are particularly impacted by
abortion laws.19 Such restrictions also implicate the freedom
of association, which guarantees an individual’s right to join
or leave groups voluntarily, and the right of the group to take
collective action to pursue the interests of its members.

Where women are only legally permitted to access abortion
services on limited grounds or where they are denied access
to lawful abortion, they are denied reproductive autonomy.
Restrictive abortion laws and policies reinforce gender-based
discrimination and perpetuate gender norms about women’s
expected role as a mother and undermines a broad range
of their human rights.20 Restrictive laws and policies also
reinforce the gender-based stereotype that women are not
competent to make decisions about their bodies and their
future.21

In addition, the GGR’s restriction on advocacy undermines
fundamental principles of democracy, including civic
participation and the related right to freedom of expression.

The Right to Equality and Non-Discrimination22

Denying women access to services only needed by
women, such as abortion, is a form of discrimination
against women.23 States must address women and girls’
distinct health needs in order to ensure equality and fulfill
obligations of non-discrimination.24 Women and girls from
marginalized populations, including those with disabilities,
indigenous women and other ethnic or racial minorities,
rural women, and economically disadvantaged women, are
particularly impacted by such restrictions because of the
intersectional discrimination that they face.25 Furthermore,
the denial of women and adolescents’ reproductive
autonomy, which the Global Gag Rule does by limiting
access to a needed service as well as to information on
abortion and abortion advocacy, perpetuates discriminatory
social norms about their role in society. This in turn
affects all facets of their lives, including their educational
attainment, ability to pursue economic opportunities,
and their participation in public and political life.

The Right to Life26

The right to health encompasses the right to sexual
and reproductive health.31 States have an obligation
to guarantee available, accessible, acceptable, and
good quality reproductive health information, services,
goods, and facilities for all women and girls, free from
discrimination, violence and coercion.32 The Global
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The Right to Information33

The Global Gag Rule censors health care providers
from informing patients of all their options related to
abortion and censors advocates from calling on States
to fulfill their obligation to ensure that information on
sexual and reproductive health provided to women and
girls both in and out of health care settings—in public
and to individuals— is complete and accurate and that
information is not censored and withheld.34 Human
rights standards specifically place this obligation on both
national and donor States.35 These standards recognize
that such restrictions, which impede access to information
and services, can fuel stigma and discrimination.36

The Right to Privacy37

The right to privacy requires all health services to be
consistent with the human rights of women and girls,
including the rights to autonomy, confidentiality, informed
States must ensure women and girls are able to realize their rights to life, health, privacy, information, non-discrimination and freedom from ill treatment, including by reforming restrictive abortion laws, ensuring the delivery and availability of quality abortion and other reproductive health care services, and ensure sufficient funding for these services.

Donor states which are part of initiatives prioritizing access to sexual and reproductive healthcare, such as She Decides and FP 2020, should uphold these commitments and ensure they represent new funds. We also call upon more States to join these initiatives.

More than ever, States around the globe must show political leadership at the United Nations and at the national level on the need for a comprehensive approach to sexual and reproductive health and rights in law and policy.

The U.S. Congress should pass the Global HER (Health, Empowerment, and Rights) Act—bipartisan legislation that would legislatively repeal the Global Gag Rule and prevent future presidents from reinstating it.

The U.S. Congress should conduct hearings and hold the administration accountable for the human rights violations and negative health impacts caused by the Global Gag Rule.
If your organization needs assistance in understanding the GGR and how it may or may not apply to your organization, we may be able to assist you by connecting you to free legal assistance from a pro bono law firm. Please reach out to us at GGRclearinghouse@reprorights.org.

ENDNOTES


4 U.S. Dep’t Sr., Implementation of PLGHA, supra note 2, at 10.

5 Under previous rules instituted by Presidents Reagan and Bush, the GGR only applied to assistance for family planning. Under the Trump Administration’s expansion, the GGR now applies to Foreign NGOs receiving U.S. government health assistance for family planning.
maternal and child health, nutrition, HIV/AIDS (including PEPFAR), infectious diseases, malaria, tuberculosis, and neglected tropical diseases.


11 Id.


18 ESCR Committee, Gen. Comment No. 22, supra note 7, para. 52. See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, transmitted by Note of the Secretary-General, para. 33, U.N. Doc. A/71/304 (Aug. 5, 2016).

19 See, e.g., ESCR Committee, Gen. Comment No. 22, supra note 7, para. 28.


21 UN Working Group on DAW 2016 Report, supra note 20, paras. 79, 86.


Safe abortion services are primary health care procedures that can be
provided early on by range of providers.

See WHO, 2012 Safe Abortion Guidance, supra note 7, at 23, 90, 94;
Gilda Sedgh, et al., Induced Abortion: Incidence and Trends World-
wide From 1995 to 2008, 379 The Lancet, at 630-631 (Jan. 19,
2012).

See CEDAW Committee, Concluding Observations: Malawi, para. 31,
U.N. Doc. CEDAW/C/MWI/CO/2006 (2006); ESCR Committee,
(2014); Human Rights Committee, Concluding Observations: Panama,
para. 9, U.N. Doc. CCPR/CPAN/CO/3 (2008); CRC Committee,
(2003); Against Torture (CAT Committee), Concluding Observations:

See ESCR Committee, General Comment No. 14: The Right to the
No. 14); ESCR Committee, Gen. Comment No. 22, supra note 7.

See ESCR Committee, Gen. Comment No. 14, supra note 31, para.
12; ESCR Committee, Gen. Comment No. 22, supra note 7, paras.
62-63; CEDAW Committee, Gen. Recommendation No. 24, supra note
20, para. 2.

ICPPR, supra note 6, United Nations Human Rights Committee,
Comment No. 170, U.N. Doc. CCPR/C/50/D/22/2009 (2011); CRC Committee,
General Comment No. 15, para. 70, U.N. Doc. CRC/C/15/15 (2013); Human
Rights Committee, Concluding Observations: Ireland, para. 9, U.N.
Doc. CCPR/C/IRL/CO/4 (2014); Sierra Leone, para. 14, U.N.
Doc. CCPR/C/SLE/CO/1 (2014); Guatemala, para. 20, U.N. Doc. CCPR/C/
GTM/CO/3 (2012); CEDAW Committee, Concluding Observations:
Bahrain, para. 42(b), U.N. Doc. CEDAW/C/BHR/CO/3 (2014); CAT
CAT/C/PYR/CO/4-6 (2011); CRC Committee, Concluding Observations:
Chad, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); Chile, para.
56, U.N. Doc. CRC/C/CHL/CO/3 (2007); Costa Rica, para. 64(c),
U.N. Doc. CRC/C/CR/CO/4 (2011); ESCR Committee, Concluding
Observations: Dominican Republic, para. 29, U.N. Doc. CRC/C/DOM/

See HHS Standard Provision, Protecting Life in Global Health Assistance,
at (a)(10)(i) (May 17, 2017) available at https://grants.nih.gov/sites/de-
fault/files/HHS%20Standard%20Provision_ProtectingLifeinGlo-
balAssistance_HHS_May%202017.pdf

See Applying the global gag rule domestically would be an uncon-
titutional violation of the organizations’ right to free speech under the
United States Supreme Court’s decision in Rust v. Sullivan, 111 S. Ct. 1759,
1774-1776 (1991) (reiterating support in dicta for the “unconstitu-
tional condition” doctrine, which prohibits “situations in which the
Government has placed a condition on the recipient of the subsidy
rather than on a particular program or service, thus effectively pro-
hibiting the recipient from engaging in the protected conduct [such as
free speech] outside the scope of the federally funded program.” Em-
phasis omitted) The Court declined to apply the doctrine in this case,
because the government regulations at issue were “limited to the Title
X funds; the recipient remains free to use private, non-Title X funds
to finance abortion-related activities.”). See also, Federal Commu-
nications Commission v. League of Women Voters of Cal., 104 S.Ct.
3106, 3128 (1984) (holding that federal law “bars[ing] absolutely
non-commercial radio stations receiving federal funds from editoria-
izing – even when editorial activity is financed with “wholly private
funds” – violates the First Amendment). The Supreme Court has dis-
favored restrictions on controversial speech, holding that “no form
of speech is entitled to greater constitutional protection than “advocacy
of a politically controversial viewpoint.” McIntyre v. Ohio Election