



**Global
Justice Center**

Human Rights Through the Rule of Law

**Global Justice Center Suggested List of Issues to Country Report Task Force
on the United States of America, Human Rights Committee**

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Human Rights Through The Rule Of Law

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I. Reporting Organization: Global Justice Center

The Global Justice Center (“GJC”) is a New York based human rights organization with consultative status to the United Nations. The GJC works with judges, parliamentarians and civil society leaders on the strategic and timely enforcement of international equality guarantees.

II. Issue Summary: Suppression of abortion speech, article 2 (legal obligations under the covenant); article 19 (freedom of expression)

The Helms Amendment to the Foreign Assistance Act of 1961 prohibits the use of U.S. foreign assistance funding to “motivate” abortion,¹ which applies to “information, education, training, or communication programs...” about abortion, including political speech² and applies to all foreign assistance funds.³ The Siljander Amendment prohibits the use of foreign assistance funding to lobby for or against abortion.⁴ Together, these restrictions impermissibly censor free speech in violation of funding recipients’ freedom of expression and contravene efforts to bring countries into compliance with their obligations under the International Covenant on Civil & Political Rights (“ICCPR”) and have the impact of denying necessary, and protected, medical services to women globally, including girls and women raped in armed conflict.

The imposition of abortion speech censorship on U.S. funding violates the U.S.’s obligations under Article 2 and Article 19 of the ICCPR and undermines implementation of human rights treaty obligations by other State Parties. Furthermore, the restrictions deny U.S. foreign assistance recipients - including foreign governments - the benefit of the complete framework of international human rights law, including those enshrined in the ICCPR, in their democracy and development, and reproductive health and family planning programs.

This Committee has found that the Article 2(1) obligations not only require states to refrain from violations of recognized rights, but also restrict rights only where the restrictions are related to legitimate aims and are proportionate to those aims.⁵ The restrictions may also not in any way impair the essence of Covenant rights,⁶ and with respect to restrictions on the freedom of speech, must be “formulated with sufficient provision to enable an individual to regulate his or her conduct

¹ Helms Amendment to the Foreign Assistance Act, Section 104(f)(1) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2151b(f)(1)), as amended by the Foreign Assistance Act of 1973 (P.L. 93-189), approved December 17, 1973.

² USAID, Policies Relative to Abortion-Related Activities (June 10, 1974).

³ USAID, Family Planning Guiding Principles and U.S. Legislative and Policy Requirements, http://www.usaid.gov/our_work/global_health/pop/restrictions.html. *See also*, Kaiser Family Foundation, The U.S. Government and International Family Planning and Reproductive Health (May 2010) (“Since 1973, U.S. law, though the Helms Amendment, has prohibited the use of foreign assistance for abortion as a method of family planning or to motivate or coerce any person to practice abortion.”), available at: http://pdf.usaid.gov/pdf_docs/PCAAC151.pdf. *See e.g.*, Strategic Objective Grant Agreement Between the United States of America and the Islamic Republic of Afghanistan for the Strategic Objective of a Democratic Government with Broad Citizenship Participation. September 19, 2005 USAID Grant Agreement No. SOAG-06-00.

⁴ Siljander Amendment, FY 2006 Appropriations Act, Title II, "Child Survival and Health Programs Fund.

⁵ Human Rights Committee, General Comment 31, ¶6, U.N. Doc. CCPR/21/Rev. 1/Add.13 (26 May 2004).

⁶ *Id.*

accordingly.”⁷ Vague statutes, like the Helms Amendment, “create an unacceptable risk of official censorship because they invite arbitrary and discriminatory enforcement.”⁸ The Helms Amendment’s “motivate” provision is vague, thereby “chilling” or stifling legal speech due to the uncertainty of whether it is permissible under the statute and is not sufficiently precise as required by Article 19(3).

These abortion restrictions censor the speech of individuals and organizations domestically, as well as individuals, governments and organizations abroad, giving the restrictions extraterritorial reach. The HRC has consistently held that in special circumstances, persons may fall under the subject matter jurisdiction of a state party even when outside that state’s territory,⁹ including circumstances in which a State Party has effective control over an individual as it pertains to certain substantive rights protected by the Covenant,¹⁰ such as abortion.

Under article 19 of the ICCPR, everyone has the right to freedom of expression. U.S. abortion restrictions, including the Helms Amendment, infringe upon that right to “to seek, receive and impart information and ideas of all kinds.” Funding recipients are prohibited from expressing any ideas that “motivate” or “lobby” for abortion, and women are therefore unable to receive information regarding abortion, which is a right under the Covenant. For example, in a Congressional Hearing on Radio in Africa, a senior USAID official admitted that the Helms Amendment precludes any USAID funded radio shows or programs in Africa from speech aimed at changing, or even discussing, local laws regarding abortion.¹¹ Such a prohibition clearly and directly violates the right of expression of African radio to “impart information and ideas of all kinds.” The use of foreign aid to create circumstances that completely ban a particular category of speech related to legal reform is in clear violation of U.S. obligations to respect and protect the freedom of expression under the ICCPR.

Under article 2(1) of the ICCPR, the United States has a legal obligation to protect all rights guaranteed by the Covenant and such rights are owed not only to individuals, but also to other State Parties to the Covenant.¹² In this context, U.S. abortion speech restrictions impede the realization of rights guaranteed by ICCPR by other State Parties, including obligations relating to the right to abortion and obligations to eliminate structural barriers to women’s rights, such as criminal abortion laws. Given that the U.S. is the largest bilateral donor to rule of law and governance programs,¹³

⁷ Human Rights Committee, General Comment 34, ¶25, U.N. Doc. CCPR/C/GC/34 (12 Sept. 2011).

⁸ Keith Werhan, Freedom of speech: a reference guide to the United States Constitution 146 (2004) (citing *Smith v. Goguen*, 415 U.S. 566 (1974)).

⁹ Human Rights Committee, Concluding Observations to the United States, U.N. Doc. CCPR/C/79/Add.50. (1995) (*The Committee does not share the view expressed by the Government that the Covenant lacks extraterritorial reach under all circumstances. Such a view is contrary to the consistent interpretation of the Committee on this subject, that, in special circumstances, persons may fall under the subject-matter jurisdiction of a State party even when outside the State’s territory.*).

¹⁰ Human Rights Committee, Communication No. 196/1985, *Ibrahima Gueye et. al. v. France*, U.N. Doc. CCPR/C/35/D/196/1985 (6 Apr. 1989).

¹¹ Role of Radio in Africa: Hearing before the Subcomm. on African Affairs of the S. Comm. on Foreign Relations, 14th Cong. 2 (1996) (Statement of Carol A. Peasley, Deputy Assistant Administrator for Africa, USAID).

¹² General Comment 31, ¶2, *supra* note 5.

¹³ USAID, DCHA/DG User’s Guide to DG Programming (Nov. 2010), available at: http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/DG_UserGuide_November10.pdf.

family planning and reproductive health programs,¹⁴ and humanitarian assistance, funding conditions on abortion speech widely limit access to unbiased training and implementation of equality rights under treaty laws, including the ICCPR. Additionally, the HRC has on numerous occasions recommended that state parties amend their criminal abortion laws to comport with the ICCPR.¹⁵ US abortion censorship stifles domestic dialogue on criminal abortion laws, impeding changes required to comply with the ICCPR.¹⁶

III. Other UN Body Recommendations

- ✦ In a resolution co-sponsored by the U.S., the Human Rights Council (HRC) underscored the importance of freedom of expression and stated that it is “one of the essential foundations of a democratic society,” that it “is instrumental to the development and strengthening of effective democratic systems,” and called upon all states to respect and ensure respect for the right. Human Rights Council, Res. 12/16, U.N. Doc. A/HRC/RES/12/16 (Oct. 12, 2009).
- ✦ Universal Periodic Review of the United States:
 - Recommendation 228, asking that the US “remov[e] blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.”¹⁷ The US officially responded to the Recommendation on March 18, 2011, stating that it could not support the Recommendation because of “currently applicable restrictions” (Paragraph 19).

IV. Recommended Questions

- ✦ How is the speech censorship imposed by the Helms & Siljander Amendments compatible with article 19?
- ✦ What guidelines does the U.S. provide to foreign aid grantees with regards to implementation, evaluation and monitoring of U.S. abortion restrictions, including the Helms & Siljander Amendments?

¹⁴ United States Mission on the United Nations, *Non-paper by the United States of America, on the Report of the Secretary General on the Flow of Financial Resources for Assisting in the Implementation of the Programme of Action of the International Conference on Population and Development in the United Nations Economic and Social Council Commission on Population and Development*, 42nd Sess. (Mar. 30, 2009), available at: <http://usun.state.gov/briefing/statements/2009/march/131657.htm>.

¹⁵ See Concluding Observations - Poland (2004), CCPR/CO/82/POL, ¶8; Concluding Observations – Guatemala (2001), CCPR/CO/72/GTM, ¶19; Concluding Observations – Nicaragua (2008), CCPR/C/NIC/CO/3, ¶13; Concluding Observations – Ecuador (1998), CCPR/C/79/Add.92, ¶11; Concluding Observations – Argentina (2000), CCPR/CO/70/ARG, ¶14; Concluding Observations – Peru (2000), CCPR/CO/70/PER, ¶20; Concluding Observations – Chile (1999), CCPR/C/79/Add.104, ¶15.

¹⁶ Kristina Kallas and Akila Radhakrishnan, *If These Walls Could Talk, They Would be Censored: U.S. Restrictions on Pro-Choice Speech*, Center for Women Policy Studies (June 2012), available at: http://www.centerwomenpolicy.org/programs/health/statepolicy/documents/REPRO_IfTheseWallsCouldTalk_KristinaKallasAkilaRadhakrishnan.pdf.

¹⁷ Human Rights Council Working Grp. on the Universal Periodic Review, 9th Sess., Nov. 1-12, 2010, Draft Report of the Working Group on the Universal Periodic Review: United States of America, ¶228, U.N. Doc. A/HRC/WG/6.9/L.9 (Nov. 10, 2010).

- ✦ Does the U.S. document instances in which foreign aid recipients fail to provide all necessary medical information to women and girls who are raped and impregnated in situations of armed conflict, or organizations and states working with such women and girls, because of the Helms Amendment?
- ✦ Has the U.S. censored the speech of rule of law groups working on the implementation of human rights guarantees, including those under the ICCPR, because the speech might be construed to “motive” or “lobby for” abortion?
- ✦ Does the U.S. have any plans to take action to limit the application of the Helms Amendment, including steps to lift the restrictions as applied to girls and women raped in armed conflict?
- ✦ Does the U.S. have any plans to examine any of its abortion-related restrictions on all foreign assistance where they violate international human rights and humanitarian law or where they conflict with the funding policies of other nations?

V. Suggested Recommendations

- ✦ Congressional repeal of U.S. abortion restrictions on foreign assistance, including the Helms Amendment and the Siljander Amendment.
- ✦ Remove all abortion-related speech restrictions on rule of law and democracy programs to ensure that such restrictions comport with the International Covenant on Civil and Political Rights.
- ✦ Lift the abortion restrictions on humanitarian aid for girls and women raped in armed conflict via an Executive Order.
- ✦ Provide clear guidance to aid grantees on the implementation, evaluation and monitoring of U.S. abortion restrictions on foreign assistance.