

Breaking the Silence

The Global Gag Rule's Impact on Unsafe Abortion

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Unsafe Abortion***

Published by:

***The Center for Reproductive Rights
120 Wall Street
New York, NY 10005
U.S.A.***

Formerly the Center for Reproductive Law and Policy

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Acknowledgements

The research for this report was conducted in Africa by Tzili Mor and Patty Skuster of the Center for Reproductive Rights, and in Peru by Susana Chavez and Marianne Mollman of Centro de la Mujer Peruana Flora Tristán. The report was written by Julia Ernst and Tzili Mor. It was edited by Anaga Dalal, Kathy Hall-Martinez and Shannon Kowalski-Morton, with further editorial input from Molly Diachok and Priscilla Smith. The report was designed by Deborah Dudley. Cover photo by Elizabeth Gilbert for the David and Lucile Packard Foundation Photo Archive.

Invaluable comments were provided by Barbara Crane of Ipas and Wendy Turnbull of Population Action International, with assistance from Valerie DeFillipo of Planned Parenthood of America Global Partners and Susan Cohen of The Alan Guttmacher Institute.

Most critically, we would also like to give special thanks to the many people interviewed for this report in Ethiopia, Kenya, Peru and Uganda, many of whom prefer to remain anonymous and who gave so magnanimously of their time and expertise.

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Contrary to its stated intentions, the global gag rule results in more unwanted pregnancies, more unsafe abortions, and more deaths of women and girls. We who have seen those effects first-hand can no longer tolerate silence about the gag rule's tragic effects.

Dr. Eunice Brookman-Amisshah in Ethiopia¹

Overview

Two weeks ago a 22 or 23-year-old medical student died of an unsafe abortion. This made the news because the person trying to provide that abortion tried to burn the woman's body. We need to look at why did she have to die, to look at the circumstances that surround the event. It boils down to people don't want to talk about it.

NGO, Kenya

The Bush Administration's gag rule is contributing to the global crisis of unsafe abortion.² It is preventing local reproductive health groups from responding to the daily tragedy of women who are needlessly dying from unsafe abortions, even when these groups use their own, non-U.S. resources.³ And it is crushing the rights to free speech and democratic participation of non-governmental organizations (NGOs) in countries that are heavily dependent on U.S. assistance, while enabling governments to act in an authoritarian manner.

This report focuses upon the impact of the gag rule on organizations that have accepted funding from the U.S. Agency for International Development

(USAID) and are therefore "gagged" from advocating for abortion. The report also will consider the gag rule's bar on providing or counseling on most abortion-related services.

Each of the four countries selected for this study—Ethiopia, Kenya, Peru, and Uganda—have very restrictive abortion laws that contribute to high rates of maternal injury and death by forcing women to resort to illegal and unsafe abortions.⁴ In addition, NGOs and governments in each of the four countries receive substantial funding from USAID for family planning and reproductive health programs.⁵ The four countries were also chosen because they are at different stages of abortion law reform and at different stages in the development of their still nascent democracies.

Between May and November 2002, researchers for the Center for Reproductive Rights interviewed a broad cross-section of actors in the reproductive health and rights field in the four countries under study. Respondents included local NGOs, particularly those impacted by the global gag rule, international NGOs and USAID

Limited Choices for Cash-Strapped NGOs

Some NGOs had no choice but to take USAID monies. New NGOs, three to five years old—the majority of groups—get their money from USAID, which is the largest donor for family planning in Ethiopia.

NGO, Ethiopia

USAID is the largest bilateral funder of family planning and reproductive health services in low-income countries. As a result, local NGO priorities, agendas and modes of operation—such as collaborating with colleagues in the field—are greatly influenced by the global gag rule. In the case of abortion, it is an externally imposed agenda that cripples the efforts of local health-care providers, advocates and officials seeking to address an acknowledged public health crisis within their own countries. Many NGOs have said that their dependence on USAID funding has forced them to accept the constraints imposed by the gag rule and neglect the needs of women suffering from unsafe abortion.

cooperating agencies, which are usually U.S.-based groups that manage and implement USAID-funded programs, in addition to working on projects funded by other donors. Center researchers also interviewed local government officials, country staff of United Nations agencies and donor agencies.

From 25 to 30 in-depth interviews were conducted in each country on condition of anonymity, which enabled our sources to discuss the impact of the gag rule without fear of reprisal from the U.S. government. We have also removed the names and identifying information of all respondents from the report. Most would not have been willing to talk to us otherwise. This fact alone demonstrates the atmosphere of coercive censorship that the U.S. government is imposing on local advocates in countries struggling to deal with the devastating consequences of unsafe abortion.

The gag rule's effects differ by country, the legal status of abortion and the extent to which USAID funds local NGOs. But in all instances, the global gag rule undermines fundamental cornerstones of U.S. foreign policy by restricting

NGOs' rights to free speech and association, and their ability to freely participate in civil society and democratic institutions for the purposes of improving safe and legal access to abortion.⁹ In contrast, the global gag rule imposes no restrictions on NGOs working to criminalize abortion or make the procedure less safe and accessible.

This report begins by documenting the litany of harms caused by the global gag rule. These consequences range from censoring civil society organizations around the world to condemning women to unsafe abortion. The report then takes a closer look at the public health crisis of unsafe abortion on a global scale and follows with a comparative discussion of the epidemic in terms of the laws, policies and social contexts of the four countries under study. We next highlight international commitments to eradicate unsafe abortion and conclude with a call to repeal the gag rule.



Photo courtesy of Elizabeth Gilbert for the Packard Foundation Photo Archives

What is the Global Gag Rule?

The global gag rule (also known as the Mexico City Policy) is an executive order, issued by President George W. Bush on January 22, 2001. The gag rule restricts foreign NGOs who receive USAID family planning assistance from using their own, non-U.S. funds to:

- Provide safe abortion services to the extent that they are legal (including where a woman's health is harmed by the pregnancy);
- Impart accurate medical counseling about, or referrals for, abortion;
- Petition their own governments to liberalize restrictive abortion laws;
- Advocate against attempts to make abortion laws even more restrictive; and
- Engage in public information initiatives and similar educational measures to ensure that abortions are safe and accessible to the full extent that the law allows.⁶

The 1973 Helms Amendment already prohibits U.S. funds from being used for these activities.⁷ Through a White House memorandum dated August 29, 2003, President Bush extended the global gag rule beyond USAID assistance to all branches of the U.S. State Department that provide voluntary population planning assistance.⁸

The gag rule has penalized hundreds of NGOs—and the women they serve—in nearly sixty countries around the world.

Effects of the Global Gag Rule: A Litany of Harms

I know of a 17-year-old who got pregnant. She was a house help with no money so she went to somebody to try to remove the pregnancy. And the person she went to did not know the anus from the vagina. He destroyed her anus, rectum, uterus, and some of the small intestine. This girl came to Kenyatta Hospital and they had to operate—to open her abdomen, remove the uterus, intestines and reconstruct. The anus and the rectum were destroyed beyond repair. The girl now has a permanent colostomy. All because she didn't have the information and means to have a safe procedure. If only she had a chance to talk to someone. She said to me, "Doctor, do you know what it means to have a pregnancy you don't want?"

NGO, Kenya

The global tragedy of unsafe and illegal abortion has destroyed the lives of countless women driven to desperate measures to terminate unwanted pregnancies. The global gag rule further jeopardizes these women's lives by hindering the efforts of local advocates to address the pressing reproductive health and rights concerns posed by unsafe and illegal abortions. The gag rule also infringes upon freedom of speech, democratic participation and national sovereignty, and curtails the development of civil society. Although this report highlights the negative effects of the gag rule in four countries, these effects are felt—to some extent—in all countries affected by the gag rule.

Photo courtesy of Richard Lord Photography



Unsafe Abortion: A Global Epidemic

| | Estimated number of unsafe abortions | Estimated number of deaths due to unsafe abortion | Mortality ratio (deaths due to unsafe abortion per 100,000 live births) | Percentage of maternal deaths due to unsafe abortion |
|------------------------------------|---|---|--|--|
| Annual Totals: | | | | |
| World | 20,000,000 | 78,000 | 57 | 13 |
| More Developed Regions* | 900,000 | 500 | 4 | 13 |
| Less Developed Regions | 19,000,000 | 77,500 | 63 | 13 |
| Africa | 5,000,000 | 34,000 | 110 | 13 |
| Asia | 9,900,000 | 38,500 | 48 | 12 |
| Europe | 900,000 | 500 | 6 | 17 |
| Latin America and the Caribbean | 4,000,000 | 5,000 | 41 | 21 |
| Northern America | - | - | - | - |

*Australia, New Zealand and Japan excluded from regional totals, but included in more developed regions.

Source: World Health Organization, *Unsafe Abortion: Global and Regional Estimates of Incidence and Mortality Due to Unsafe Abortion with a Listing of Available Country Data 2* (1997).

Sticks, catheters, powdered glass, herbal mixtures, lemon juice, and cow dung are the coat hangers of the twenty million—mostly poor—women around the world who are driven to unsafe abortions every year. More than 95% of these abortions occur in low-income countries. And every year, complications resulting from these procedures claim the lives of some 70,000 women. Untold millions more suffer serious injuries and permanent disabilities.

For women in the United States, where abortion was legalized in 1973, the dark days of unsafe and illegal abortion are distant memories. Before abortion was legalized in the U.S., women

obtained between 200,000 and 1.2 million illegally induced abortions every year.¹⁰ This resulted in the death of some 5,000 to 10,000 women who often resorted to secret procedures by untrained providers working in unhygienic conditions. Many more women suffered severe health complications from these back-alley procedures.¹¹ The legalization of abortion in the U.S. resulted in a dramatic decline in deaths due to unsafe abortion.¹² In countries currently dependent on U.S. family planning assistance, however, the dark days of unsafe and illegal abortion remain everyday realities.

The Global Gag Generates a Climate of Censorship

Organized and peaceful expression is not only the cornerstone of any democracy, it is a universally recognized right. Freedom of speech is also a primary U.S. foreign policy goal:

The development of civil society depends on freedom of expression and association. USAID's strategy assessment framework explains that "free and independent media, freedom of expression, and freedom of association are particularly critical for a pluralistic civil society and for democracy. In authoritarian or transitional regimes, where at least some associational life is permitted, the political establishment often tries to gain control over civil society or, failing that, to limit the freedom of expression and association upon which it depends."¹³

The ability to access and publicize information is a fundamental need of a politically active civil society.¹⁴

U.S. Agency for International Development

Many of the people interviewed for this report felt oppressed by the environment of censorship, fear and distrust brought on by the global gag rule. Since USAID can unilaterally decide whether an NGO violated the rule and require that the NGO refund all USAID funds, groups take excessive precautions to avoid even the perception that they are speaking about the forbidden subject of unsafe abortion.¹⁵

The move to reform the abortion law is slow. People don't want to talk very loud. The debates take place in the academic world. These studies are unfolding the problems. The communities themselves, they have to start advocating. We especially need advocacy on issues—to make sure people know and understand.

NGO, Uganda

Unsafe abortion and back street abortion is very common. There is little talk because of the dependence on donor funding. People don't want to talk about legalizing abortion because they fear risking donor funding. If the U.S. government is against abortion, they don't want to speak up. No organization will have the courage to speak. Women doctors have since spoken. But somebody has gagged the rest.

International Donor, Uganda

In Kenya, NGOs that were once vocal supporters of comprehensive reproductive health care for women now abstain from debates on reforming the country's restrictive abortion law.

Reproductive health organizations have been invited to the public debate but they don't come. They can feel the pressure on them not to participate. Unfortunately most NGOs working on reproductive health are also working with USAID.

International NGO, Kenya

In Ethiopia, where one of the largest NGOs lost U.S. family planning assistance for refusing to be gagged, a climate of fear has pervaded advocacy circles and curbed free speech.

There was a withdrawal of USAID funding and this withdrawal may intimidate others from speaking out. NGOs fear even remote association with abortion. It will impact who can debate because of repercussions some may face.

International Donor, Ethiopia

In Peru, gagged NGOs have been unable to participate in public debates about a constitutional clause banning abortion. One reproductive rights NGO representing the concerns of rural and urban populations explained how the gag rule shut her organization out of the debates and advocacy efforts concerning the ban:

But when other groups signed a public statement about the abortion clause, we could not sign and I felt bad. It was like not being present in the debate about reproductive rights, which are so central to women's empowerment. We had to hide from any public statement on the abortion aspect.

NGO, Peru

We used to hold debates, invited medical doctors, produced research publications. We cannot speak as freely now. No one knows at what point it becomes prohibited speech. USAID told us that we couldn't lobby for abortion liberalization or decriminalization. That, for example, if we attend a general conference and the issue of abortion comes up we can

not speak. But we don't know how much we can talk about it before it crosses over to not being permitted anymore. We, for example, can do research on unsafe abortion. But if we draw conclusions, someone can say "that's lobbying."

NGO, Peru

But when there are less funds, and you have to compete, obviously organizations have to be more careful about getting linked to something controversial that could affect them, and that can produce self-censorship.

NGO, Peru



Photo courtesy of Mike Jay Browne/PhotoShare



Silencing U.S.-Based Cooperating Agencies

When we are passing out information at a gathering, we cannot relate ourselves to organizations that are lobbying for abortion access. We cannot commit to the organizations. These organizations have great hope to turn into advocacy groups. But we can provide no support because of a fear that the association will make us lose our USAID funding. We must remain “mild.” I would like to explore partnerships with some of these organizations who are pushing for reform, but I do not know how this association will affect the future relationship with USAID.

Cooperating Agency, Uganda

Cooperating agencies are U.S.-based organizations that are responsible for implementing USAID-funded programs overseas. These agencies work with local NGOs and are usually staffed by some of the most prominent and influential local public health experts. Although the global gag rule does not directly apply to cooperating agencies — provided they use non-U.S. government funds—their supervisory relationship with gagged NGOs compromises their ability to address the local crisis of unsafe abortion.¹⁶ Even if the cooperating agency has funding from non-U.S. government donors, its staff cannot work on abortion law reform with gagged local NGOs.

Because these agencies are charged with enforcing NGO compliance with the gag rule, many of their staff feel that it would be ineffective and even inappropriate for them to work for abortion law reform when their local partners are prevented from doing so. Furthermore, cooperating agencies often fear that if they speak out in favor of abortion law reform, their U.S. family planning funding may be cut even though the gag rule does not directly apply to them.

In **Ethiopia**, one cooperating agency that provides reproductive health assistance to numerous NGOs and private health clinics has stopped supporting abortion law reform, despite their long-standing interest in the issue.¹⁷ According to a local representative of another international NGO, “the absence of [this particular organization] is significant because it is very powerful and influential in Ethiopia.”¹⁸

A major cooperating agency in **Uganda** has said that it may be doing a disservice to its work on abortion because it is heavily funded by USAID and the policy “restricts how much we can do.”¹⁹

The Global Gag Skews the Abortion Debate with Bias and Misinformation

Although the global gag rule forbids those who support safe and comprehensive abortion services from speaking out, it places no such restrictions on opponents of abortion reform.

The debate will not be informed and balanced if organizations supporting abortion liberalization are unable to speak about it.

Cooperating Agency, Ethiopia

Those interviewed for this report expressed concern, and at times outrage, that the U.S. government was stifling the spread of information about the devastating consequences of unsafe abortion in their countries. In **Ethiopia**, where reforms to liberalize the abortion law are currently on the national agenda, NGO representatives felt that the global gag rule was making it harder to dispel myths about abortion and accurately inform the public about the positive impact of liberal abortion laws on women's lives.

The needed informed debate on unsafe abortion in Ethiopia will suffer. When donors provide assistance, there are strings. We talk in hiding, whispering to each other. This will continue until the global gag rule is ended or we have other means of funds.

Government Official, Ethiopia

In **Peru**, where a constitutional amendment that largely prohibits abortion has been under consideration, advocates said the gag rule prevented them from mounting a balanced and informed debate on the proposed amendment.²⁰

When I am interviewed by the press I must choose the words I say very carefully and must limit what I can speak about. Even when I am talking about maternal mortality due to unsafe abortion complications, I must be careful not to put the project at risk. We were a leader on advocacy for liberalization of abortion

before, and now we cannot even sign on with our colleagues to a public statement on the constitutional clause on abortion. Our silence, the fact that we did not sign the public statement, surprised parliament members. The Bishop could speak to the parliamentarians, but we could not.

NGO, Peru

The fact that there are fewer groups doing advocacy, or fewer groups creating a counter balance against pro-life activists, this can lead to modifications. In fact, if it keeps going this way, they have already lost the Constitution.

International Donor, Peru

In **Kenya, Peru and Uganda**, the gag rule reinforces the conservative views that reach most policymakers. Moreover, some government officials are using the gag rule as an excuse for their inaction, allowing it to impede efforts to address preventable death and injury due to illegal abortion.

It gets more slimy as you get down into it. The side for abortion rights never gets press coverage. But there is press coverage for the pro-life side.

Cooperating Agency, Kenya

The Ministry of Health doesn't have a position on abortion. They agree that post-abortion care is needed. They agree that unwanted pregnancy is a problem especially with girls below 18. There is a high mortality rate that refuses to go down. The main contributor is unsafe abortion. The Ministry of Health admits to this, but the religious are telephoning the Ministry.

NGO, Uganda

At least one of the biggest organizations, historically, can't participate. And so for any anti-choice political analyst, that is a triumph, right? Because you've got one organization with national presence blocked, a big one, one that eventually—if it weren't for this pol-

icy—could make life a bit more difficult for you than at present.

International Donor, Peru

The lack of accurate statistics on unsafe abortion contributes to misconceptions about its incidence and scope. For example, some Ethiopian parliamentarians and religious leaders have countered abortion law reform by asserting that abortion is only the plight of the urban elite.²¹ NGOs that would challenge these misconceptions are silenced by the global gag rule. For instance, rep-

resentatives of a religious NGO in rural **Ethiopia** said they would consider supporting liberalization of the abortion law because they recognize that unsafe abortion is “a social problem hidden within the culture and society and, even if surrounded by difficult circumstances, it is covered up.”²² Yet, because of the global gag rule, this religious NGO—which serves 1.5 million people who visit its 52 health institutions in traditionally underserved rural areas—cannot join the public discussion on abortion law reform.

The Global Gag Impedes Abortion Law Reform

The most effective way to reduce unsafe abortion is to ensure that safe abortion services are both legal and accessible. Respondents in all four countries lamented that policymakers often hide behind the global gag rule to justify their inaction on law and policy reforms meant to address unsafe abortion. With some key civil society groups silenced, any progress toward the adoption of a locally responsive, socially responsible health agenda is severely impeded.

Abortion complications are the easiest to prevent. But we cannot work to prevent them with the global gag rule. Now how can we work to avoid unsafe abortion? It is the issue that contributes to the most mortality.

NGO, Kenya

The global gag rule adds support to those supporting the restrictive law—it gives them another reason to oppose liberalization. The global gag rule will impact the liberalization of the law because the government makes the policy and it closely watches U.S. policy.

NGO, Ethiopia

We will not be involved in the law reform efforts in Ethiopia because of USAID, because the U.S. government does not allow it. I will feel fine about attending

meetings but I will be unable to speak up. I can be there as a silent observer.

Cooperating Agency, Ethiopia

The gag rule’s silencing of reproductive rights advocates has been particularly damaging when highly restrictive abortion laws are under consideration and actively supported by opponents of women’s rights. In **Peru**, for example, a constitutional clause largely prohibiting abortion has recently been considered. But the gag rule stifled the much needed, informed and balanced debate on this prohibition. It gave free reign to opponents of women’s rights and sidelined gagged NGOs too intimidated to speak up about the ban.

This conservative group in the government is aware of the fact that the gag rule exists, and what they can use it for.

International Donor, Peru

350,000 clandestine abortions a year, that’s the problem. So how do I think this global gag rule affects that? Well, in the sense that there are institutions that cannot even discuss this problem and eventually propose legal reforms that might contribute to solve the problem.

Government Official, Peru

The Global Gag Curtails the Participation of Civil Society in Democracy

It has long been recognized that democratic governance is a fundamental prerequisite for a just and stable world.²³ According to democracy experts, a functioning democracy “must provide for a rule of law, and rigorously protect the right of individuals and groups to speak, publish, assemble, demonstrate, lobby, and organize to pursue their interests and passions.”²⁴ Without a robust and active civil society, a democratic government cannot respond to its citizenry.²⁵

NGOs play an invaluable role in building a structured dialogue between citizens and governments. They contribute information and ideas, advocate more effectively for change, bring individuals with common interests together to petition their government, and generally increase government accountability and legitimacy. The gag rule, however, precludes NGOs from using their own funds to access key forums such as parliaments, executive branch officials and the public, and prevents them from addressing the root causes of unsafe abortion by putting it on the political and social agenda.

Each of the four countries under study is a young democracy that struggles with low public confidence in the political process, untested democratic institutions, shaky traditions of open and informed debates, and limited legal reform. Civil society organizations in these emerging democracies require support from outside donors, such as USAID, to foment open, informed debates between political branches and civil society organizations on the frontlines of democratic reform. Instead, the gag rule forbids NGOs from participating in their own country’s democracy and also encourages governments to act in an authoritarian manner.

USAID gives funding to build capacity for civil society to provide the necessary friction with the government, to make sure it is there, to see how civil society can work with parliament. The hypocrisy of USAID fund-

ing to build civil society—but not some issues such as abortion—is troubling.

NGO, Uganda

The irony is that America spearheaded the “informed choices” project. It is a project that is trying to compile information on how women make their own choices on reproductive health.

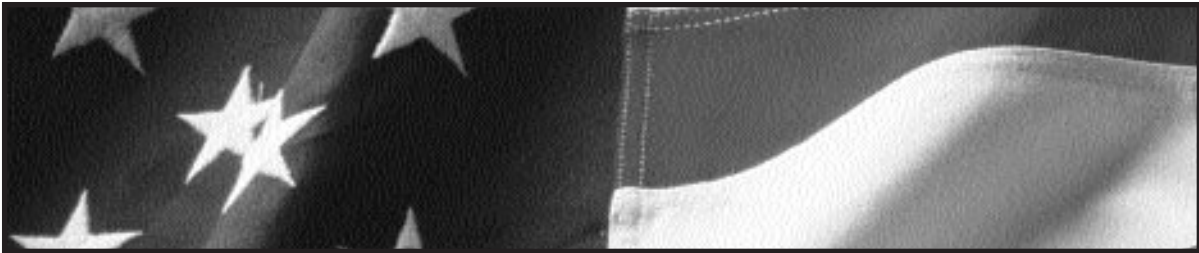
Cooperating Agency, Kenya

In **Peru**, the recent fall of the repressive regime of President Alberto Fujimori signaled the potential for a new era of democracy. However, Peruvian women’s rights activists point out that the global gag rule strengthens the conservative and repressive agenda of reproductive rights opponents in the government.

We had a democracy tide but the current conservative approach of USAID and the [then] Minister of Health goes against democracy. This conservatism is not strictly about reproductive health issues. It limits participation of citizens in making their own decisions, private ones and those related to the state. This approach goes against what started with the fall of Fujimori.

NGO, Peru

Democracy was constitutionally established in **Ethiopia** in the early 1990s, following decades of repressive military rule that brutalized any opposition and independent civic organizing. The subsequent development of civil society organizations in the country has been new and volatile. Most local NGOs are consumed by the struggle to survive and to provide services. For example, one of Ethiopia’s primary reproductive health providers, which lost a substantial portion of its funding by refusing to be gagged, has downgraded advocacy activities to keep its services and programs operational.



U.S. Foreign Policy Goals: Promotion of Democracy and Civil Society

Building democracy is one of USAID's strategic objectives to further "America's foreign policy interests in expanding democracy and free markets while improving the lives of the citizens of the developing world."²⁶

Public apathy toward advocacy organizations in some cases is a condition fostered by authoritarian governments intent on marginalizing the role of the public in the life of the polity. The result is that many citizens have not developed the knowledge, skills, and sense of political efficacy associated with civic competence.

USAID on Civil Society Development ²⁷

USAID's Democracy and Governance program works to empower civil society organizations, including NGOs, to participate in democracy by advocating for legal and policy reform.²⁸ USAID's democracy and governance conceptual framework explains that "it is through the advocacy efforts of civil society organizations that people are given a voice in the process of formulating public policy. [Such o]rganizations . . . play a vital role in educating the public and the government on important local and national issues."²⁹ In assessing its democracy programs, USAID stresses that "a healthy democracy requires a vibrant, pluralistic civil society, not merely to augment government but as a basis for it."³⁰

Ironically, by re-imposing the global gag rule and attempting to control an area of public debate that affects millions of women's lives, the U.S. government has taken on the role historically assumed by authoritarian regimes.

In Ethiopia, NGOs and civil society are still emerging and depend on donors, especially the U.S. NGOs are the agents of change. The health conditions and the conditions of women in Ethiopia are terrible, and these agents of change cannot speak out on a variety of issues.

International Donor, Ethiopia

Several respondents said that government officials often look to the U.S. as a positive model for development and democratization. The global gag rule signals that the U.S., a presumed beacon of progress, is questioning the appropriateness of safe and legal abortion.

People see the U.S. as a role model on free speech and democracy. If they see that the role model is taking an action, people will think that they are doing that action for a good intention, that there has to be a reason, and that it should be emulated. The global gag rule will put big questions in peoples' minds. They will ask, why would a poor country try to advocate while big states are taking a big step backward? These questions have been especially asked by policymakers who are informed.

International NGO, Ethiopia

The Global Gag Condemns Women to Unsafe Abortion

I met with a headmaster of a school where three girls have died from unsafe abortion. When do providers in rural areas say no to girls in need?

The clinic is supported with USAID funds—do they turn the girls away because it is related to abortion? What should the school do? Refer the girls to the clinic? How were these kids counseled? The girls were all pregnant by the same man. It is very difficult for the nurse in the situation. What can she counsel about? What about rape and incest? It is a problem if the provider is a member of that community—how can she differentiate about what to say?

Ugandan law is also vague with regards to abortion in cases of rape and incest. The provider is in a tricky situation. Lack of clarity and guidance has led to confusion. Especially when funding comes from multiple organizations. The community looks for some source of support from the provider yet the provider must comply with a rule. Should the provider follow the community or the rule?

I could not stand up and take the story to the government. I can't speak. A person cannot even speak as a community member or a parent. Because how can you differentiate between an individual or NGO employee?

Cooperating Agency, Uganda

Local organizations and government officials in the four countries under study asserted that illegal and unsafe abortion remains a severe public health concern in their communities, and that the Bush Administration's gag rule is preventing them from addressing it. The global gag rule compels health-care providers to withhold vital medical information from indigent women patients. In Uganda, for example, 100 trainers and 65 providers at a reproductive health program receiving USAID family planning assistance were told to stop counseling about abor-

tion in order to comply with the gag rule.³¹ Providers struggle with the “tricky situation” of how to counsel victims of rape or incest.³² Many are frustrated that the global gag rule forces them to subordinate the needs of the community they serve to USAID restrictions on abortion-related activity. One cooperating agency in Uganda stated that it is “closing [its] eyes to abortion” because of the global gag rule.³³ The sentiment is echoed in Ethiopia.

Our projects are donor driven. We will do as USAID asks because USAID is so big. This doesn't mean that we have no problem with abortion—we do have a problem with it. Mothers themselves don't have enough services and should be told about abortion. The communities are aware of this matter.

NGO, Ethiopia

The concept of abortion needs to be understood by USAID. When a plane has crashed with hundreds of people on board, this is a problem. But when women are dying every moment from unsafe abortions, nobody notices. The figures are overwhelming. These are the deaths of women—poor women. That USAID provides post-abortion care is a contradiction. If they will care for cases after abortion has been undergone, they should work to prevent complications.

International NGO, Kenya

The global gag rule also reinforces discrimination against women, which is more acute in conservative societies.

Unsafe abortion is prevalent in Kenya. We are in that situation because it is a conservative society; because the government and the Catholic Church haven't allowed us to provide appropriate information. Conservatives have made it impossible to let information flow freely. Consequently, young women don't know about their bodies, about their sexuality and its



Abortion—Out of Reach for Indigent and Young Women

The global gag rule has a particularly discriminatory and disproportionate impact on impoverished urban and rural women, as well as young women with limited access to resources. In countries where abortion is highly restricted, only some women can afford safe, clandestine abortions performed by doctors in private clinics, or overseas. The cost of a safe abortion in **Kenya**, for example, is 10,000–15,000 Kenyan Shillings (US\$188), which is out of reach for the majority of Kenyans who live on less than US\$2 per day.³⁴ In **Peru**, health-care providers perform 98% of all abortions for urban women with financial means, compared to only 35% for low-income, rural women.³⁵ Other women rely on unskilled providers or try to induce their own abortions.³⁶

In the slums, they don't have access and it creates complications from abortion. That abortion law is discriminatory and favors the rich. It needs review. We should do like in South Africa. There was a big reproductive rights alliance there with over thirty organizations to forward the new, liberal law. Here in Kenya, they don't know that the current law is favoring the rich.

Government Official, Kenya

Fewer people die from unsafe abortions than in the past, but the people who die the most are poor people. Because the quality of the abortion depends on the amount of money you can pay. As simple as that.

Anthropologist, Peru

The illegal provision of services does not reach the most needy. The rich know where they can get abortions and who offers it. The very poor, teenagers and students cannot get a safe abortion. There is a big problem of unsafe and clandestine abortion in Uganda.

Health Professional, Uganda

consequences. The result is misery and death from unsafe abortion.

NGO, Kenya

In countries where abortion services and counseling are legal or where there are certain exceptions to a ban on abortion, the global gag rule forbids local health-care organizations from using their own funds to provide these services or related information. For example, **Ethiopia, Kenya** and **Peru** permit legal abortions when a woman's health is in danger, and other countries impacted by the gag rule permit legal abortions for socioeconomic reasons, in cases of fetal impairment or without restriction as to reason.³⁷ Most of these countries also allow counseling and information

to be provided to women concerning legal abortion. The gag rule, however, restricts the provision of these services, and forbids training programs from ensuring that legal abortions are provided safely. Moreover, in countries where restrictive abortion laws may eventually be liberalized, retention of the gag rule will further impede women's access to safe abortion services.

If the government decides to legalize abortion, the global gag rule will have serious implications for service provision.

Cooperating Agency, Uganda

The Global Gag Reduces Access to Other Reproductive Health Services

The global gag rule has shut down programs that provide family planning, HIV/AIDS and other reproductive health care—effectively undermining services, such as those outlined below, that it is not supposed to affect. Although the global gag rule permits both emergency contraception (EC) and post-abortion care, it has curtailed initiatives to increase women's access to these services. Often NGO representatives and health-care professionals are not aware of the exceptions included in the global gag rule, or they feel pressured to avoid all activities that may be associated with abortion.

A DOUBLE BURDEN FOR WOMEN WITH HIV/AIDS

For women with special health concerns such as HIV/AIDS, the segregation of safe abortion services from other reproductive health-care services has been particularly harmful.³⁸ Although public health experts recommend that women have access to comprehensive and integrated health-care services, gagged health-care organizations that serve patients with HIV/AIDS have been unable to provide these services, including abortion.³⁹

Our HIV initiative is meant to be comprehensive and should address contraceptives, STIs and abortion, but it will not be able to address HIV status as an exception for illegal abortions.

Cooperating Agency, Ethiopia

Gagged NGOs face a difficult situation in being unable to talk about abortion for HIV-positive women.

NGO, Ethiopia

The lack of discussion about abortion in the context of HIV/AIDS is particularly irresponsible given the potential risks of pregnancy and delivery on the health of HIV-positive women and the risk of transmission to the fetus. The World Health Organization estimates that “[w]ithout preventative treatment up to 40% of children born to HIV-positive women will be infected,” predominantly during pregnancy and delivery, and even with preventative treatment the likelihood of HIV infection is only reduced by half.⁴⁰ Despite local support for expanding access to safe and legal abortion services to HIV-positive women, gagged organizations are forbidden to express this support

on behalf of their patients. And the dilemmas for HIV-positive women with unwanted pregnancies may only get worse. The Bush Administration has already imposed the global gag rule upon one HIV/AIDS program, and has considered expanding it to all international HIV/AIDS assistance.⁴¹

INHIBITED ACCESS TO FAMILY PLANNING

The global gag rule has severely disrupted, and in some cases halted, key family planning programs that service low-income communities in **Ethiopia, Kenya and Uganda**. For example, a major family planning provider in **Kenya** lost substantial funding when the global gag rule was reinstated. Because the provider refused to be subjected to the gag rule, it was forced to close clinics and lay off staff as a result.

[One major reproductive health organization's] clinics not only provided family planning but other reproductive health services such as STI management, well-baby care and immunization. With the closure of these clinics, services are no longer available to communities.

NGO, Kenya

Because of the global gag rule, reproductive rights are being violated as women are not getting access to family planning.

International NGO, Kenya

In Kenya, cooperating agencies have been unable to work with local organizations that are leading providers of reproductive health services.

We cannot provide population funds to [two major reproductive health organizations in Kenya], one of which was going to play a significant role in the provision of long-term and permanent family planning methods to women in rural areas. The cost of transport to a service provider is prohibitive. Women in their late 30s with many children are at risk of mater-

nal mortality and morbidity because they can't access family planning. Because of the gag rule, we have to look for alternative partners. We haven't been able to find any.

Cooperating Agency, Kenya

The impact of the global gag rule is huge. It has wiped out partners. Now [a USAID reproductive health project] can't work with [a major reproductive health organization], and yet another is struggling because of the global gag rule. It is obvious that it doesn't work. The gag rule is creating a bigger problem and it is doing more harm than good.

Cooperating Agency, Kenya

The cost of providing family planning services is extremely low relative to the benefits. Studies in several countries show that for every dollar invested in family planning, governments save as much as \$16 in reduced expenditures in health, education and social services. As USAID notes, this is especially relevant in low-income countries struggling to pay for health services.⁴²

A Peruvian NGO lamented the impact of the gag rule on reproductive health service provision:

I think family planning services have been affected, in the sense that several organizations have not signed, and have stopped receiving U.S. funds and that means that certain sectors no longer receive care.

NGO, Peru

STALLED EMERGENCY CONTRACEPTION INITIATIVES

In **Uganda**, a scheduled launch of emergency contraception (EC) was cancelled when the gag rule rendered local USAID-Uganda staff silent and unable to respond to a local cardinal's false condemnation of EC as an abortifacient.

Officially the policy hasn't affected any programs except for EC. An organization had made a proposal to pilot EC. The Ministry of Health had no objection and we thought there would be no problem. In 2000

they were going to do a promotion and service delivery of EC. Then there was a strong letter from the Cardinal that said the ministry was promoting abortion. The Cardinal later found that it was a USAID-funded project. USAID then did not want to be associated with the project.

Government Official, Uganda

They had this call-in radio show that wanted to do education about EC but someone from the group entrusted with launching EC said they needed approval from USAID and the show was pulled. It was to be a promotion for post-abortion care and it would include EC. But because of EC the whole show was cancelled.

Cooperating Agency, Uganda

In **Ethiopia**, one of the primary reproductive health organizations in the country planned to introduce emergency contraception through a two-year pilot project of a USAID cooperating agency. However, the organization's refusal to accept gagged funds led to the cancellation of the project, perpetuating ignorance about emergency contraception as a safe and effective contraceptive method.

This may be the only organization in Ethiopia to provide EC. This project was an introduction—a two-year pilot project with the cooperating agency that they probably will end because of the global gag rule.

NGO, Ethiopia

In **Peru**, one respondent reported that local USAID officials pressured one of the organizations that it was funding to withdraw from a campaign supporting emergency contraception.⁴³ In another case, USAID reportedly reprimanded a gagged NGO for signing onto a statement demanding the provision of EC from the Ministry of Health.⁴⁴ In yet another incident, a USAID official allegedly noted that the gag rule forbids USAID recipients from promoting emergency contraception, despite an explicit exemption for

EC in the gag rule and the international medical consensus that it is not an abortifacient.⁴⁵

CURTAILED EDUCATION ON POST-ABORTION CARE

The global gag rule's speech restrictions—and confusion about the scope of these restrictions—have undermined planned expansions of post-abortion care (PAC) services.

In **Uganda**, officials running a large USAID-funded reproductive health program with a post-abortion care component were intimidated by the gag rule and scaled back education and publicity efforts about its PAC services to avoid losing funds or risking an anti-abortion backlash. The organization chose not to write about the success of its PAC program in a pamphlet distributed to district health providers and NGOs, omitted any mention of the program in internet resources, and canceled the community education component of the project.

With the Mexico City Policy (MCP), we are still doing post-abortion care training. We would have publicized it more for doctors and nurses, if it weren't for the MCP but we were afraid that someone will be against it so we decided not to let anyone know about it. We are afraid that it will get attention and USAID won't support it. We made the decision not to publicize it because of the MCP.

Cooperating Agency, Uganda

The Global Gag Isolates NGOs and Dictates Their Policies

Building a critical mass of support for sensitive issues such as women's health and rights has been essential to local advocacy efforts around the world. USAID has acknowledged this fact and made a priority of supporting local NGO networks that want to improve women's reproductive health and the public health-care system. The global gag rule, however, is hindering these very efforts.

In resource-poor countries, NGOs must fight for financial survival, forcing them to focus on providing services, rather than joining forces with their colleagues to advocate for a better reproductive health environment. Furthermore, local NGOs dependent on USAID assistance take excessive precautions to avoid even casually associating with groups that are not gagged.

Coalitions are vital to ensuring effective advocacy on reproductive health issues in **Ethiopia** where the involvement of key players in the reproductive rights field is essential to the success of any advocacy network. But the global gag rule has hampered coalition-building efforts throughout the country.

Local NGOs were concerned that if they start or continue to work with us, they will lose funds for family planning programs from a USAID cooperating agency. These NGOs are faced with this dilemma: if they are working with the cooperating agency, they will be forced not to do advocacy. And if they work with us on advocacy, they will have to curtail their family planning activities due to lost funds from USAID.

International NGO, Ethiopia

In the area of reproductive health, we need to work very hard together with other partners and the government to bring about a change in women's lives in Ethiopia. We need to work together to change the laws.

NGO, Ethiopia

In the early 1990s, USAID funded a reproductive health NGO network in **Ethiopia** that was meant to build the capacity of its members, mobilize resources, and advocate for more comprehensive reproductive health services.⁴⁶ Today the coalition has dozens of members and is expanding to include organizations throughout the country. But the coalition, which remains heavily reliant on USAID assistance, has refused to work on unsafe abortion even though its members recognize that unsafe abortion is a leading cause of maternal mortality in the country.

Our coalition is not able to advocate for abortion specifically—we work on the broad issue of reproductive health.

Coalition Participant, Ethiopia

I would advise the coalition not to work on reforming the abortion law because it is too dependent on USAID funding. And the directive from USAID is quite clear.

Coalition Participant, Ethiopia

The global gag rule has restricted NGO partnerships in **Kenya** as well. Though some advocates are attempting to include abortion rights in discussions on constitutional reform, only one small reproductive health coalition is actively working on this issue. The coalition's efforts to recruit and involve other NGOs are limited by the global gag rule. USAID-funded NGOs, although invited, are noticeably absent from public debates organized by the coalition.

As the coalition is thinking of broadening the base of stakeholders, USAID-funded organizations may be reluctant to take part in the debate.

Coalition Participant, Kenya

While some officials in Kenya's Ministry of Health have expressed support for liberalizing the country's abortion law, they are effectively barred from collaborating with gagged NGOs to bring about this reform.

The problem in developing countries is different. They have little capacity to fight for their rights, because they are fighting for their existence. And with the global gag rule, it becomes a difficult situation. Because if funds are not available, few people will volunteer to advocate and the situation becomes very tricky.

NGO, Kenya

There are not a lot of advocates in this region. What we are missing is advocates.

International NGO, Kenya

The gag rule's fracturing of reproductive health communities has been particularly devastating in Peru, where civil society organizations are strong and vibrant.

I feel that what's happening, as a consequence of

the gag rule, is a paradox—is that more than having a gagging effect or affecting legislative possibilities, what it is doing is dividing us into two groups: those who signed the gag rule and receive U.S. funds, and those who did not sign and do not receive U.S. funds. And it is as if we are opposed and fight. As if some are traitors and some are not, some are right and some are not. And for me that is really sad, but it is the only victory I see. The only victory is to divide us and make us fight among ourselves for the same cause.

NGO, Peru

There is only so far that you can go with an organization that doesn't have on its agenda the critical issues from a women's health and rights perspective. We want to work with an organization that's willing to be on the cutting edge.

International NGO, Peru

The Global Gag Infringes Upon National Sovereignty

At several recent global conferences, the international community agreed that individual countries must craft their own laws and policies concerning abortion: “measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”⁴⁷ Several respondents pointed out that the United States is violating its commitment under the Programme of Action of the 1994 International Conference on Population and Development (ICPD) and other conferences. Government officials and NGOs alike condemned the Bush Administration's policy because it complicates the already challenging task of reforming abortion laws in their countries.

Government officials have expressed sentiments such as “who are they to decide on that for us?” and that even at ICPD, where abortion was controversial, the decision as to whether to liberalize or restrict abor-

tion was left to the individual country to decide. The global gag rule prevents countries from deciding for themselves.

Government Official, Ethiopia

When [a major reproductive health organization] must be selective of programs because of funding, it undermines the notion of comprehensive reproductive health into disparate components; it undermines the whole notion of ICPD and the Beijing Platform for Action from the Fourth World Conference on Women.

NGO, Ethiopia

Although the global gag rule does not apply to governments that receive USAID funds, it has chilled government agencies' work on comprehensive reproductive health care.⁴⁸ Government officials feel constrained by the global gag rule, fearing that upsetting USAID may result in a loss of funding for the government itself, and especially for the ministry of health. Several respon-

dents alluded to the refusal by the Bush Administration to fund the United Nations Population Fund as another indicator that no entity, governmental or NGO, that wishes to maintain friendly relations with the U.S. should be tainted by abortion.

USAID is the largest bilateral donor in Ethiopia, and of the U.S. \$194.8 million in aid allocated for the country over the next five years, U.S.\$86.2 million is for health.⁴⁹ The Ministry of Health's reproductive health budget is almost entirely subsidized by donor assistance. As a result, government administrators limit their work on abortion.

The Family Health Department in the Ministry of Health is a main beneficiary of USAID, and so they will likely oppose any movement on abortion. The global gag rule affects the government's attitude. The government may worry that if safe abortion is accessible, then USAID support may be less strong.

Obstetrician-Gynecologist, Ethiopia

There is always fear—a tension in the Ethiopian government—if the government is not in line with the U.S. government it may lose assistance. The Ministry of Health receives substantial funds from the U.S., and if it will continue abortion work, it will lose funds from the U.S.

Government Official, Ethiopia

The Ethiopian government's reluctance to address abortion-related concerns because of the gag rule became clear in the work of the reproductive health task force, which includes representatives from government ministries, international organizations, local NGOs, UN agencies, and bilateral donors including USAID and its major cooperating agencies. Not surprisingly, despite the belief of an official in the National Office of Population that "the abortion law reform should be discussed by the reproductive health task force," the issue has been kept off the table.⁵⁰

When the president of the U.S. comes out with this kind of rule, it will have an impact on other nations. By virtue of him being the president of the U.S., peo-

ple take note of his opposition to all abortion issues.

NGO, Ethiopia

Several of the people interviewed for this study were not even aware that abortion is legal in the United States, and were dismayed to learn that it is unconstitutional for the global gag rule to be imposed upon U.S.-based NGOs.⁵¹ Numerous respondents expressed their outrage at the hypocrisy of the Bush Administration for imposing a policy that could not stand in the United States, where abortion is legal and safe and free speech enjoys strong constitutional protection.

Let me tell you, it is an imperialist policy, let me put it like that. Imperialist and awful.

Anthropologist, Peru

Why is the U.S. so openly arrogant? The policymakers in the U.S. need to know the situation of sub-Saharan Africa. In sub-Saharan Africa they don't need additional problems. They need a U.S. policy that supports their work, not one that puts another burden on their work. Why do organizations have to face USAID restrictions when they already have to cope with the realities of local conditions?

In Ethiopia the young have no access to services; women are dying. The problem is so complex that Ethiopia can't tolerate any other burden. There are enough problems already. They are dealing with attitudes that are culturally entrenched; the problem is very complex and USAID makes it more difficult. The youth can't share ideas about sexuality with their parents. Twelve to thirteen-year-olds are getting pregnant. It is a major problem. Given this context, does Ethiopia deserve another problem?

NGO, Ethiopia

In a country like Ethiopia that has little family planning infrastructure and a contraceptive prevalence of less than 10%, it is morally repugnant to enforce the Mexico City Policy by a country where abortion is legal.

NGO, Ethiopia

The Global Epidemic of Unsafe Abortion

The first section of this report documented the impact of the global gag rule on overseas advocates and health-care providers who are struggling to make abortion legal, safe and accessible in their countries. The urgency of this work is rooted in the lives of the women who continue to die or suffer from the public health crisis of unsafe abortion. The second section takes a closer look at the dimensions of this crisis. We begin by examining the global context of unsafe abortion, follow with a comparative discussion of how this epidemic plays out in the laws, policies and social contexts of the four countries under study, and end with an analysis of international commitments to address the crisis.

A Severe Public Health Crisis

Unsafe abortion is a leading cause of pregnancy-related deaths and injuries in countries where access to abortion is significantly restricted or illegal altogether, as well as in those where abortion is legal but remains largely unavailable.⁵²

Unsafe abortion is one of the most easily preventable and treatable causes of maternal mortality and morbidity.

World Health Organization⁵³

In many low-income countries, abortion is regulated in criminal codes established by colonial rulers years ago. Local customs that discriminate against women and pressure them to bear many children reinforce these antiquated laws. Legal restrictions on access to safe abortion services are now associated with some of the highest rates of maternal mortality and morbidity in the world. These restrictions can also increase the costs of related health-care services. In some countries where safe and legal abortions are unavailable, treating the complications of abortion consumes up to 50% of hospital resources.⁵⁴ Even then, less than half of all women who require post-abortion

treatment receive it.⁵⁵

In other cases, women may not seek needed treatment due to fear of prosecution or stigmatization.⁵⁶

Unsafe abortion is induced by traditional herbs. When there are complications, the girl or woman does not go to the hospital. She waits, and only once it gets very serious will she go. They do not want to tell anyone that they had tried abortion; they fear stigma.

NGO, Ethiopia

In the absence of safe, legal and accessible abortion services, women seek abortions from physicians, midwives, traditional or lay practitioners, or other health professionals who secretly perform the procedure, often at a very high price to compensate them for the legal and professional risk. In many cases women try to self-induce abortions. The riskiest abortion procedures are those performed by lay practitioners and women themselves. These procedures often involve inserting sharp or contaminated objects, or caustic substances into the vagina; drinking caustic substances, traditional herbs or medications; or vigorously massaging the abdomen. The use of unsanitary instruments by clandestine abortion providers is regularly a source of post-abortion infection and other complications.⁵⁷

Women will go to *wadaja*, a place where the local religious man will treat disease and provide herbs for abortion. If the women experience complications, they will have to get to a clinic.

NGO, Ethiopia

Many girls are lost. Many drink herbs and die, drink Omo (detergent) and die. She does many things to her body. They have their traditional ways. Most of the girls go to their grandmothers and aunties. Girls run to them. Some die. A few reach the hospital and are saved from complications. They usually go to the hospital with fever.

Member of Parliament, Uganda

Most women who die from unsafe abortions or lack access to comprehensive family planning services are poor and socially disenfranchised. The lack of access to comprehensive reproductive health services is even more extreme for young women. In contrast, wealthy women have always been able to access safe abortions in the comfort of private doctors' offices—even in countries where abortion is illegal.

The rates of unwanted pregnancy, unsafe abortion and maternal mortality have been significantly reduced in countries where all women have access to and knowledge of a range of effective contraceptive options, and where they are empowered to exercise these options.⁵⁸ Moreover, in countries where abortion has been decriminalized, rates of abortion-related maternal mortality have declined dramatically.⁵⁹

Tragedies in Four Countries

We are running away from reality. Young girls are dying due to unsafe abortions.

Sylvia Sinabulya, (Public Statement)
Member of Parliament for Mubende, Uganda⁶⁰

Respondents in **Ethiopia, Kenya, Peru, and Uganda** repeatedly identified unsafe abortion as a public health concern of epidemic proportions. They also denounced the insufficient research and resources for addressing this tragic problem.

RESTRICTIVE ABORTION LAWS ENDANGER HEALTH

In both **Ethiopia** and **Peru**, penal codes prohibit abortion unless it is performed to save a woman's life or prevent serious or permanent damage to her health.⁶¹ In both countries, women and providers are often unaware of the circumstances under which abortion is legal, and the exceptions to the laws are almost never invoked. In Ethiopia, two medical practitioners, including one specialist, must diagnose a serious health risk, while in

Peru women whose health is endangered by pregnancy are left to the mercy of public health officials because the exceptions to the abortion law are wholly unregulated.⁶²

Kenya and **Uganda's** penal codes prohibit abortion in all cases, although neither law holds a provider criminally liable if the abortion is performed to save the life of the woman.⁶³ In Kenya, this exception has been extended to the preservation of women's physical and mental health, if two doctors diagnose a threat to the woman's health.⁶⁴ However, even where abortion is permitted under certain circumstances, few women are aware of the exceptions to the law. This, coupled with a lack of trained abortion providers, means that abortion is unavailable even for women who qualify for an exception.

Although accurate statistics concerning unsafe abortion are very difficult to obtain, particularly in countries where abortion is largely illegal and clandestine, public health researchers have attempted to quantify the problem. In **Ethiopia**, unsafe abortion is the second leading cause of death for women of reproductive age, accounting for 55% of maternal mortality and causing one-fifth of all hospital admissions.⁶⁵

One report estimates that more than 40% of **Kenya's** maternal mortality rate is due to unsafe abortion, causing more than 5,000 deaths each year.⁶⁶ More than 50% of gynecological admissions countrywide result from abortion-related complications.⁶⁷ Approximately 350,000 clandestine abortions are performed annually in **Peru**, resulting in the hospitalization of one in seven women who have had abortions and one of the highest maternal mortality rates in Latin America.⁶⁸ In **Uganda**, 5,000 women and girls are known to be admitted into hospitals for incomplete abortions every year, and unsafe abortions cause approximately one-third of maternal deaths.⁶⁹ In each country, young and low-income women are most likely to suffer grave complications from unsafe abortions.

A Comparative Look at Four Countries

| | Ethiopia | Kenya | Peru | Uganda |
|--|----------|-------|-------|--------|
| Total Fertility Rate (per 1,000 women aged 15-49) | 6.75 | 4.60 | 2.98 | 7.10 |
| Mean Age of Women at Marriage | 17.1 | 20.3 | 22.7 | 19.4 |
| Deliveries Aided by Skilled Attendants (%) | 9.7 | 44.3 | 56.4 | 37.8 |
| Maternal Mortality Ratio (per 100,000 live births)* | 1,800 | 1,300 | 240 | 1,100 |
| Women Who have Died from Unsafe Abortion (1995-2000)** | 24,969 | 9,051 | 1,908 | 9,947 |
| Contraceptive Prevalence Rates - Modern Methods (% women 15-49) | 6.3 | 31.5 | 50.4 | 18.2 |
| Unmet Need for Family Planning (%) | 35.8 | 23.9 | 10.2 | 34.6 |
| Female Life Expectancy at Birth | 45.36 | 53.21 | 70.85 | 42.50 |
| Adult Female Illiteracy Rate | 68.96 | 23.98 | 14.76 | 43.16 |
| Population Living Below \$1/Day (%) | 31.3 | 26.5 | 15.5 | n/a |
| Infant Mortality Rate (per 1,000 live births) | 114.82 | 64.66 | 45.00 | 106.47 |

Source: United Nations Population Fund, *Population and Reproductive Health Country Profiles 2003*, available at <http://www.unfpa.org/profile/default.cfm>.

* By way of comparison, the annual maternal mortality ratio in the United States is approximately 7.5 maternal deaths per 100,000 live births. See Centers for Disease Control, *National Center for Health Statistics Report for 1982-1996*, available at: <http://www.cdc.gov/epo/mmwr/preview/mmwrhtml/00054602.htm#00001778.gif>.

****Source:** Global Health Council, *Promises to Keep: The Toll of Unintended Pregnancies on Women's Lives in the Developing World* (2002), available at <http://www.globalhealth.org/news/article/2319>.

Unsafe abortion is a leading cause of maternal mortality in Uganda—one of the highest. It causes 30-40% of gynecological or obstetric complications. This is the justification that people use to lobby for legalizing abortion.

Cooperating Agency, Uganda

Data on the actual magnitude of unsafe abortion in Ethiopia is not available mainly because of the clan-

destine nature of the procedure and the poorly developed health information system. Facility-based studies in Addis Ababa have demonstrated that abortion related deaths exceed 30%. In Gambella Hospital, which serves a rural area in Ethiopia, patients with abortion complications constituted 70% of all admissions to the gynecological ward.

Draft Government Document, Ethiopia⁷⁰

LIMITED ACCESS TO FAMILY PLANNING SERVICES DENIES WOMEN CONTROL OVER THEIR FERTILITY

Limited access to family planning services, counseling and contraceptive methods, especially among low-income, rural and young women, leads to high levels of unwanted pregnancy. In **Ethiopia**, a lack of contraceptive methods and poor distribution channels means that only 8.1% of women report using any method of contraception and only 6.3% use a modern method.⁷¹ Laws that restrict the supply and manufacture of contraceptives in **Kenya** contribute to a low contraceptive prevalence rate of 39% among married women, with only 31.5% using modern methods.⁷² Young women in **Kenya** have particular difficulty accessing contraceptives because of reported “unfavorable attitudes” toward sexually active youth by health-care providers and family planning clinics.⁷³

In **Uganda**, financial and geographic barriers hamper women’s access to family planning services and contraceptive methods: the average Ugandan woman lives almost 12 miles from a family planning facility.⁷⁴ This is reflected in low contraceptive prevalence rates throughout the country and a high unmet need: only 18.2% of Ugandan women report using a modern method of contraception, while there is a 34.6% unmet need for family planning services.⁷⁵ Peruvian women face similar difficulties accessing family planning services, resulting in more than 860,000 women without adequate contraceptive protection.⁷⁶

POVERTY, SEXUAL VIOLENCE AND PATRIARCHAL NORMS COMPROMISE WOMEN'S LIVES

Cultural practices that are harmful to women and girls, domestic and sexual violence against women, and women’s low socioeconomic status in each of the four countries under study also contribute to high rates of unwanted pregnancy. In **Ethiopia** and **Uganda**, for example, early marriages are common; the average age of marriage

for women is 17.1 and 19.4 respectively.⁷⁷ Young girls and women are usually subordinate to their older spouses and often have limited power to access family planning services or make decisions about their fertility. In all countries, violence against women restricts women’s ability to control the frequency and timing of sex.

Abduction for the purposes of wife acquisition persists in **Ethiopia**, and it is estimated that in the southern regions up to 80% of marriages result from abductions.⁷⁸ In Lima, **Peru**, a recent survey found that 48.4% of women had experienced some form of violence, and 22.5% had experienced sexual violence from an intimate partner. In Cuzco and rural areas of **Peru**, the incidence of physical and sexual violence perpetrated by intimate partners is even higher.⁷⁹ In **Kenya**, the Penal Code does not prohibit marital rape and sexual harassment is pervasive in schools and universities, while in conflict-ridden **Uganda**, rape has been used as a weapon of war.⁸⁰ Many women suffer from unwanted pregnancies as a result of sexual violence and many turn to abortion as a last resort, despite its illegality.

These social conditions, combined with widespread poverty, mean that unsafe abortion is often the only alternative for women faced with unwanted pregnancies in each of the four surveyed countries. Due to an increasing recognition of the public health problems posed by unsafe abortion in these countries, the medical community, governments and other advocates are taking preliminary steps to reduce abortion-related deaths and injuries. In **Ethiopia**, the Ministry of Justice has prepared a draft law that would liberalize the country’s currently restrictive abortion laws.⁸¹ In **Kenya** and **Uganda**, public discussion about unsafe abortion and the need for abortion law reform is beginning to take place.⁸² In contrast, despite efforts by women’s rights organizations, the government in **Peru** has recently considered adopting a constitutional clause further restricting abortion.

International Commitments

Over the past decade, the international community has increasingly recognized the public health crisis posed by unsafe abortion and has taken steps to ensure that when women do have abortions, they are safe. At the 1994 International Conference on Population and Development (ICPD), governments from 179 countries, including the United States, noted that a “significant proportion of the abortions carried out are self-induced or otherwise unsafe, leading to a large fraction of maternal deaths or to permanent injury to the women involved.”⁸³ They agreed “to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services.”⁸⁴ They committed to reduce the incidence of abortion-related mortality by ensuring that all legal abortions are performed under safe conditions, and by guaranteeing women’s access to “quality services for the management of complications arising from abortion” including post-abortion counseling, education and family planning services.

One year later at the Fourth World Conference on Women, 181 governments again committed to reduce the mortality and morbidity that stems from unsafe abortion. Calling unsafe abortion a “grave public health problem” and noting that “it is primarily the poorest and youngest who take the highest risk,” the international community recognized that “[m]ost of these deaths, health problems and injuries are preventable through improved access to adequate health-care services, including safe and effective family planning methods and emergency obstetric care.”⁸⁵ Most important, the international community recommended that governments “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.”⁸⁶

At the five-year review of the implementation of the ICPD Programme of Action in 1999, govern

ments committed to “train and equip health-service providers” and “take other measures to ensure that [legal] abortion is safe and accessible.”⁸⁷

At each of these conferences, the international community observed that “measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process,” leaving it up to individual countries to decide the legal status of abortion within their own borders.⁸⁸ In keeping with these international commitments, the World Health Organization issued guidance for health systems in 2003, “to ensure access to good quality abortion services as allowed by law.”⁸⁹

The global gag rule is in direct opposition to the calls to action in the conference documents. Numerous additional international human rights principles endorsed by the United States and the international community are also violated by the global gag rule, which stifles debate about abortion and forbids the provision of abortion services even where they are legal. Freedom of expression (including the right to impart and receive information), freedom of association and freedom from discrimination based on political opinion are all rights protected by customary international law, as well as the U.S. Constitution. These basic rights are reflected and embodied in a number of treaties and agreements endorsed by the U.S., including the **International Covenant on Civil and Political Rights**, the **Universal Declaration of Human Rights**, the **American Declaration on the Rights and Duties of Man**, the **Vienna Declaration and Programme of Action**, **World Conference on Human Rights**.⁹⁰

Conclusion

This report gives a voice to NGOs in countries where the global gag rule has impeded their efforts to slow down spiraling rates of unsafe abortion. As far as we know, this research is the most comprehensive survey of the rule's impact on gagged organizations and exemplifies what is happening in many of the sixty countries dependent on USAID family planning funds. The harms we identify have been difficult to document because of the gag rule's chilling effect on free speech. Our findings, nevertheless, reveal a clear pattern of damage to the work of groups struggling to save women's lives.

As we have shown, the global gag rule helps perpetuate unsafe abortion in countries with restrictive abortion laws and limited access to safe abortion services. Although NGOs in each of the four countries we studied are acutely aware of the tragic effects of unsafe abortion, the Bush Administration's gag rule is impeding their ability to address this largely preventable health crisis.

For the sake of women's health and lives, women's rights, freedom of speech and the development of democracy, the Center for Reproductive Rights urges the U.S. government to repeal the global gag rule.

October 2003

Appendix

Appendix

PARTIAL TEXT OF MEXICO CITY POLICY MANDATES FOR “GRANTS AND COOPERATIVE AGREEMENTS WITH NON-U.S., NONGOVERNMENTAL ORGANIZATIONS”

Paragraph (e) is replaced by the following paragraphs (e) and (f), which are to be included in the Standard Provision for grants and cooperative agreements with non-United States, nongovernmental organizations:

“(e) Ineligibility of Foreign Nongovernmental Organizations that perform or actively promote abortion as a method of family planning.

- (1) The recipient certifies that it does not now and will not during the term of this award perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (e), a foreign nongovernmental organization is a nongovernmental organization that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

- (13) The following definitions apply for the purposes of paragraph (e):
 - (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother but does not include 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).
 - (ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals that do not include abortion in their family planning programs. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
 - (iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.
 - (A) This includes, but is not limited to, the following:
 - (I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;
 - (II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clear-

- ly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely);
- (III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and
 - (IV) Conducting a public information campaign in USAID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.
- (B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest or if the life of the mother would be endangered if the fetus were carried to term. Also excluded from this definition is the treatment of injuries or illness caused by legal or illegal abortions, for example, post-abortion care.
 - (C) Action by an individual acting in the individual's own capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent the individual is acting on behalf of the organization.
- (iv) To furnish assistance for family planning to a foreign nongovernmental organization means to provide financial support under this award to the family planning program of the organization, and includes the transfer of funds made available under this awards or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient, subrecipient or sub-subrecipient.
 - (v) To control and organization means the possession of the power to direct or cause the direction of the management and policies of an organization.
- (14) In determining whether a foreign nongovernmental organization is eligible to be a recipient, subrecipient or sub-subrecipient of assistance for family planning under this award, the action of separate nongovernmental organizations shall not be imputed to the recipient, unless, in the judgment of USAID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (e). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request USAID's approval to treat as separate the family planning activities of two or more organizations, which would not be considered separate under the preceding sentence, if the recipient believes, and provides a written justification to USAID therefore, that the family planning activities of the organizations are sufficiently distinct so as to warrant not imputing the activity of one of the other.
 - (15) Assistance for family planning may be furnished under this award by a recipient, subrecipient or sub-subrecipient to a foreign government even though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in

a segregated account to ensure that such funds may not be used to support the abortion activity of the government.

- (16) The requirements of this paragraph are not applicable to child spacing assistance furnished to a foreign nongovernmental organization that is engaged primarily in providing health services if the objective of the assistance is to finance integrated health care services to mothers and children and child spacing is one of several health care services being provided by the organization as part of a larger child survival effort with the objective of reducing infant and child mortality.
- (f) The recipient shall insert paragraphs (a), (b), (c), (d) and (f) of this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported in whole or in part from funds under this award. Paragraph (e) shall be inserted in subagreements and sub-subagreements in accordance with the terms of paragraph (e). The term subagreements means subgrants and sub-cooperative agreements.”

ENDNOTES

- 1 See Press Release, Ipas, African health leaders, lawyers, women's advocates call for action to save women's lives from unsafe abortion (Mar. 17, 2003), available at http://www.ipas.org/english/press_room/2003/releases/03172003a.html (last visited Sept. 7, 2003).
- 2 Copy of the January 22, 2001, Presidential Memorandum on file with the Center for Reproductive Rights. President Bush issued a Presidential Memorandum implementing the policy on March 28, 2001. "Memorandum of March 28, 2001 – Restoration of the Mexico City Policy – White House Memorandum for the Acting Administrator of the U.S. Agency for International Development (Revised)," [CIB 01-08 (R)], 66 Fed. Reg. 17,303 (Mar. 29, 2001). Available on the USAID website at http://www.usaid.gov/procurement_bus_opp/procurement/cib/pdf/cib0108r.pdf.
- 3 On August 29, 2003, President Bush issued another White House memorandum expanding the global gag rule to cover "all assistance for voluntary population planning" furnished by any component of the U.S. State Department, on file with the Center for Reproductive Rights.
- 4 See Anika Rahman, Laura Katzive and Stanley K. Henshaw, *A Global Review of Laws on Induced Abortion, 1985-1997*, 24 INT'L FAM. PLAN. PERSPECTIVES 56 (1998), available at <http://www.guttmacher.org/pubs/journals/2405698.html>.
- 5 In 2000, the four countries ranked in the top 16 countries supported by USAID family planning and health funding, in descending order of level of funding: Peru, Ethiopia, Kenya and Uganda. U.S. Agency for International Development (USAID), *Global Health, Top 16 Supported Countries for PHN FY 2000*, at http://www.usaid.gov/pop_health/pop/funding/countries.html (last visited Aug. 27, 2003).
- 6 *Supra* note 2, see appendix for an excerpt of the restrictions imposed upon foreign NGOs. Although the global gag rule contains certain exceptions (for example, NGOs are allowed to provide abortions in cases of rape, incest or life endangerment), to our knowledge these exceptions have never been used. Additionally, while this study was not intended to investigate whether gagged NGOs are in compliance with the global gag rule, the researchers found no instances of non-compliance, but instead documented that NGOs were over-complying with the global gag rule, resulting in even greater censorship and withholding of information and medical services than is technically required.
- 7 22 U.S.C.A. 2151(b)(f)(1).
- 8 See Assistance for Voluntary Population Planning, 68 Fed. Reg. 52,323 (Aug. 29, 2003).
- 9 In the summer of 2001, the Center for Reproductive Rights, formerly known as the Center for Reproductive Law and Policy (CRLP) brought a challenge against the global gag rule, suing the President, Secretary of State and Administrator of the United States Agency for International Development. In the case, *CRLP v. Bush*, the Center charged that the global gag rule's censorship of NGOs directly interferes with the ability of the Center's legal advisors to advocate for abortion law reform in the U.S. and internationally, in violation of their rights to free speech protected by the First Amendment and international law. Unfortunately, the suit was dismissed in September 2002 by the U.S. Court of Appeals for the 2nd Circuit, which held that the plaintiffs – international human rights lawyers based in the U.S. – lacked standing to challenge the global gag rule.
- 10 See W. Cates, Jr., D. A. Grimes and K. F. Schulz, *The Public Health Impact of Legal Abortion: 30 Years Later* 35 PERSP. ON SEXUAL & REPROD. HEALTH 25 (Jan/Feb 2003).
- 11 *Id*
- 12 *Id*
- 13 CENTER FOR DEMOCRACY AND GOVERNANCE, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID), CONDUCTING A DG ASSESSMENT: A FRAMEWORK FOR STRATEGY DEVELOPMENT 49-50 (2000), available at <http://www.usaid.gov/democracy/pdfs/pnach305.pdf> (last visited Sept. 5, 2003).
- 14 CENTER FOR DEMOCRACY AND GOVERNANCE, USAID, DEMOCRACY AND GOVERNANCE: A CONCEPTUAL FRAMEWORK 16 (1998), available at <http://www.usaid.gov/democracy/pdfs/pnaccd395.pdf>.
- 15 *Supra* note 2.
- 16 See *DKT Memorial Fund v. U.S. Agency for International Development*, 887 F.2d 275, 307-308. Under the 1973 Helms Amendment, no U.S. funds can be used for abortion-related services. 22 U.S.C.A. 2151(b)(f)(1).
- 17 The Ethiopian office of one major cooperating agency, which provides reproductive health assistance to local NGOs, indicated that it would like to advocate for law reform to permit legal abortion for pregnancies resulting from... incest, which is a significant problem. However, if felt constrained from doing so because the global gag rule contains no explicit exemption for such advocacy, but only for abortion services concerning such pregnancies. The office

- also stated that it would only be able to address abortions for health reasons if the health risk constitutes a “life threatening” situation. Interview with Cooperating Agency, Ethiopia.
- 18 Interview with International NGO, Ethiopia.
- 19 Interview with Cooperating Agency, Uganda.
- 20 The Peruvian constitution already contains a clause protecting “the conceived.” The new amendment would give the prohibition against abortion added constitutional weight. However, the allowance for abortion under “the exceptions allowed for by the law” modifying the ban may permit advocates to work incrementally to add legal exemptions for abortion.
- 21 Interview with NGO, Ethiopia.
- 22 *Id.*
- 23 See e.g. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948). Article 21 of the Universal Declaration of Human Rights provides that “the will of the people shall be the basis of the authority of government.” Illustrating the growing acceptance of the benefits of democratic systems, today, more than 68% of the world’s population resides in a country with some level of democracy, compared with 46% two decades ago. UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 2002 14 (2002). Democratic governments have been hailed as the “only political regime compatible with human development. . . .” See *id.*, at 55. See also *supra* note 1, available at <http://www.usaid.gov/democracy/pdfs/pnacd395.pdf>. According to the Universal Declaration on Democracy, adopted by the Inter-Parliamentary Union in 1997, “[a]s an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster . . . economic and social development of the community, strengthen the cohesion of society and enhance national tranquility, as well as to create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.” Universal Declaration on Democracy, Inter-Parliamentary Council 161st Sess., Cairo, art. 3 (Sept. 16, 1997), available at <http://www.ipu.org/cnl-e/161-dem.htm> (last visited Sept. 5, 2003). Nobel-laureate economist Amartya Sen explains that democracies play a “constructive role” toward development by facilitating free and open public debate. See UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT (2002) at 58-59.
- 24 See LARRY DIAMOND, CIVIL SOCIETY AND THE DEVELOPMENT OF DEMOCRACY 2-3 (1997), available at www.march.es/ciencia/archivos/1997_101.pdf (last visited Sept. 5, 2003).
- 25 See Peter Willetts, *What is a Non-Governmental Organization?* in ENCYCLOPAEDIA OF LIFE SUPPORT SYSTEMS (Ed: UNESCO), Art. 1.44.3.7 (2002), available at <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM> (last visited Sept. 5, 2003).
- 26 United States Agency for International Development (USAID), *This is USAID*, available at http://www.usaid.gov/about_usaid/ (last visited Sept. 5, 2003).
- 27 *Supra* note 14 at 15.
- 28 “From a purely democracy perspective, non-governmental organizations (NGOs) typically . . . “aggregate interests” to meet common needs and advance a common cause [and] advance that common cause by “petitioning” government to do so with public funds and/or they monitor the actions of government.” CENTER FOR DEMOCRACY AND GOVERNANCE, USAID, CONDUCTING A DG ASSESSMENT: A FRAMEWORK FOR STRATEGY DEVELOPMENT 4 (2000), available at <http://www.usaid.gov/democracy/pdfs/pnach305.pdf>. See Center for Democracy and Governance, USAID, *Agency Objectives*, available at <http://www.usaid.gov/democracy/dgso.html> (last visited Sept. 5, 2003).
- 29 *Supra* note 14 at 15.
- 30 *Supra* note 13 at 4.
- 31 Interview with Cooperating Agency, Uganda.
- 32 Although health-care workers are allowed under the global gag rule to provide abortions for victims of rape and incest, they are not permitted to provide victims with information or counseling about abortion – even to let her know that abortion is an available option – unless the victim “clearly states that she has already decided to have a legal abortion.” White House Memorandum, March 28, 2001, II(e)(13)(iii)(A)(II).
- 33 Interview with Cooperating Agency, Uganda.
- 34 Interview with International NGO, Kenya. See also, WORLD BANK, 2002 WORLD DEVELOPMENT INDICATORS 29 (2002).
- 35 See DELICIA FERRANDO, FLORA TRISTAN AND PATHFINDER INTERNATIONAL, CLANDESTINE ABORTION IN PERU: FACTS AND FIGURES 2002 20 (2002): “350,000 Peruvian women annually submit to illegal and often unsafe abortions. Complications as a result of unsafe abortions and hemorrhaging are amongst the top reasons for the exceptionally high maternal mortality rate in Peru, the third highest in South America.” Peru has a maternal mortality rate of 240 deaths per 100,000 live births. See WORLD HEALTH ORGANIZATION, MATERNAL MORTALITY IN

- 1995: ESTIMATES DEVELOPED BY WHO, UNICEF, UNFPA 44 (2000).
- 36 *Id.*
- 37 See PENAL CODE arts. 528-535 (Eth.); PENAL CODE, art. 240 (Kenya); PENAL CODE, art. 114-120 (Peru). A respondent in Uganda also understood the law to allow legal abortion in the case of fetal impairment; however, the law was unclear to many respondents. See Interview with NGO, Kampala, Uganda.
- 38 The global gag rule technically does not apply to HIV/AIDS funding; however, any organization subject to the gag rule restrictions that also provides HIV/AIDS services to its patients is forbidden from providing abortion-related services, including counseling and referrals, to those patients.
- 39 See letter dated March 14, 2003, calling for integrated sexual and reproductive health services, to President George W. Bush from 315 health care providers, as well as researchers, religious leaders, advocates and HIV-positive women from around the world (on file with the Center for Reproductive Rights). This letter was sent in opposition to a proposed expansion of the global gag rule to U.S. HIV/AIDS assistance.
- 40 WORLD HEALTH ORGANIZATION (WHO), FACT SHEET 10: WOMEN AND HIV AND MOTHER TO CHILD TRANSMISSION (2000), available at http://www.who.int/health-services-delivery/hiv_aids/English/fact-sheet-10/index.html (last visited Sept. 5, 2003). UNICEF fact-sheet on mother-to-child transmission, February 2002, at <http://www.unaids.org/en/in+focus/topic+areas/reproductive+health.asp>; and “Pediatric HIV infection and AIDS,” UNAIDS Point of View, September 2002, at <http://www.unaids.org/en/in+focus/topic+areas/mother-to-child+transmission.asp>.
- 41 See Rachel L. Swarns, *U.S. Cuts Off Financing for AIDS Program, Provoking Furor*, NY TIMES (Aug. 27, 2003). See *id.* Although the White House Memorandum issued August 29, 2003, explicitly exempts “foreign assistance furnished pursuant to the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108-25),” this exemption does not extend to other HIV/AIDS funds.
- 42 See UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID), POPULATION BRIEFS: FAMILY PLANNING 2001 1 (2001), available at www.usaid.gov/pop_health/pop/publications/docs/fpfund.pdf (last visited Sept. 5, 2003).
- 43 Interview with International NGO, Peru.
- 44 Correspondence with NGO, Peru.
- 45 *Id.*
- 46 Interview with coalition participant, Ethiopia.
- 47 *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, ¶ 8.19, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*]. *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, ¶ 98, U.N. Doc. A/CONF.177/20, (1995) [hereinafter *Beijing Declaration and Platform for Action*]. *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, U.N. GAOR, 21st Special Sess., New York, United States, June 30 - July 2, 1999, ¶ 63(iii) U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter *ICPD+5 Key Actions Document*].
- 48 *Supra* note 2.
- 49 Interview with government official, Ethiopia.
- 50 *Id.*
- 51 Application of the global gag rule domestically would be an unconstitutional violation of the organizations’ right to free speech under the U.S. Supreme Court’s decision in *Rust v. Sullivan*, 111 S. Ct. 1759, 1774-1776 (1991) (reiterating support in *dicta* for the “unconstitutional 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 prohibiting the recipient from engaging in the protected conduct [such as free speech] outside the scope of the federally funded program.” (emphasis 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 Communications Commission v. League of Women Voters of Cal.*, 104 S.Ct. 3106, 3128 (1984) (holding that federal law “barr[ing] absolutely” non-commercial radio stations receiving federal funds from editorializing – even when editorial activity is financed with “wholly private funds” – violates the First Amendment). The Supreme Court has disfavored 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 Comm’n*, 514 US 334, 347 (1995).
- 52 See ALAN GUTTMACHER INSTITUTE, SHARING RESPONSIBILITY: WOMEN, SOCIETY AND ABORTION WORLDWIDE 32 (1999), available at <http://www.guttmacher.org/pubs/sharing.pdf>.

- 53 See World Health Organization, *Address Unsafe Abortion* (Apr. 7, 1998), at http://www.who.int/archives/whday/en/pages1998/whd98_10.html (last visited Aug. 27, 2003).
- 54 See WORLD HEALTH ORGANIZATION, UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF INCIDENCE OF AND MORTALITY DUE TO UNSAFE ABORTION WITH A LISTING OF AVAILABLE COUNTRY DATA 4 (1997).
- 55 *Supra* note 52 at 32.
- 56 *Supra* note 52 at 38.
- 57 *Supra* note 52 at 35-38.
- 58 *Supra* note 54 at 14.
- 59 *Supra* note 10. See also *supra* note 54 at 3-4.
- 60 See Joyce Namutebi, *Legalise Abortion, Says Ambassador*, NEW VISION (Jan. 9 2003), available at <http://www.newvision.co.ug/detail.php?mainNewsCategoryId=8&newsCategoryId=13&newsId=107802> (last visited Aug. 27, 2003).
- 61 PENAL CODE arts. 528-535 (Eth.); PENAL CODE, art. 114-120 (Peru). In both countries, the term of punishment may be mitigated if the pregnancy has been terminated in account of rape. In Ethiopia “an exceptionally grave state of physical or mental distress,” incest and extreme poverty, and in Peru nonconsensual artificial insemination, or fetal abnormalities, are also mitigating factors. See Penal Code, art. 533 (Eth.); Penal Code, art. 120 (Peru).
- 62 PENAL CODE, art. 534 (Eth.). A particularly devastating instance of discretionary misuse was evidenced in a Peruvian case involving a young woman carrying a anencephalic fetus, a condition where the fetus lacks most or all of a forebrain, who was denied an abortion by the public hospital’s director. On January 13, 2002, she gave birth to the infant, and was forced to breast feed the newborn for four days before its inevitable death. See Press Release, Center for Reproductive Rights, UN Human Rights Committee Petitioned with Reproductive Rights Case (Nov. 26, 2002), available at http://www.reproductiverights.org/pr_02_1126peru.html (last visited Aug. 26, 2003).
- 63 See PENAL CODE, art. 158-160, 240 (Kenya); PENAL CODE, art. 136-138, 217 (Uganda).
- 64 See UNITED NATIONS POPULATION DIVISION, ABORTION POLICIES: A GLOBAL REVIEW 86-87 (2002).
- 65 See Ipas, *Ethiopia Country Report*, at http://www.ipas.org/english/where_ipas_works/africa/ethiopia/index.pdf (last visited Aug. 8, 2003).
- 66 See MINISTRY OF HEALTH, GOVERNMENT OF KENYA, PUBLIC EXPENDITURE REVIEWS 2003 2 (2003). With an estimated 13,000 maternal deaths occurring in Kenya each year, a 40% mortality rate from unsafe abortion results in an estimated 5,200 annually. See WORLD HEALTH ORGANIZATION, MATERNAL MORTALITY IN 1995: ESTIMATES DEVELOPED BY WHO, UNICEF, UNFPA 44 (2000).
- 67 CENTRE FOR THE STUDY OF ADOLESCENCE, UNSAFE ABORTION AMONG ADOLESCENTS AND YOUTH IN KENYA (2001), available at <http://www.adolescencekenya.org/facts-abortion.htm> (last visited Sept. 7, 2003).
- 68 *Supra* note 35.
- 69 KARUNGARI KIRAGU, MICHAEL KITYO GALIWANGO, HAM MUKASA MULIRA, EMMANUEL SEKATAWA, PROMOTING REPRODUCTIVE HEALTH IN UGANDA: EVALUATION OF A NATIONAL IEC PROGRAM 65 (1996), available at <http://www.jhuccp.org/pubs/fr/77.pdf> (last visited Aug. 27, 2003). See UNITED NATIONS POPULATION DIVISION, ABORTION POLICIES: A GLOBAL REVIEW 148-149 (2002).
- 70 Ministry of Health, Ethiopia. *PAC Guideline for Health Service Providers in Ethiopia*, Draft (May 2002) (on file with the Center for Reproductive Rights).
- 71 See United Nations Population Fund, *Country Profiles: Ethiopia*, at <http://www.unfpa.org/profile/ethiopia.cfm> (last visited Aug. 27, 2003).
- 72 See CENTER FOR REPRODUCTIVE RIGHTS & THE INTERNATIONAL FEDERATION OF WOMEN’S LAWYERS – KENYA, WOMEN OF THE WORLD: LIVES AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, ANGLOPHONE AFRICA 61 (1997). See United Nations Population Fund, *Country Profiles: Kenya*, at <http://www.unfpa.org/profile/kenya.cfm> (last visited Aug. 27, 2003).
- 73 See MINISTRY OF HEALTH, IMPLEMENTATION PLAN FOR THE NATIONAL REPRODUCTIVE HEALTH STRATEGY 1999-2003 17 (1999).
- 74 See Marie Stopes International, *Uganda*, at <http://www.mariestopes.org.uk/ww/uganda.htm> (last visited Aug. 29, 2003).
- 75 See United Nations Population Fund, *Country Profiles: Uganda*, at <http://www.unfpa.org/profile/uganda.cfm> (last visited Aug. 27, 2003).
- 76 *Supra* note 35 at 15.
- 77 See United Nations Population Fund, *Country Profiles: Ethiopia*, at <http://www.unfpa.org/profile/ethiopia.cfm>; United Nations Population Fund, *Country Profiles: Uganda*, at <http://www.unfpa.org/profile/uganda.cfm> (last visited Aug. 27, 2003).
- 78 *Supra* note 72 at 24.
- 79 See ANA GÜEZMOS, NANCY PALOMINO & MIGUEL RAMOS, VIOLENCIA SEXUAL Y FÍSICA CONTRA LAS MUJERES EN EL PERÚ [SEXUAL AND PHYSICAL VIOLENCE AGAINST WOMEN IN PERU] 101 (2002).
- 80 See AMNESTY INTERNATIONAL, KENYA: RAPE—THE INVISIBLE CRIME 8 (2002), available at

- <http://web.amnesty.org/library/Index/ENGAFR320012002?open&of=ENG-KEN> (last visited Sept. 5, 2003); Juliana Omale, *Tested to Their Limit*, in *NO PARADISE YET: THE WORLD'S WOMEN FACE THE NEW CENTURY* 20, 22 (Judith Mirsky and Marty Radlett, eds. 2000); HUMAN RIGHTS WATCH. *ABDUCTED AND ABUSED: RENEWED CONFLICT IN NORTHERN UGANDA* 28, 45 (2003).
- 81 See Memorandum from Meaza Ashenafi, Ethiopian Women Lawyers' Association, to Maryse Fontus, Staff Attorney, Center for Reproductive Law and Policy (Apr. 9, 2001) (on file with the Center for Reproductive Rights).
- 82 For Kenya see *Women Body Calls For Law Relaxation* PANA (Mar. 18, 1999), available at <http://www.hartford-hwp.com/archives/36/030.html> (last visited Sept. 12, 2003). *Kenya: Abortion Still a Problem, Says Ngilu*, PLANETWIRE, available at http://ippfnet.ippf.org/pub/IPPF_News/News_Details.asp?ID=2728 (last visited Sept. 12, 2003). For Uganda see *Uganda Physicians And Church Leaders Clash Over Abortion*, MARANATHA CHRISTIAN J (Apr. 21, 2000), available at <http://www.mcjonline.com/news/00/20000421d.htm> (last visited Sept. 12, 2003); *Legalise Abortion, Says Ambassador*, NEW VISION (Jan. 9, 2003).
- 83 *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, ¶ 8.19, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].
- 84 *Id.* at 8.25.
- 85 *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, ¶ 98, U.N. Doc. A/CONF.177/20, (1995) [hereinafter *Beijing Declaration and Platform for Action*].
- 86 *Id.* at 106(k).
- 87 *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, U.N. GAOR, 21st Special Sess., New York, United States, June 30 - July 2, 1999, ¶ 63(iii) U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter *ICPD+5 Key Actions Document*].
- 88 *ICPD Programme of Action*, ¶ 8.19; *Beijing Declaration and Platform for Action*, ¶ 107(k); *ICPD+5 Key Actions Document*, ¶ 63(i); *Beijing +5 Review Document*, ¶ 72(o).
- 89 World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, Geneva (WHO, 2003).
- 90 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948); American Declaration of Rights and Duties of Man, O.A.S. Off. Rec. OEA/Ser.L/V/II.82 doc. 6, rev. 1, at 17 (1948); *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Vienna, Austria, June 14-25, 1993, U.N. Doc. A/CONF.157/23 (1993).

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