

# **Exporting Confusion**

U.S. Foreign Policy as an Obstacle to the  
Implementation of Ethiopia's Liberalized Abortion Law

May 2010



**Leitner Center**  
for International Law and Justice  
AT FORDHAM LAW SCHOOL, NEW YORK CITY

# **Exporting Confusion**

## U.S. Foreign Policy as an Obstacle to the Implementation of Ethiopia's Liberalized Abortion Law

May 2010

### About the Walter Leitner International Human Rights Clinic

---

This report is a project of the Walter Leitner International Human Rights Clinic of the Leitner Center for International Law and Justice at Fordham Law School. It was written by Fordham Law Professor Chi Mgbako; Fordham Law students Tashmin Ali, David Ashley, and Ndidi Igboeli; Ethiopian Lecturers-in-Law Aron Degol and Fikraeb Gintamo; and Ethiopian human rights lawyer Maedot Tesfaye. Fieldwork for the report was conducted in Ethiopia by the authors in November 2009. The views expressed herein are not reflective of the official position of Fordham Law School or Fordham University.

The Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice aims to train a new generation of human rights lawyers and to inspire results-oriented, practical human rights work throughout the world. The Clinic works in partnership with non-governmental organizations and foreign law schools on international human rights projects ranging from legal and policy analysis, fact-finding and report writing, human rights training and capacity-building, and public interest litigation.

For more information about the Clinic, contact Chi Mgbako, Clinical Associate Professor of Law and Director, Walter Leitner International Human Rights Clinic, at [mgbako@law.fordham.edu](mailto:mgbako@law.fordham.edu). Learn more at [www.leitnercenter.org](http://www.leitnercenter.org).

# Exporting Confusion

## U.S. Foreign Policy as an Obstacle to the Implementation of Ethiopia's Liberalized Abortion Law

### Executive Summary

Unsafe abortion in Ethiopia is a leading cause of death among women of reproductive age, second only to HIV-AIDS.<sup>1</sup> Studies estimate that one in seven Ethiopian women dies from pregnancy-related causes, and unsafe abortions account for more than half of the 20,000 maternal deaths that occur in the country each year.<sup>2</sup> In response to this public health crisis, the Ethiopian government liberalized the national abortion law in 2005 in an attempt to decrease the high rate of unsafe abortions across the country.<sup>3</sup> A major obstacle to the effective implementation of Ethiopia's abortion law is United States foreign policy.<sup>4</sup> The United States restricts the use of foreign aid for abortion-related services through policies and laws such as the recently-rescinded Global Gag Rule and the Helms Amendment. U.S. foreign policy restrictions on abortion impede the efforts of the Ethiopian government and reproductive healthcare organizations to provide safe abortion care for Ethiopian women. U.S. foreign policy should, instead, support Ethiopia in its ongoing efforts to

reduce the rates of maternal death linked to unsafe abortion and provide comprehensive reproductive health care to all of its citizens.

Although the Obama administration rescinded the Global Gag Rule in January 2009,<sup>5</sup> and should be commended for this effort, the United States Agency for International Development (USAID) has not adequately provided clear guidance in Ethiopia regarding the scope and detail of this policy change.<sup>6</sup> Further, USAID has not engaged in adequate efforts to address the far-reaching effects of the strict Global Gag Rule compliance procedures enforced under the Bush administration.<sup>7</sup> As a result, there is a great deal of continuing confusion regarding the permitted scope of safe abortion care across the reproductive healthcare community in post-Global Gag Rule Ethiopia.<sup>8</sup>

The Global Gag Rule prohibited foreign NGOs from receiving U.S. funding if they performed or promoted abortion, even if the foreign NGOs used *non-U.S. funds* for the

- 1 Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion* (2003), available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo\\_ggr.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo_ggr.pdf); see also Meaza Ashenafi, *Advocacy for Legal Reform for Safe Abortion*, 8(1) Afr. J. Repro. Health 79 (2004), available at <http://www.bioline.org.br/request?rh04014>.
- 2 World Health Organization, *Maternal Mortality in 2005: Estimates developed by WHO, UNICEF, UNFPA, and The World Bank* 15 (2007), available at [http://www.who.int/whosis/mme\\_2005.pdf](http://www.who.int/whosis/mme_2005.pdf).
- 3 Federal Democratic Republic of Ethiopia Ministry of Health, *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia* (June 2006).
- 4 See Interview with Muna Abdullah, Program Officer, United Nations Population Fund, in Addis Ababa, Ethiopia (Oct. 30, 2009).
- 5 White House, Memorandum for the Secretary of State and the Administrator of the United States Agency for International Development (Jan. 23, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/MexicoCityPolicy-VoluntaryPopulationPlanning](http://www.whitehouse.gov/the_press_office/MexicoCityPolicy-VoluntaryPopulationPlanning)
- 6 Repeated attempts by the authors to secure interviews with the USAID mission in Ethiopia were rebuffed.
- 7 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).
- 8 See Interview with Dagmawi Selamssa, Program Manager, Hiwot Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009); see also Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

prohibited abortion-related services.<sup>9</sup> From 2001 to 2008, the Bush administration strictly enforced Global Gag Rule restrictions upon reproductive healthcare organizations receiving U.S. funding.<sup>10</sup> Well-known NGOs such as Marie Stopes International Ethiopia (MSIE) and the Family Guidance Association of Ethiopia (FGAE) that were dedicated to providing safe abortion services were forced to forgo USAID funding and found themselves isolated from the wider reproductive health community.<sup>11</sup> Local NGOs that could not afford to refuse U.S. funding were not only subject to restrictions on providing abortion services, but were also subject to speech restrictions that limited the information and counseling they could provide to Ethiopian women regarding safe abortion options.<sup>12</sup> The strict enforcement policy under the Bush administration hampered Ethiopia's efforts to address high rates of unsafe abortion.

Although the Global Gag Rule is now rescinded, the residual effects of years of strict enforcement during the Bush administration remain an obstacle to addressing unsafe abortion in Ethiopia. Many local NGOs perceive the change in policy as tied to the domestic abortion debate between Democrats and Republicans in the United States, thus fearing that the Global Gag Rule may be reinstated upon a future change in administration. The political nature of the Global Gag Rule discourages reproductive healthcare organizations from investing the resources necessary to increase access to safe abortion care, which reinforces the Global Gag Rule's chilling effect in Ethiopia.<sup>13</sup>

In addition to the confusion surrounding the lifting of the Global Gag Rule, restrictive interpretation of the 1973 Helms Amendment remains a significant barrier to the

effective use of U.S. foreign aid to combat the dangers of unsafe abortion.<sup>14</sup> In contrast to the Global Gag Rule, the Helms Amendment restricts the direct use of U.S. funding by governments and NGOs for abortion "as a method of family planning."<sup>15</sup> In the Ethiopian reproductive healthcare community, there is confusion regarding the continuing restrictions imposed by the Helms Amendment after the lifting of the Global Gag Rule.<sup>16</sup> Under the restrictive policies of the Bush administration, the Helms Amendment was broadly interpreted and implemented to prohibit the use of U.S. funds for nearly any abortion-related service,<sup>17</sup> despite the language of the law itself suggesting a more narrow scope.<sup>18</sup> Since the lifting of the Global Gag Rule, the Obama administration has not yet indicated if it will interpret the Helms Amendment differently than previous administrations.

This report culminates an intense program of research and fieldwork undertaken by faculty and students at the Walter Leitner International Human Rights Clinic at Fordham Law School in New York City and Ethiopian law instructors and students to study the impact of U.S. foreign policy on the implementation of Ethiopia's liberalized abortion law. The joint United States/Ethiopia team met with international and local reproductive health NGOs, community organizations, United Nations specialized agencies, academics, journalists, medical doctors, midwives, human rights advocates, and Ethiopian women seeking reproductive health care in Addis Ababa and Asella, Ethiopia. The following section outlines key recommendations that would help clarify the current state of U.S. foreign policy and allow Ethiopia to channel U.S. funding towards more effectively combating the problem of unsafe abortion.

- 9 Cherry Bird, IPAS-Case Study Report, *Effects of the Global Gag Rule on Safe Abortion Programming in Nepal*, Nov. 2007, at 1. See generally Population Action Int'l, *What You Need to Know About the Mexico City Policy Restrictions on U.S. Family Planning Assistance* (2006), available at [http://www.populationaction.org/Publications/Reports/Global\\_Gag\\_Rule\\_Restrictions/GlobalGagRule.pdf](http://www.populationaction.org/Publications/Reports/Global_Gag_Rule_Restrictions/GlobalGagRule.pdf).
- 10 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).
- 11 Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia, in Addis Ababa, Ethiopia (Oct. 30, 2009); see also Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).
- 12 See Dina Bogecho & Melissa Upreti, *The Global Gag Rule—An Antithesis to the Rights-Based Approach to Health*, 9(1) Health Hum. Rights 17, 27 (2006).
- 13 See Interview with Selamaw Fekade, Program Coordinator, Ethiopian Aid, in Addis Ababa, Ethiopia (Oct. 27, 2009); see also Interview with Dagmawi Selamssa, Program Manager, Hiwot Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009); see also Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).
- 14 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13, 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/); see also Global Justice Center, *Still Gagged: The Helms Amendment and U.S. Policy*, available at <http://www.globaljusticecenter.net/> (noting that elimination of the Global Gag Rule addresses only a fraction of the U.S. censorship and restrictions on abortion exported by the U.S. to over 170 countries through Helms Amendment stipulations on foreign aid).
- 15 Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women's Lives* (2009), available at [http://www.ipas.org/Publications/asset\\_upload\\_file986\\_4330.pdf](http://www.ipas.org/Publications/asset_upload_file986_4330.pdf).
- 16 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).
- 17 See Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 28 2001), available at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf). See also Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).
- 18 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, available at [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).

# Recommendations

## Global Gag Rule Recommendations

1. Congress should codify President Obama's lifting of the Global Gag Rule by approving the State Department's Foreign Operations and Related Programs Appropriations bill, including Senator Lautenberg's amendment to legislatively eliminate the Global Gag Rule. A permanent ban on the Global Gag Rule would allow foreign aid recipients to address the problem of unsafe abortion without fearing a change in policy. As a result, reproductive healthcare organizations in Ethiopia could finally invest much-needed resources toward safe abortion care for Ethiopian women.
2. USAID should distribute information explaining the rescinding of the Global Gag Rule and clarifying the current scope of permitted safe abortion care to the relevant organizations working on reproductive health issues in Ethiopia. This would allow the local reproductive healthcare community to coordinate their efforts with a clear understanding of how the lifting of the Global Gag Rule impacts their ability to provide safe abortion services to Ethiopian women.
  - a. USAID should communicate the implications of the Global Gag Rule rescission to a broad base of cooperating agencies and local NGOs involved in reproductive health services, rather than limiting such information to head offices of select cooperating agencies. This type of coordinated effort would help relevant members of the Ethiopian reproductive healthcare community stay informed of U.S. policy. At the very least, USAID should ensure that cooperating agencies such as Pathfinder International and EngenderHealth communicate the rescinding of the Global Gag Rule to staff operating at every level of the affected local NGOs. This would ensure the efficient use of U.S. funding while allowing reproductive healthcare organizations on the ground to effectively address the safe abortion crisis in Ethiopia.
  - b. USAID should collaborate with Ethiopian member-based organizations such as the Consortium of Reproductive Healthcare Associations (CORHA) and the Christian Relief and Development Association (CRDA) to disseminate information regarding the Global Gag Rule to their member organizations, since these groups have well-developed networks that reach NGOs providing reproductive health services to Ethiopian communities. This type of outreach would help USAID more efficiently communicate the current scope of U.S. foreign policy to the reproductive health community; identify organizations that are implementing successful reproductive health programs; and help USAID and the Ethiopian reproductive healthcare community more effectively coordinate efforts to provide access to safe abortion services.
3. USAID should administer guidelines, organize workshops, and conduct trainings to explain the implications of the Global Gag Rule rescission to staff members working at every level of affected reproductive healthcare organizations in Ethiopia. Now that the Global Gag Rule no longer applies, organizations on the ground must understand how this development creates opportunities to address the need for safe abortion services for Ethiopian women. An effective campaign to provide this type of clarification necessarily involves cooperation between all the parties involved, including USAID Administrators, mission workers on the ground, foreign NGO staff, and employees at every level of affected local reproductive healthcare organizations.
  - a. USAID staff members in Ethiopia should enforce the rescinding of the Global Gag Rule in the same way they enforced strict compliance with Global Gag Rule restrictions, from senior staff members at reproductive healthcare organizations to the service providers on the ground. One valuable method for implementing this recommendation involves providing enhanced documentation and training regarding what type of safe abortion services U.S. fund grantees can and cannot provide to women in post-Global Gag Rule Ethiopia.
  - b. USAID should utilize cooperating agencies or established local networks to distribute guidelines that include the following information: (1) a definition of the Global Gag Rule (2) an explanation of when and why the policy was rescinded; (3) clarification regarding the new scope of permitted safe abortion care in post-Global Gag Rule Ethiopia, including any continuing restrictions on U.S. funding (i.e., the Helms Amendment), and (4) a description of new opportunities for the provision of safe abortion care using U.S. funding now that the Global Gag Rule no longer applies.
4. USAID mission workers and local NGOs should utilize grassroots-level strategies to raise awareness regarding the scope of permitted safe abortion care with U.S. funding in rural areas, since increased knowledge among service providers and Ethiopian

women in rural areas regarding the availability of permitted safe abortion services is critical to reducing the high rates of unsafe abortion and post-abortion complications across Ethiopia. Not only do community health workers and service providers at rural clinics need to know about the new scope of safe abortion care, but USAID and local organizations need to use an awareness-raising strategy that connects the rescinding of the Global Gag Rule to the reality of Ethiopian women's reproductive healthcare options on the ground. Ultimately, coordinated action at the grassroots-level would help establish USAID's presence in local communities and create a positive impression that the United States is committed to addressing Ethiopian women's reproductive healthcare needs.

## Helms Amendment Recommendations

1. Congress should repeal the Helms Amendment, which negatively impacts Ethiopia's efforts to address the public health crisis caused by unsafe abortion.
2. In the absence of the Helms Amendment being repealed, the Obama administration should narrowly reinterpret the "method of family planning" language in the Helms Amendment and have USAID clarify which specific services are permitted and prohibited under the law.
  - a. USAID should clarify that the use of U.S. funding is permitted for the purchase of MVA equipment and training, which is a key tool for dealing with post-abortion complications.
  - b. USAID should clarify that the use of U.S. funding is permitted for comprehensive reproductive health programs, which provide (i) counseling on all pregnancy options, including safe abortion, and (ii) referral services.
3. The Obama administration should disseminate information about the current status and interpretation of U.S. policy in relation to the use of USAID funding for safe abortion services. In order to assist the Ethiopian government and NGOs working on reproductive health issues in the struggle to combat unsafe abortion, the U.S. needs to make clear what actions are permitted and prohibited under the Helms Amendment and how interpretation of the Helms Amendment has changed since President Obama took office and the Global Gag Rule was lifted.
4. USAID should publish guidelines on the distinction between the Helms Amendment and the Global Gag Rule so that potential NGO partners understand whether their programs are in compliance with current U.S. policy.
5. USAID should distribute information that explains the current state of U.S. policy to all the relevant parties who are working on reproductive health issues in Ethiopia to ensure that the reproductive health community can coordinate their efforts with a clear understanding of how U.S. policy affects their efforts to provide safe abortion services.
  - a. USAID should communicate this information to a broad base of cooperating agencies and local NGOs involved in reproductive health services, and not just the organizations USAID directly partners with, in order to more effectively keep the relevant reproductive health community informed of U.S. policy. USAID should work with cooperating agencies, such as Pathfinder International and EngenderHealth, to develop programs that communicate relevant U.S. policy information to the local NGOs that these cooperating agencies partner with.
  - b. USAID should collaborate with member-based organizations such as the Consortium of Reproductive Healthcare Associations (CORHA) and the Christian Relief and Development Association (CRDA) to disseminate information regarding the Helms Amendment to their member organizations, since these groups have well-developed networks that reach NGOs providing reproductive health services to communities. This would help USAID more efficiently communicate relevant information to the reproductive health community; identify organizations that are implementing successful reproductive health programs; and help USAID and the Ethiopian reproductive health community more effectively coordinate efforts to provide access to safe abortion services.

# Section I – Background

## A. Ethiopian Abortion Law

### 1. UNSAFE ABORTION IN ETHIOPIA

Unsafe abortion is a procedure for terminating a pregnancy by individuals lacking the necessary skills or in an environment failing to meet minimal medical standards, or both.<sup>19</sup> According to the World Health Organization (WHO), Ethiopia has the fifth largest number of maternal deaths in the world.<sup>20</sup> One out of every seven Ethiopian women dies from pregnancy-related issues, and unsafe abortion accounts for over 50% of the 20,000 maternal deaths occurring each year.<sup>21</sup> Approximately half of the 500,000 abortion procedures performed in Ethiopia each year are unsafe, and between 7,000 and 10,000 Ethiopian women die annually as a result.<sup>22</sup> Despite the fact that Ethiopia has one of Africa's most liberalized abortion laws, unsafe abortion continues to be a leading cause of death among Ethiopian women of reproductive age, second only to HIV/AIDS.<sup>23</sup>

As many as 67,000 women in the world die annually as a result of unsafe abortion, and 48% of all abortions worldwide are deemed unsafe.<sup>24</sup> WHO and the Alan Guttmacher Institute ("AGI"), a non-profit organization that works to advance reproductive health, have found that unsafe abortion is disproportionately concentrated in the Global South,<sup>25</sup> with more than 97% of all unsafe

abortions occurring in those countries where abortion is legally restricted.<sup>26</sup> It is for this reason that unsafe abortion is recognized as an important public health problem.<sup>27</sup> Over 4.2 million African women undergo unsafe abortion procedures every year, with approximately 30 unsafe abortions occurring for every 1,000 women of reproductive age (15-44 years).<sup>28</sup> These figures translate into unsafe abortion accounting for roughly 14% of all maternal deaths in Africa.<sup>29</sup>

The reasons for these alarming figures vary. In countries where abortion is limited, there are non-medical barriers that cause delays in obtaining an abortion, which increase the chance of abortion complications.<sup>30</sup> These barriers may include: the need for permission from a husband or parent; counseling requirements; mandatory waiting periods; approval procedures and the need to locate and travel to an authorized provider, including traveling to countries where abortion is legal.<sup>31</sup> Such barriers can be found in laws, regulations or simply practiced by medical providers. In desperation, many women put their lives in danger by procuring or inducing unsafe, "backyard abortions."<sup>32</sup>

Unsafe abortion methods outside of medical facilities range from traditional remedies, such as toxic Alligator chili peppers, to physical force, such as repeated blows to the stomach and insertion of rubber catheters into the uterus.<sup>33</sup> Many of the Ethiopian clients interviewed for this

- 19 Editorial, *Unsafe Abortion and Maternal Mortality: Is Africa Prepared to Face the Reality?*, E. AFRICA MED. J., Feb. 2004, at 61, <http://ajol.info/index.php/eamj/article/viewFile/9126/2049>.
- 20 WORLD HEALTH ORGANIZATION, UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2003 15 (5th ed. 2007), available at [http://whqlibdoc.who.int/publications/2007/9789241596121\\_eng.pdf](http://whqlibdoc.who.int/publications/2007/9789241596121_eng.pdf).
- 21 IPAS, IPAS IN ETHIOPIA (2008), [http://www.ipas.org/Publications/Ipas\\_in\\_Ethiopia.aspx](http://www.ipas.org/Publications/Ipas_in_Ethiopia.aspx).
- 22 Interview with Abebe Kebede, Marie Stopes International Ethiopia [MSIE], in Addis Ababa, Ethiopia (Oct. 26, 2009).
- 23 Center for Reproductive Rights, THE BUSH GLOBAL GAG RULE: ENDANGERING WOMEN'S HEALTH, FREE SPEECH, AND DEMOCRACY, June 2003, <http://reproductiverights.org/en/document/breaking-the-silence-the-global-gag-rules-impact-on-unsafe-abortion>.
- 24 Susheela Singh, *Hospital Admissions Resulting From Unsafe Abortion: Estimates from 13 Developing Countries*, 368 THE LANCET 1887- 92, (2006).
- 25 Elisabeth Rosenthal, *Legal or Not, Abortion Rates Compare*, NEW YORK TIMES, Oct. 12, 2007, [http://www.nytimes.com/2007/10/12/world/12abortion.html?\\_r=1](http://www.nytimes.com/2007/10/12/world/12abortion.html?_r=1).
- 26 Rhonda Schlagen, *Global Illegal Abortion: Where There Is No 'Roe': An Examination of the Impact of Illegal Abortion Around the World Issue Brief*, <http://www.plannedparenthoodaction.org/campaigns/global-illegal-abortion-where-there-no-roe-an-examination-impact-o-589.htm>. See also Elisabeth Rosenthal, *Legal or Not, Abortion Rates Compare*, NEW YORK TIMES, Oct. 12, 2007, [http://www.nytimes.com/2007/10/12/world/12abortion.html?\\_r=1](http://www.nytimes.com/2007/10/12/world/12abortion.html?_r=1).
- 27 Leila Hessin, Eunice Bookman Amisah & Barbara B. Crane, *Global Policy Change and Women's Access to Safe Abortion: The Impact of the World Health Organization's Guidance in Africa*, 10 AFRICAN J. OF REPROD. HEALTH 15 (2006) (outlining efforts taken by the World Health Organization, International Conference on Population and Development, and other NGOs and organizations in responding to the unsafe abortion pandemic). The United Nations' fifth Millennium Development Goals recommends a 75% reduction in maternal mortality rates by 2015. Lisa Haddad & Nawal Nour, *Unsafe Abortion: Unnecessary Maternal Mortality*, 2 REVIEWS IN OBSTETRICS & GYNECOLOGY 2 (2009).
- 28 WORLD HEALTH ORGANIZATION, UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2003 15 (5th ed. 2007), available at [http://whqlibdoc.who.int/publications/2007/9789241596121\\_eng.pdf](http://whqlibdoc.who.int/publications/2007/9789241596121_eng.pdf).
- 29 Yirgu Gebrehiwot & Tippawan Liabsuetrakul, *Trends of Abortion Complication in the Transition of Abortion Law Revisions in Ethiopia*, J. OF PUB. HEALTH (2008).
- 30 The likelihood of complications and death increase with gestation, indicating that abortion is safest when carried out in the early stages of pregnancy. THE ALAN GUTTMACHER INSTITUTE, SHARING RESPONSIBILITY: WOMEN, SOCIETY, ABORTION WORLDWIDE, (1999) <http://www.guttmacher.org/pubs/sharing.pdf>.
- 31 THE ALAN GUTTMACHER INSTITUTE, SHARING RESPONSIBILITY: WOMEN, SOCIETY, ABORTION WORLDWIDE (1999), <http://www.guttmacher.org/pubs/sharing.pdf>. See also WORLD HEALTH ORGANIZATION, DEPARTMENT OF REPRODUCTIVE HEALTH AND RESEARCH, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 82, available at [http://www.who.int/reproductivehealth/publications/unsafe\\_abortion/9241590343/en/index.html](http://www.who.int/reproductivehealth/publications/unsafe_abortion/9241590343/en/index.html).
- 32 THE ALAN GUTTMACHER INSTITUTE, SHARING RESPONSIBILITY: WOMEN, SOCIETY, ABORTION WORLDWIDE (1999), <http://www.guttmacher.org/pubs/sharing.pdf>.
- 33 *Id.*

report at the Marie Stopes International Ethiopia (MSIE) Clinic in Asella, a rural town 100km outside of Addis Ababa, stated that they were aware of women who self-induced abortions by swallowing pills from traditional healers.<sup>34</sup> The use of contaminated, unclean and unsterilized instruments during unsafe abortions are a common source of infection and often lead to post-abortion complications such as hemorrhage and sepsis, and in many cases, death.<sup>35</sup>

Many women resort to these methods because abortion is highly restricted, contributing to high abortion-related mortality rates.<sup>36</sup> Countries with strict abortion laws suffer from higher abortion rates than those countries with liberalized laws.<sup>37</sup> There has been much documentation showing a decrease in abortion-related mortality and morbidity with the liberalization of abortion laws.<sup>38</sup> In South Africa and Romania, the legalization of abortion resulted in a substantial reduction of abortion-related maternal deaths.<sup>39</sup> The rate of deaths caused by abortion complications decreased by a remarkable 91% in South Africa<sup>40</sup> from 1994 – 2001, and in Romania, maternal mortality fell by 73% between 1990 and 2002.<sup>41</sup> The cases of South Africa and Romania demonstrate that enacting liberalized abortion laws is an effective way of reducing unsafe abortion rates.

## 2. ETHIOPIA'S 1957 CRIMINAL CODE

In response to mounting evidence of high abortion-related maternal mortality, the Ethiopian Parliament amended the 1957 Penal Code on abortion in 2004. The 1957 Penal Code

was extremely conservative in its approach to women's reproductive autonomy.<sup>42</sup> The Penal Code, which had been in effect for over forty years, referred to abortion in several provisions. For example, women who self-induced abortions, as well as any individuals aiding them, were subject to imprisonment for up to five years.<sup>43</sup> A woman (or someone who assisted her) convicted of terminating a pregnancy could reduce her sentence if the pregnancy resulted from rape or incest.<sup>44</sup> Circumstances of rape or incest served as a mitigating factor, but they were not excepted circumstances. While abortion was permissible to save a woman from grave and permanent danger to her life, it was also essential that she prove that she could not avert that danger in any other way.<sup>45</sup> The law further required two qualifying doctors to certify the woman's need for an abortion.<sup>46</sup>

Combined with low levels of contraceptive supplies, limited use of birth control and high rates of sexual violence, the restrictive abortion provisions of the 1957 Criminal Code led a substantial number of Ethiopian women to seek unsafe abortions by unskilled and back-street abortion providers or through self-induced methods.<sup>47</sup>

## 3. PROCESS OF REVISING THE 1957 PENAL CODE

Recognizing the issue of unsafe abortion in Ethiopia, many stakeholders, including advocates from the Ethiopian Women Lawyer's Association (EWLA), the Ethiopian Society of Obstetricians and Gynecologists (ESOG), Ipas, and several grassroots associations formed a working group for advocacy on abortion.<sup>48</sup> Personnel from these organizations contributed to the "National Assessment of

34 Interviews conducted at the Marie Stopes International Ethiopia [MSIE] Clinic, in Asella, Ethiopia (Oct. 29, 2009).

35 Lisa Haddad & Nawal Nour, *Unsafe Abortion: Unnecessary Maternal Mortality*, 2 REVIEWS IN OBSTETRICS & GYNECOLOGY 2 (2009).

36 Marge Berer, *National Laws and Unsafe Abortion: The Parameters of Change*, 12 REPROD. HEALTH MATTERS 2-4 (2004) (analyzing the connection between the legal status of abortion worldwide and unsafe abortion. Berer stated that "when abortion is legal, and when safe, accessible services have been put in place, unsafe abortion disappears and abortion-related mortality and morbidity are reduced to a minimum."). See also Rhonda Schlagen, *Global Illegal Abortion: Where There Is No 'Roe': An Examination of the Impact of Illegal Abortion Around the World Issue Brief*, <http://www.plannedparenthoodaction.org/campaigns/global-illegal-abortion-where-there-no-roe-an-examination-impact-o-589.htm>.

37 Endalkachew Hailemichael, *The Abortion Dilemma: How the debatable issue of abortion is affecting every aspect of women's lives in Ethiopia*, (Jan. 2008), <http://futurechoices.net/documents/AbortionDilemma-Ethiopia.pdf>.

38 Brooke R. Johnson, Mihai Horga & Peter Fajans, *A Strategic Assessment of Abortion and Contraception in Romania*, 12 REPROD. HEALTH MATTERS 184 (2004).

39 See POPULATION ACTION INTERNATIONAL, *THE CONSEQUENCES OF UNSAFE ABORTION ECHO FOR GENERATIONS* (2007), [http://www.populationaction.org/Publications/Reports/Measure\\_of\\_Survival/sec7.shtml](http://www.populationaction.org/Publications/Reports/Measure_of_Survival/sec7.shtml). See generally Jewkes, R., H. Rees, K. Dickson, H. Brown, & J. Levin, *The Impact of Age on the Epidemiology of Incomplete Abortions in South Africa After the Legislative Change*, 112 BJOG: AN INTERNATIONAL JOURNAL OF OBSTETRICS AND GYNAECOLOGY 355-59 (2004); Johnson, B.R., M. Horga, & L. Andronache, *Contraception and Abortion in Romania*, 341 THE LANCET 875-78 (1993).

40 See POPULATION ACTION INTERNATIONAL, *THE CONSEQUENCES OF UNSAFE ABORTION ECHO FOR GENERATIONS* (2007), [http://www.populationaction.org/Publications/Reports/Measure\\_of\\_Survival/sec7.shtml](http://www.populationaction.org/Publications/Reports/Measure_of_Survival/sec7.shtml).

41 PLANNED PARENTHOOD ACTION CENTER, *GLOBAL ILLEGAL ABORTION: WHERE THERE IS NO "ROE": AN EXAMINATION OF THE IMPACT OF ILLEGAL ABORTION AROUND THE WORLD*, <http://www.plannedparenthoodaction.org/campaigns/global-illegal-abortion-where-there-no-roe-an-examination-impact-o-589.htm>.

42 FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA MINISTRY OF HEALTH, *TECHNICAL AND PROCEDURAL GUIDELINES FOR SAFE ABORTION SERVICES IN ETHIOPIA* (June 2006).

43 Ethiopia, Penal Code 158/1957, art. 529 (1957).

44 *Id.* at art. 531.

45 *Id.*

46 *Id.*

47 IPAS, *IPAS IN ETHIOPIA* (2008), [http://www.ipas.org/publications/Ipas\\_in\\_Ethiopia.aspx](http://www.ipas.org/publications/Ipas_in_Ethiopia.aspx).

48 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).



the Magnitude and Consequence of Unsafe Abortion in Ethiopia,” which provided a comprehensive description of the magnitude of unsafe abortion in Ethiopia.<sup>49</sup> The working group for advocacy on abortion used the assessment as justification for changes to the 1957 Penal Code.<sup>50</sup> The assessment also influenced the Institute of Legal Reform, a government organ that reports to the Prime Minister and is responsible for reviewing laws and policies, to submit a progressive draft revision of the Ethiopian abortion law to Parliament in 2002.<sup>51</sup> This version replaced an initial proposal prepared by the Ethiopian Ministry of Justice, which did nothing to substantially alter the abortion provisions of the 1957 Penal Code.

Tsehai Wada, Professor of Criminal Law at Addis Ababa University in Ethiopia, was among those who aided in the drafting of the version of the law by the Institute of Legal Reform. In the draft, they proposed “a very liberal revision of the law that decriminalized abortion and would have made it available upon request.”<sup>52</sup> The versions from both the Institute of Legal Reform and the Ministry of Justice underwent a lengthy debate process, which lasted for roughly four years.<sup>53</sup> The Institute of Legal Reform argued for abortion reform from two distinct strategic perspectives: the health perspective and the rights perspective. Representative from ESOG were the primary players in advocating from the health perspective, as the organization had collected data and studied unsafe abortion for twenty years.<sup>54</sup> The Ethiopian Women Lawyer’s Association contributed significantly to the rights perspective, as it was able to utilize legal concepts to appeal to the government.<sup>55</sup> Stressing the health and the rights issue, advocates worked at every level of society – from grassroots community groups to NGOs and parliamentary officials – to educate the public about the law and its implications.<sup>56</sup>

Tsehai Wada indicates that there was political will on the part of the Ethiopian government in 2003 to fully liberalize the country’s abortion laws and make abortion available upon request.<sup>57</sup> However, unexpected opposition by anti-choice religious groups, such as the Ethiopian

Orthodox Church and the Ethiopian Catholic Church, created an obstacle in passing the law by the end of 2003. Additionally, United States Congressman Chris Smith sent correspondences to the Ethiopian Embassy hoping to prevent the passage of the Institute of Legal Reform’s revision of the law.<sup>58</sup> These opposition forces led to the Ethiopian government’s passage of a liberalized, though far-less progressive, abortion law.<sup>59</sup>

#### 4. ETHIOPIA’S 2005 CRIMINAL CODE

Under the current 2005 Criminal Code of the Federal Republic of Ethiopia, abortion is legal when the pregnancy results from rape or incest; when continuance of the pregnancy endangers the health or life of the woman or fetus; in cases of fetal abnormalities; for women with physical or mental disabilities; for minors who are physically or psychologically unprepared to raise a child; and in cases of grave and imminent danger that can be averted only through immediate pregnancy termination.<sup>60</sup>

Many NGO representatives recognize this law as a positive step in the right direction in terms of women’s rights in Ethiopia.<sup>61</sup> Saba Geberemedhin of the Network of Ethiopian Women’s Association stated that “this law represents that the Ethiopian government has recognized the problem of unsafe abortion” and had made an honest attempt to make it less restrictive.<sup>62</sup> Additionally, by permitting abortion for minors physically or psychologically unprepared for parenthood, the law signifies a major change for Ethiopia, where adolescents comprise more than 45% of those seeking abortions.<sup>63</sup>

#### 5. MINISTRY OF HEALTH GUIDELINES

To promote clarification, and pursuant to article 552 of the 2005 abortion law, the Ethiopian Ministry of Health issued the Technical and Procedural Guidelines for Safe Services in Ethiopia in 2006.<sup>64</sup> The Ministry of Health (MoH) Guidelines were the Ethiopian government’s attempt to move towards a functional implementation of the revised abortion law, focusing on two types of care: woman-centered abortion care and post-abortion care.<sup>65</sup>

49 *Id.* See also Abortion Research Consortium. *A National Assessment of the Magnitude and Consequences of Abortion in Ethiopia*, available at <http://www.abortionresearchconsortium.org/extra/IPAS-ESOG-Assessment.pdf>.

50 Email correspondence with Saba Kidanemariam, Country Director, Ipas Ethiopia (Mar. 26, 2010).

51 Interview with Tsehai Wada, Professor of Criminal Law, Addis Ababa University, in Addis Ababa, Ethiopia (Oct. 26, 2009).

52 *Id.*

53 *Id.* See also Meaza Ashenafi, *Advocacy for Legal Reform for Safe Abortion*, 8 AFRICAN J. OF REPROD. HEALTH 79 (2004).

54 Interview with Tsehai Wada, Professor of Criminal Law, Addis Ababa University, in Addis Ababa, Ethiopia (Oct. 26, 2009).

55 *Id.*

56 *Id.*

57 *Id.*

58 Email correspondence with Saba Kidanemariam, Country Director, Ipas Ethiopia (Mar. 26, 2010).

59 IPAS, TOOLS FOR PROGRESSIVE POLICY CHANGE: LESSONS LEARNED FROM ETHIOPIA’S ABORTION LAW REFORM, [http://www.ipas.org/publications/asset\\_upload\\_file502\\_3401.pdf](http://www.ipas.org/publications/asset_upload_file502_3401.pdf). See also Interview with Tsehai Wada, Professor of Criminal Law, Addis Ababa University, in Addis Ababa, Ethiopia (Oct. 26, 2009).

60 Ethiopia, Proclamation No. 414/2004, Criminal Code of the Federal Democratic Republic of Ethiopia, art. 551 (2004).

61 Interview with Tilahun Giday, Country Representative, Pathfinder Ethiopia, in Addis Ababa, Ethiopia (Oct. 28, 2009).

62 Interview with Saba Geberemedhin, Network of Ethiopian Women’s Association [NEWA], Addis Ababa, Ethiopia (Oct. 27, 2009).

63 IPAS, IPAS IN ETHIOPIA, available at [http://www.ipas.org/Publications/Ipas\\_in\\_Ethiopia.aspx](http://www.ipas.org/Publications/Ipas_in_Ethiopia.aspx). (last visited Dec. 16, 2009).

64 CRIMINAL CODE OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, Proclamation No. 414/2004, art. 552 (2004).

65 MINISTRY OF HEALTH, FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, TECHNICAL AND PROCEDURAL GUIDELINES FOR SAFE ABORTION SERVICES IN ETHIOPIA (2006).

They serve as the official interpretation of the abortion law, mandating that: abortion should be performed within three days of a request; a woman seeking an abortion on the grounds of rape or incest does not need to provide proof or identity of the offender; a woman seeking an abortion on the grounds that she is a minor does not need to provide proof of age and; midwives and midlevel providers are permitted to perform abortions.<sup>66</sup>

The fact that a woman does not need to prove rape, incest or her age provides a woman with “greater power over her reproductive health,” as Muna Abdullah, of the United Nations Fund for Population Activities (UNFPA), states, and “it further liberalizes the law by reducing the burden of proof on women.”<sup>67</sup> Taken together, the MoH Guidelines and the 2005 abortion law represent a fairly progressive reform of Ethiopia’s abortion law, which, if properly implemented, could substantially benefit Ethiopian women and serve as a useful model for other African nations.

## **6. OBSTACLES TO IMPLEMENTING THE ETHIOPIAN ABORTION LAW**

Although liberalizing the Ethiopian abortion law was a necessary step towards decreasing maternal mortality and protecting Ethiopian women’s health and rights, change in policy does not necessarily translate to change in practice, as the implementation of the law has been replete with challenges.<sup>68</sup> The continued problem of unsafe abortion in Ethiopia is described by Tilahun Giday, Country Representative for Pathfinder International Ethiopia, as “partially cultural and partially due to a lack of knowledge, for many women are unaware of their rights and are unaware that government facilities provide abortion services, and thus do not have access to safe abortion services and they continue to resort to ‘back alley’ procedures.”<sup>69</sup> For many diverse and complicated reasons, such as stigma, conscientious objectors among health care providers, lack of awareness, cost of abortion procedures, and inadequately equipped facilities, Ethiopian women may not receive safe abortion services or treatment for

post abortion complications, which puts their lives and health at risk.

### **a. Stigma**

The controversial nature of abortion and the negative stigma associated with it has created difficulties for the implementation of Ethiopia’s liberalized abortion law.<sup>70</sup> Deeply rooted social norms and religious values influence an Ethiopian woman’s regarding the termination of an unwanted pregnancy. Geta Alem Kassa and Dagmawi Selamssa of HIWOT-Ethiopia explain that the degree to which stigma permeates the society can be observed at the government level, as parliamentarians are unwilling to further discuss the abortion issue because of “religious influence.”<sup>71</sup> Powerful Christian and Muslim religious groups have voiced opposition to the liberalization of the law. These groups have developed a strong anti-choice movement supported by exported United States policies, such as the Helms Amendment and the recently-rescinded Global Gag Rule.<sup>72</sup> However, resistance to the Ethiopian abortion law does not lie solely at the institutional level; it also exists at the community level, where some women are unwilling to discuss abortion issues because of the associated stigma.<sup>73</sup> Local NGOs have recognized the need to address this issue with a three-pronged approach. Abebe Kebede, from MSIE, stated that lawmakers and NGOs alike should “promote conversation at the community level, by engaging local leaders, and at the grassroots level.”<sup>74</sup>

### **b. Professional Unwillingness of Health Care Providers**

Despite their professional code of conduct and training, health care providers may carry religious, cultural and societal biases that inhibit them from providing services when abortion is legally permissible.<sup>75</sup> Individuals who refuse to perform certain medical services because of religious or moral beliefs are commonly known as “conscientious objectors.”<sup>76</sup> Some conscientious objectors display their intolerance for the abortion law by refusing to complete routine training for abortion-related equipment.

66 *Id.*

67 Interview with Muna Abdullah, Program Officer, United Nations Populations Fund [UNFPA], in Addis Ababa, Ethiopia (Oct. 30, 2009).

68 See Interview with Holie Folie, Executive Director, Consortium of Reproductive Health Associations [CORHA], in Addis Ababa, Ethiopia (Oct. 28, 2009).

69 Interview with Tilahun Giday, Country Representative, Pathfinder Ethiopia, in Addis Ababa, Ethiopia (Oct. 28, 2009).

70 *Id.*

71 Interview with Geta Alem Kassa, Executive Director, and Dagmawi Selamssa, Program Manager, HIWOT Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

72 Interview with Saba Kidanemariam, Country Director, Ipas, in Addis Ababa, Ethiopia (Oct. 27, 2009). Interview with Tilahun Giday, Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

73 Interview with Beltu Mingistu, Director, Ethiopian Media Women Association [EMWA], in Addis Ababa, Ethiopia (Oct. 28, 2009).

74 Interview with Abebe Kebede, Marie Stopes International Ethiopia [MSIE], in Addis Ababa, Ethiopia (Oct. 26, 2009).

75 Interview with Saba Kidanemariam, Country Director, Ipas, in Addis Ababa, Ethiopia (Oct. 27, 2009). See also Interview with Muna Abdullah, Program Officer, United Nations Population Fund [UNFPA], in Addis Ababa, Ethiopia (Oct. 30, 2009).

76 Gregory W. Moore, *Implement New Health Care Conscientious Objector Rule-For Now*, BUSINESS MANAGEMENT DAILY, May 17, 2009, <http://www.businessmanagementdaily.com/articles/18280/1/Implement-new-health-care-conscientious-objector-rule-for-now/Page1.html>. See also WORLD HEALTH ORGANIZATION, DEPARTMENT OF REPRODUCTIVE HEALTH AND RESEARCH, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 67, available at [http://www.who.int/reproductivehealth/publications/unsafe\\_abortion/9241590343/en/index.html](http://www.who.int/reproductivehealth/publications/unsafe_abortion/9241590343/en/index.html); G.I. Serour, *Ethical Guidelines on Conscientious Objection: FIGO Committee for the Ethical Aspect of Human Reproduction and Women’s Health*, 92 INTERNATIONAL JOURNAL OF GYNECOLOGY OBSTETRICS 333-34 (2006).

This is problematic because some equipment is not only used to induce abortions but also necessary to correct post-abortion complications.<sup>77</sup>

Ipas Ethiopia, a leading foreign NGO working on reproductive health issues, is addressing the issue of conscientious objectors by introducing Value Clarification Programs.<sup>78</sup> These programs aim to address health care providers' obligation not to interfere with a woman's rights under the law regardless of their personal beliefs.<sup>79</sup> Ipas provides assistance and training to other NGOs, such as EngenderHealth and FGAE, two organizations whose mission is to make quality reproductive health care available to Ethiopians, in launching their own Value Clarification Programs.<sup>80</sup>

Additionally, there have been accounts of health care professionals at government clinics working in brokerage capacities.<sup>81</sup> Gynecologists with private clinics, midwives, and/or other hospital personnel at public clinics with financial ties to a private clinic have diverted women seeking abortions or post abortion care at public clinics to their associated private clinics.<sup>82</sup> Those private clinics are often more expensive, costing more than 300 Birr,<sup>83</sup> and may be kilometers away from the location of the public clinic or from the woman's home.<sup>84</sup> In this case, properly trained doctors who are capable of administering safe abortions in public clinics are refusing to do so on monetary grounds.<sup>85</sup>

### **c. Lack of Awareness**

There is a pervasive lack of awareness of the abortion law in Ethiopia because Ethiopian women are unaware of the specific provisions of the law and, in turn, are unaware of their rights.<sup>86</sup> This lack of awareness is further compounded by service providers' erroneous interpretation of the law, which limits the actual services women are able to obtain.

Even with the issuance of the Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, there still remains a lack of awareness.<sup>87</sup> Many clients interviewed at the MSIE Clinic stated that they were unaware that public clinics provide abortion services, and those who initially went to the public clinics had been nonetheless referred to MSIE.<sup>88</sup>

Health care workers often misinterpret the enumerated exceptions in the abortion law.<sup>89</sup> Many healthcare workers, such as midwives, may not understand a woman's rights under the reformed law and may therefore impede the quality and quantity of services delivered.<sup>90</sup> For example, Saba Geberemedhin of the Network of Ethiopian Women's Association (NEWA) stated that health care providers such as midwives need training to better understand the scope of the legal provisions under the MoH Guidelines.<sup>91</sup> In some cases, midwives may create requirements that are barriers to safe abortion care and may not understand that proof of a woman's age or an investigation into a woman's alleged rape or incest would violate the legal provisions in place to ensure women's access to safe abortion services.<sup>92</sup> This evidences a continuous need to provide training that will inform providers on the content and intent of the law.<sup>93</sup>

### **d. Cost/Misperception of Cost**

Many Ethiopian women believe that abortion procedures are expensive, but these services are supposed to be free at public clinics. However, when government clinics do not provide these services because of the aforementioned reasons, women are forced to go to private clinics, which are in fact costly.<sup>94</sup> Although MSIE is able to provide essential abortion services, their clinics charge a fee that totals anywhere between 125 and 175 Birr. Even this small fee can easily be a week's worth of sustenance for the average

77 Interview with Tilahun Giday, Country Representative, Pathfinder, in Addis Ababa, Ethiopia (Oct. 28, 2009). Manual vacuum aspirations (MVAs) are used to induce abortion and to rectify post abortion complications.

78 Email correspondence with Saba Kidanemariam, Country Director, Ipas Ethiopia (Mar. 26, 2010).

79 Interview with Yetnayet Asfaw, Deputy Director of Programs, EngenderHealth, in Addis Ababa, Ethiopia (Oct. 28, 2009).

80 Email correspondence with Saba Kidanemariam, Country Director, Ipas Ethiopia (Mar. 26, 2010).

81 Interview with Shegu Kumsa, Center Coordinator, MSIE Clinic, in Asella, Ethiopia (Oct 29, 2009).

82 *Id.*

83 1 U.S. dollar is equal to roughly 12.5 Ethiopian Birr.

84 Interview with Shegu Kumsa, Center Coordinator, MSIE Clinic, in Asella, Ethiopia (Oct 29, 2009).

85 *Id.*

86 Interview with Birhanu Tufu, African Development Aid Association [ADAA], in Addis Ababa, Ethiopia (Oct. 30, 2009).

87 Interview with Dagmawi Selamssa, Program Manager, HIWOT Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

88 Interview with clients at MSIE Clinic, in Asella, Ethiopia (Oct. 29, 2009).

89 Interview with Saba Kidanemariam, Country Director, Ipas, in Addis Ababa, Ethiopia (Oct. 27, 2009).

90 Interview with Agazi Ameha, Program Coordinator, ENMA, in Addis Ababa, Ethiopia (Oct. 26, 2009).

91 Under the Ministry of Health Guidelines, a woman does not need to prove rape, incest, age. She is taken at word for what she indicates, and no further investigation is permitted to prove or disprove this statement. Interview with Saba Geberemedhin, Network of Ethiopian Women's Association [NEWA], Addis Ababa, Ethiopia (Oct. 27, 2009).

92 Interview with Saba Geberemedhin, Network of Ethiopian Women's Association [NEWA], in Addis Ababa, Ethiopia (Oct. 27, 2009).

93 Interview with Saba Kidanemariam, Country Director, Ipas, in Addis Ababa, Ethiopia (Oct. 27, 2009).

94 MSIE Clinic Director, Shegu Kumsa, spoke of women having the perception that abortion services were not available at public health clinics and that private clinics were prohibitively expensive.

rural Ethiopian woman. MSIE offers services free of charge if the woman cannot afford the fee; however, this information is not widely known.<sup>95</sup> Thus, low-income, rural women, who comprise the majority of the Ethiopian female population, are often barred from accessing services and from exercising their legal right to abortion because they lack the necessary economic means to procure health services.

#### **e. Lack of Adequately Equipped Facilities**

Part of the reason why Ethiopian women are unable to obtain safe abortions at public clinics is because those clinics are unequipped to provide such services. As the Executive Director of Consortium of Reproductive Health Associations (CORHA), a local Ethiopian NGO aimed at improving access to health care, Holie Folie is in a unique position to comment on the widespread lack of equipped

facilities.<sup>96</sup> Folie believes this is a resource and capacity issue to which the government must pay serious attention.<sup>97</sup> Some health care professionals themselves believe they are improperly trained to provide safe abortion care.<sup>98</sup> They often instead refer clients to clinics run by Marie Stopes International Ethiopia and Family Guidance Association of Ethiopia (FGAE). Shegu Kumsa, the director of the MSIE Clinic in Asella, recalled needing to re-train a midwife who was initially trained at a government clinic because the midwife lacked experience and did not demonstrate proper skills.<sup>99</sup> Although the Ethiopian government should be applauded for establishing training programs at public clinics, they should continue to allocate resources to ensure the clinics are providing adequate care.<sup>100</sup>

## Section II – The Global Gag Rule

One aspect of U.S. foreign policy that continues to hinder the implementation of Ethiopia's abortion law is the Global Gag Rule. Although President Obama rescinded the Global Gag Rule, the Bush administration's strict enforcement of this policy, combined with confusion regarding the new scope of U.S. foreign policy restrictions, has led to a chilling effect across Ethiopia's reproductive healthcare community.

### A. Background

In addition to internal obstacles impeding the implementation of Ethiopia's liberalized abortion law, U.S. restrictions on foreign assistance pose a significant external challenge.<sup>101</sup> The funding restrictions imposed by U.S. foreign policies such as the recently rescinded Global Gag Rule and the Helms Amendment limit the capacity of reproductive healthcare organizations to provide safe abortion care for Ethiopian women. Thus, instead of helping Ethiopian women realize their right to comprehensive reproductive healthcare under their country's liberalized abortion law, U.S. restrictions serve as an additional barrier to such progress.

The U.S. influence on Ethiopia's domestic attempt to address unsafe abortion dates back to *before* Ethiopia's new abortion law even took effect. As discussed in the previous section, during the period Ethiopian stakeholders were considering liberalization of the abortion law, Congressman Chris Smith advocated against pro-choice reforms, going so far as to write a letter of opposition to the Ethiopian Embassy.<sup>102</sup> Saba Kidanemariam, Country Director of Ipas Ethiopia, notes that Congressman Smith's actions contradicted the substantial public support for liberalizing Ethiopia's abortion law.<sup>103</sup> Ipas was part of a broad-based coalition of civil-society actors and other constituents in favor of liberalizing Ethiopia's restrictions on abortion.<sup>104</sup> Despite widespread domestic support, Congressman Smith's opposition cast a shadow on the legislative process. Specifically, Kidanemariam recalls that Congressman Smith's actions led to internal questioning by Ethiopians regarding the proposed reforms,<sup>105</sup> prompting them to ask: "if abortion is a positive development for Ethiopian women's health, then why does the U.S. government *not* support it?"<sup>106</sup> Ultimately, Kidanemariam concludes, it is very "difficult to convince others about

95 Interview of Shegu Kumsa, Center Coordinator, MSIE Clinic, in Asella, Ethiopia (Oct. 26, 2009).

96 Interview with Holie Folie, Executive Director, CORHA, in Addis Ababa, Ethiopia (Oct. 28, 2009).

97 Interview with Saba Geberemedhin, NEWA, in Addis Ababa, Ethiopia (Oct. 27, 2009).

98 Interview with Shegu Kumsa, Center Coordinator, MSIE Clinic, in Asella, Ethiopia (Oct. 29, 2009). Interview with Yetnayet Asfaw, Deputy Director of Programs, EngenderHealth, in Addis Ababa, Ethiopia (Oct. 28, 2009).

99 Interview with Shegu Kumsa, Center Coordinator, MSIE Clinic, in Asella, Ethiopia (Oct. 29, 2009).

100 Interview with Yetnayet Asfaw, Deputy Director of Programs, EngenderHealth, in Addis Ababa, Ethiopia (Oct. 28, 2009).

101 Interview with Muna Abdullah, Program Officer, United Nations Population Fund, in Addis Ababa, Ethiopia (Oct. 30, 2009).

102 See Congressman Chris Smith, Newmakers Speech on Ethiopia and Human Rights (Oct. 22, 2007), available at <http://chrissmith.house.gov/News/DocumentSingle.aspx?DocumentID=76947>; see also Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

103 See Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

104 See Ipas, Tools for progressive policy change: Lessons learned from Ethiopia's abortion law reform (2008), available at [http://www.ipas.org/Publications/Tools\\_for\\_progressive\\_policy\\_change\\_Lessons\\_learned\\_from\\_Ethiopia's\\_abortion\\_law\\_reform.aspx](http://www.ipas.org/Publications/Tools_for_progressive_policy_change_Lessons_learned_from_Ethiopia's_abortion_law_reform.aspx)

105 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

106 *Id.*

the benefits of a liberalized abortion law when the U.S. is against it.<sup>107</sup>

U.S. foreign assistance restrictions on safe abortion access export the United States' domestic abortion debate to a country where women operate under a different set of circumstances.<sup>108</sup> Desta Kebede, Program Director of Family Guidance Association of Ethiopia (FGAE), states that opponents of abortion rights in the United States fail to consider "the reality of the situation on the ground" in Ethiopia.<sup>109</sup> The U.S. restrictions assume that Ethiopian women operate in similar social environments and have adequate control over their reproductive rights, when in fact, emphasizes Kebede, "harmful traditional practices, domestic and sexual violence against women, and low socioeconomic status contribute to high rates of unwanted pregnancy in Ethiopia."<sup>110</sup> Early marriages are common, and forced abductions of females continue throughout Ethiopia's southern region.<sup>111</sup> As a result, many Ethiopian girls and women are subordinate to their male counterparts, which limit their ability to access family planning services and to safeguard their sexual and reproductive health. These social conditions, combined with high levels of poverty across the country, leave many Ethiopian women with no choice but to seek abortion. For these women, access to safe abortion services is a necessity, and the ability to obtain a safe abortion may make the difference between life and death.<sup>112</sup> To properly address Ethiopia's reproductive health needs, it is essential for U.S. foreign policy makers to consider the socio-economic realities of Ethiopian women and structure family planning funding accordingly.

Restrictions such as the recently rescinded Global Gag Rule ignore these realities and impede efforts to address Ethiopia's unsafe abortion crisis. Although the Global Gag Rule no longer applies to U.S. foreign assistance, confusion

regarding the rescinding of the policy and its lingering chilling effects continue to harm Ethiopian women by blocking access to safe abortion services and undermining their ability to exercise their reproductive rights.<sup>113</sup>

## 1. HISTORY OF THE IMPLEMENTATION OF THE GLOBAL GAG RULE

In 1984, at the Second International Conference on Population held in Mexico City, members of the Reagan Administration introduced a new policy governing U.S. support for foreign non-governmental organizations (NGOs) that provide family planning and abortion services.<sup>114</sup> The "Mexico City Policy" required all foreign NGOs receiving U.S. foreign assistance to agree that they would not perform or promote abortion "as a method of family planning."<sup>115</sup> The United States Agency for International Development (USAID) implemented this policy by prohibiting foreign NGOs from receiving U.S. funding if they performed or promoted abortion, even if the foreign NGOs used *non-U.S. funds* for the prohibited abortion-related services.<sup>116</sup> Within the reproductive rights community, the Mexico City Policy soon became known as the "Global Gag Rule," because of the severe restrictions it placed on abortion-related speech and advocacy within the affected countries.<sup>117</sup>

From 1988 to 1992, President George H. W. Bush strictly enforced the Global Gag Rule. In 1993, upon entering office, President Bill Clinton repealed the Global Gag Rule. After repealing the policy, Clinton administration officials issued a short memorandum to explain the implications of this decision. The three-paragraph document<sup>118</sup> noted that USAID's voluntary family planning policies did not advocate the use of abortion "as a method of family planning" and were not intended to motivate any person to have an abortion, except in cases of rape, incest, or if the woman's life was in danger. However, the memorandum explained that USAID recognized "that in many countries, as in

107 *Id.*

108 Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia, in Addis Ababa, Ethiopia (Oct. 30, 2009).

109 *Id.*

110 *Id.*

111 Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion* 28 (2003), available at <http://reproductiverights.org/en/document/breaking-the-silence-the-global-gag-rules-impact-on-unsafe-abortion>.

112 Meaza Ashenafi, *Advocacy for Legal Reform for Safe Abortion*, 8(1) *Afr. J. Reprod. Health* 79, 84 (2004).

113 See generally Ipas, *The Global Gag Rule harms democracy, women and U.S. interests abroad* (2007), available at [http://www.ipas.org/Publications/The\\_Global\\_Gag\\_Rule\\_harms\\_democracy\\_women\\_US\\_interests\\_abroad.aspx](http://www.ipas.org/Publications/The_Global_Gag_Rule_harms_democracy_women_US_interests_abroad.aspx).

114 Larry Nowels, CRS Report RL30830, *International Family Planning: The "Mexico City" Policy* 3 (2001).

115 *Id.*

116 Cherry Bird, *Case Study Report: Effects of the Global Gag Rule on Safe Abortion Programming in Nepal* 1 (on file with Ipas). See generally Population Action International, *What You Need to Know About the Mexico City Policy Restrictions on U.S. Family Planning Assistance* (2006), available at [http://www.populationaction.org/Publications/Reports/Global\\_Gag\\_Rule\\_Restrictions/GlobalGagRule.pdf](http://www.populationaction.org/Publications/Reports/Global_Gag_Rule_Restrictions/GlobalGagRule.pdf).

117 See Rachael E. Seevers, Note, *The Politics of Gagging: The Effects of the Global Gag Rule on Democratic Participation and Political Advocacy in Peru*, 31 *Brook J. Int'l Law* 899, 934 (2004).

118 Telephone Interview with Patty Schuster, Senior Policy Advisor, Ipas, in New York, N.Y. (Sep. 29, 2009).

the United States, the issue of whether a woman seeks an abortion is a matter of individual choice.<sup>119</sup> Accordingly, the memorandum laid out USAID's post-Global Gag Rule position:

USAID will not use its policies or programs to restrict [a woman's right] to choose, nor will USAID refuse to support family planning organizations that use their own resources to fund or otherwise support a women's right to choose abortion.<sup>120</sup>

Five years later, anti-choice supporters in Congress reinstated the Global Gag Rule by attaching it to the Foreign Appropriations bill, as part of a negotiation between the Clinton Administration and Congress regarding payment of the United States' United Nations dues.<sup>121</sup> Thus, although the Clinton administration officially lifted the Global Gag Rule in 2000, Congress effectively deferred family planning funds from flowing to foreign NGOs until February 2001.<sup>122</sup>

On January 22, 2001, two days after taking office, President George W. Bush issued a Memorandum to the Administrator of USAID, reinstating the Global Gag Rule and emphasizing the new administration's "conviction that taxpayer funds should not be used to pay for abortions or advocate or actively promote abortion, either here or abroad."<sup>123</sup> The White House Press Secretary emphasized, however, that the reinstated restrictions were not intended to "limit organizations from treating injuries or illnesses caused by legal or illegal abortions, including, for example, post-abortion care."<sup>124</sup> The restrictions applied to foreign NGOs receiving USAID family planning assistance,<sup>125</sup> either through a USAID country mission or a U.S. cooperating agency.<sup>126</sup>

On March 29, 2001 the Bush Administration issued a more detailed official memorandum stating that it would not provide USAID grants to foreign NGOs that used their private funds to perform or actively promote abortion as a method of family planning in USAID-recipient countries, nor would USAID grants be provided to foreign NGOs assisting other organizations that conducted such activities. The memorandum defined abortion as a "method of family planning when it is used for the purpose of spacing births," including certain types of abortions performed for the physical or mental health of the mother.<sup>127</sup> The memorandum further restricted foreign NGOs from: (1) imparting advice and/or information on legal abortions or referring clients to clinics that conducted such activities; (2) lobbying to legalize, liberalize, maintain, or decriminalize national abortion laws; or (3) conducting public information operations regarding abortion in countries receiving USAID funds. The policy included several notable exceptions, including the following: (1) abortions may be performed in cases where pregnancy results from rape or incest, or if the life of the mother would be endangered by carrying the fetus to full term; (2) health care facilities may treat injuries or illnesses caused by legal or illegal abortions (post-abortion care); (3) "passive responses" by family planning counselors to abortion-related questions from pregnant women who have already decided to have an abortion are not considered an act of "promoting abortion" under the policy; and (4) referrals for abortion are permitted if the pregnancy results from rape or incest, where the mother's life would be endangered by carrying the fetus to full term, or for post-abortion care.<sup>128</sup>

119 White House, Memorandum-USAID Policy on Abortion (Apr. 28, 1994).

120 *Id.*

121 Ann Blackman, Bush Acts on Abortion 'Gag Rule', TIME, Jan. 22, 2001, available at <http://www.time.com/time/nation/article/0,8599,96275,00.html>.

122 See *id.*

123 White House, Memorandum for the Administrator of the United States Agency for International Development, Restoration of the Mexico City Policy (Jan. 22, 2001), available at <http://www.usaid.gov/whmemo.html>.

124 *Id.*

125 The Global Gag Rule specifically targeted foreign NGOs receiving funds through USAID for family planning programs; thus, organizations receiving funding for non-family planning services were not subjected to the policy restrictions. Population Action International, *What You Need to Know About the Mexico City Policy Restrictions on U.S. Family Planning Assistance 1-2* (2006), available at [http://www.populationaction.org/Publications/Reports/Global\\_Gag\\_Rule\\_Restrictions/GlobalGagRule.pdf](http://www.populationaction.org/Publications/Reports/Global_Gag_Rule_Restrictions/GlobalGagRule.pdf).

126 "Cooperating agencies" are international organizations that distribute USAID funding through partnerships with foreign NGOs and local organizations ("sub-grantees"). Thus, cooperating agencies serve as the connection between USAID and reproductive healthcare organizations operating on the ground.

127 White House, Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 29, 2001), available at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf).

128 *Id.*

## 2. CURRENT STATUS OF THE GLOBAL GAG RULE

On January 23, 2009, President Barack Obama signed an executive order rescinding the Global Gag Rule. In a corresponding statement released by the White House, the Obama Administration explained:

It is clear that the provisions of the Mexico City Policy are unnecessarily broad and unwarranted under current law, and for the past eight years, they have undermined efforts to promote safe and effective voluntary family planning in developing countries. For these reasons, it is right for us to rescind this policy and restore critical efforts to protect and empower women and promote global economic development.<sup>129</sup>

President Obama cited plans to reengage the U.S. mission of the United Nations Fund for Population Activities (UNFPA),<sup>130</sup> an international development agency dedicated to reducing poverty by addressing reproductive health and gender equality issues, and the Department of State announced that it would contribute \$50 million to UNFPA in the coming year.<sup>131</sup> However, the far-reaching implications of the previous administration's policy affected approximately 430 reproductive healthcare organizations in more than 50 countries across the globe, from South America to Sub-Saharan Africa.<sup>132</sup> Although a number of these organizations have received revised contracts from USAID that no longer include the Global Gag Rule language,<sup>133</sup> the Obama administration has not issued any further communication regarding how USAID or foreign NGOs should interpret the lifting of the Global Gag Rule, despite lingering effects from the previous administration's strict enforcement of the Global Gag Rule to limit safe abortion services in affected countries.

## B. Effects in Ethiopia

### 1. THE GLOBAL GAG RULE FORCED MAJOR REPRODUCTIVE HEALTHCARE ORGANIZATIONS IN ETHIOPIA TO FORGO USAID FUNDING

Since Ethiopia is heavily dependent on USAID funding in the areas of population assistance and reproductive healthcare, the country experienced a number of serious negative repercussions as a result of the Global Gag Rule restrictions.<sup>134</sup> Two of Ethiopia's premiere reproductive healthcare organizations—the Family Guidance Association of Ethiopia (or FGAE, an affiliate of the International Planned Parenthood Federation) and Marie Stopes International Ethiopia (MSIE)—concluded after careful consideration that they would not be able to comply with the U.S.-imposed restrictions on safe abortions services. FGAE's Program Director, Desta Kebede, explains that Pathfinder International, a cooperating agency responsible for coordinating and distributing USAID funding in Ethiopia, told FGAE that if they did not sign the new restrictions they would not receive USAID funds, and their "access [would be] denied."<sup>135</sup> After carefully considering the implications of Global Gag Rule restrictions on FGAE's ability to provide safe abortion services to Ethiopian women, the organization made the difficult decision to refuse compliance with the Global Gag Rule. Desta Kebede comments: "We took a bold stand and decided that the needs of our women should not be dictated by foreign policy restrictions, especially those that don't properly assess the reproductive healthcare situation in Ethiopia."<sup>136</sup> Abebe Kebede of MSIE explains that his organization was forced to make the same decision, thus severing its long-standing ties with USAID: "With one phrase, everything was blocked."<sup>137</sup>

129 White House, Memorandum for the Secretary of State and the Administrator of the United States Agency for International Development (Jan. 23, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/MexicoCityPolicy-VoluntaryPopulationPlanning](http://www.whitehouse.gov/the_press_office/MexicoCityPolicy-VoluntaryPopulationPlanning).

130 Posting of Macon Phillips to The White House Briefing Room Blog, *Statement released after the President rescinds "Mexico City Policy"* (Jan. 24, 2009), available at <http://www.whitehouse.gov/statement-released-after-the-president-rescinds/> (President Obama's statement specifically addressed how lifting the ban would allow the United States to resume funding commitments to the UNFPA: "I look forward to working with Congress to restore U.S. financial support for the U.N. Population Fund. By resuming funding to UNFPA, the U.S. will be joining 180 other donor nations working collaboratively to reduce poverty, improve the health of women and children, prevent HIV/AIDS and provide family planning assistance to women in 154 countries.").

131 U.S. Department of State, *U.S. Government Support for the United Nations Population Fund (UNFPA)* (Mar. 24, 2009), available at <http://www.state.gov/r/pa/prs/ps/2009/03/120841.htm>.

132 Ann Blackman, *Bush Acts on Abortion 'Gag Rule'*, TIME, Jan. 22, 2001, available at <http://www.time.com/time/nation/article/0,8599,96275,00.html>.

133 See Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009); see also Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

134 Although this report focuses on the negative repercussions of the Global Gag Rule in Ethiopia, the policy produced similar effects across a wide range of countries receiving U.S. foreign assistance, from Ghana to Peru. Since USAID is the largest bilateral funder of family planning and reproductive health services in low-income countries—where the maternal mortality rate resulting from unsafe abortions is highest—local NGO priorities, agendas, and operations were greatly influenced by the Global Gag Rule. An extensive study conducted by Center for Reproductive Rights surveyed the effects of the Global Gag Rule on reproductive health rights in four different countries and concluded that "in the case of abortion [the Global Gag Rule] provided an externally-imposed agenda that crippled the efforts of local health-care providers, advocates, and officials seeking to address the public health crisis within their own countries." Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion* 5 (2003), available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo\\_ggr.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo_ggr.pdf).

135 Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia, in Addis Ababa, Ethiopia (Oct. 30, 2009).

136 *Id.*

137 Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

As a result of refusing to comply with the Global Gag Rule, FGAE and MSIE lost 35% to 40% of their overall budgets.<sup>138</sup> FGAE lost 25% of its funding from International Planned Parenthood Federation (IPPF), which also refused to comply with the rule, resulting in a significant decrease in operations for eleven of FGAE's local clinics.<sup>139</sup> These drastic cuts in funding led to several crippling effects.

#### **a. Clinics Lost Contraceptives and Valuable Technical Support**

FGAE, MSIE, and other reproductive healthcare organizations unable to comply with the Global Gag Rule requirements were forced to significantly reduce their services, minimize their outreach, and reduce staffing levels. Although other foreign donors tried to help restore the loss in U.S. funding, organizations that refused to comply with Gag Rule restrictions also lost contraceptive supplies and technical support, including equipment necessary for safe post-abortion care.<sup>140</sup> This type of support was a key reason why family planning assistance from the United States was unique, effective, and somewhat indispensable.<sup>141</sup> Although FGAE and MSIE turned to the Ethiopian government to seek a replacement for the U.S. supplies, the Ministry of Health proved to be an unreliable source due to competing priorities and logistical difficulties.<sup>142</sup> The government supplied its own clinics before serving any other organizations, which forced FGAE, MSIE, and similar organizations to purchase contraceptive supplies themselves and redirect valuable financial resources from other necessary reproductive healthcare services.<sup>143</sup>

This shift in resources placed Ethiopians at a disadvantage, because they had to pay for services and supplies that were previously provided for free at FGAE and MSIE facilities, through U.S. funding. For instance, prior to the Global Gag Rule, FGAE kept boxes of free condoms in their clinics. When the organization lost its USAID funding, it was forced to sell condoms to the general public at a cost of 50

Ethiopian cents for every six condoms.<sup>144</sup> In addition, FGAE had to ask clinic patients to reserve condoms in advance, to ensure that enough were set aside. The increased cost of condoms, combined with the advance notice requirement, deterred Ethiopian women from seeking discreet access to contraceptives.

In addition to losing USAID-provided contraceptive supplies, FGAE and MSIE also lost valuable technical support previously covered under U.S. funding. Since non-U.S. donors were often limited to providing monetary support to FGAE and MSIE, these organizations struggled to fill the gap in high-quality technical assistance and training required for them to guarantee efficient and safe abortion services to Ethiopian women.<sup>145</sup>

The Global Gag Rule also forced both FGAE and MSIE to scale back their community-based distribution (CBD) initiatives.<sup>146</sup> Community-based distribution programs permitted healthcare workers to access isolated rural areas and provide reproductive healthcare services, supplies, and information regarding HIV/AIDS.<sup>147</sup> Since public health clinics are not geographically accessible to approximately 45 percent of the Ethiopian population, CBD programs were an important mechanism for providing local women with contraception and other reproductive healthcare services.<sup>148</sup> When organizations such as FGAE and MSIE lost their USAID funding because of the Global Gag Rule, they were forced to scale back their outreach programs. MSIE, for example, closed several of its rural health posts and laid off a number of community health workers after losing USAID funding.<sup>149</sup> This further limited the reproductive health rights of Ethiopia's rural women, since CBD programs were often their only connection with Ethiopia's reproductive healthcare system.<sup>150</sup>

#### **b. Service Providers Lost Trust of Local Women**

The Global Gag Rule imposed freedom of speech restrictions that would constitute a clear violation of the First

138 See The Global Gag Rule Impact Project, *Country in Focus: Ethiopia*, available at [http://www.populationaction.org/PDFs/Ethiopia/GGR\\_fact\\_ethiopia.pdf](http://www.populationaction.org/PDFs/Ethiopia/GGR_fact_ethiopia.pdf).

139 See *id.*; see also Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia, in Addis Ababa, Ethiopia (Oct. 30, 2009).

140 The Global Gag Rule Impact Project, *Access Denied: The Impact of the Global Gag Rule in Ethiopia 2-6* (2005), available at [http://www.populationaction.org/PDFs/Ethiopia/GGRcase\\_ethiopia.pdf](http://www.populationaction.org/PDFs/Ethiopia/GGRcase_ethiopia.pdf).

141 *Id.*

142 See *id.*

143 Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion 10* (2003), available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo\\_ggr.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo_ggr.pdf).

144 The Global Gag Rule Impact Project, *Access Denied: The Impact of the Global Gag Rule in Ethiopia 2-6* (2005).

145 See *id.*

146 See *id.*

147 See generally Implementing Best Practices Report in Reproductive Health Workshop Report, *Community Based Reproductive Health Services* (2007), available at <http://www.ibpinitiative.org/activities/CBDWorkshopreport.pdf>.

148 The Global Gag Rule Impact Project, *Access Denied: The Impact of the Global Gag Rule in Ethiopia 2-6* (2005).

149 See The Global Gag Rule Impact Project, *Country in Focus: Ethiopia*, available at [http://www.populationaction.org/PDFs/Ethiopia/GGR\\_fact\\_ethiopia.pdf](http://www.populationaction.org/PDFs/Ethiopia/GGR_fact_ethiopia.pdf).

150 The Global Gag Rule Impact Project, *Access Denied: The Impact of the Global Gag Rule in Ethiopia 2-6* (2005).



Amendment if implemented within the United States, but imposed no parallel restriction on anti-choice speech by policy makers or service providers. This led to a double standard with detrimental effects on Ethiopian women's reproductive rights.<sup>151</sup> In effect, the Global Gag Rule prohibited medical service providers from giving comprehensive and accurate information to their clients, which in turn made it impossible for these clients to participate meaningfully in decisions involving abortion, and other critical reproductive rights.<sup>152</sup> Referring to the practical implications of the speech restriction, Amare Badada, former Director of FGAE, notes: "Under the Global Gag Rule, I can treat a woman who comes in bleeding after an illegal abortion but I am not allowed to warn her of the dangers before she goes . . . We should not be told what to think and say."<sup>153</sup> Similarly, members of the Consortium for Reproductive Healthcare Organizations (CORHA) in Ethiopia emphasized the disabling effect of the Global Gag Rule on service providers across the country, who could not counsel needy women regarding safe abortion services.<sup>154</sup>

In sum, the Global Gag Rule "gagged" service providers from counseling their female clients regarding safe abortion care, which in turn eroded long-standing relationships between service providers and their clients. As Ethiopian women lost trust in their service providers, local reproductive healthcare organizations lost their legitimacy. Emphasizing this point, Abede Kebede of MSIE recalls that because of the Global Gag Rule, many local organizations' "images were ruined" in the eyes of the Ethiopian women who depended on their safe abortion services. As a result, "the entire service-provider relationship was jeopardized."<sup>155</sup>

### **c. Organizations Lost Long-Standing Partnerships with Cooperating Agencies and Other Members of the Reproductive Healthcare Community**

In addition to preventing reproductive healthcare organizations from providing safe abortion services to Ethiopian women and compromising the service provider-client relationship, the Global Gag Rule isolated well-established organizations such as FGAE and MSIE from their peers in the reproductive healthcare community. For a period of time, FGAE and MSIE were barred from attending NGO

meetings funded by USAID.<sup>156</sup> Commenting on the extent of this isolation, FGAE's current Program Director, Desta Kebede, notes that the organization was "cut off from USAID and all our other relationships were blocked . . . we couldn't have any contact with other organizations working with USAID, and so we couldn't learn from the progress of our colleagues."<sup>157</sup> Thus, reproductive healthcare organizations in Ethiopia lost valuable opportunities to foster relationships with peers in the field. These lost opportunities prevented organizations from sharing information and building the solidarity that is essential for progress within the reproductive health community as a whole.

Similarly, USAID cooperating agencies in Ethiopia found that their supervisory relationship with "gagged" NGOs compromised their ability to address the local unsafe abortion crisis and impeded them from conducting critical advocacy to raise awareness regarding reproductive health rights among Ethiopian women.<sup>158</sup> Moreover, by discontinuing its long-term investment in FGAE and MSIE, which are two of the largest and oldest family planning organizations in Ethiopia, USAID was forced to identify and rely upon other, less experienced NGOs to provide the much-needed family planning services. Thus, U.S. organizations were faced with the difficult and time-consuming process of identifying new local partners, scaling up services, training new personnel, and establishing reporting and oversight procedures, which added to the gap in crucial health care services and supplies.<sup>159</sup>

Although USAID's cooperating agencies regretted losing their valuable ties to local NGOs because of the Global Gag Rule, they felt that the U.S. government had given them no choice. For example, Tilahun Giday, Pathfinder International's Country Representative in Ethiopia, comments that Pathfinder was very "uncomfortable losing long-standing relationships with FGAE and MSIE" but felt that it "had to disconnect with them" because of the U.S. foreign policy restrictions. Giday's comments demonstrate the extent of Ethiopian dependence on U.S. funding and the inability of local NGOs to object to damaging foreign policy restrictions on reproductive healthcare funding such as the Global Gag Rule. Ultimately, he concludes,

151 Nadine Ghouri, *US exports anti-abortion policy*, BBC News, Jun. 28, 2003, available at <http://news.bbc.co.uk/2/hi/americas/3028820.stm>.

152 See Dina Bogecho & Melissa Upreti, *The Global Gag Rule—An Antithesis to the Rights-Based Approach to Health*, 9(1) Health Hum. Rights 17, 27 (2006).

153 Nadine Ghouri, *US exports anti-abortion policy*, BBC News, Jun. 28, 2003, available at <http://news.bbc.co.uk/2/hi/americas/3028820.stm>.

154 Interview with Holie Folie, Executive Director, Consortium of Reproductive Health Associations, in Addis Ababa, Ethiopia (Oct. 28, 2009).

155 Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

156 The Global Gag Rule Impact Project, *Access Denied: The Impact of the Global Gag Rule in Ethiopia 2-6* (2005).

157 Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia, in Addis Ababa, Ethiopia (Oct. 30, 2009).

158 Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion 10* (2003), available at [http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/bo\\_ggr.pdf](http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/bo_ggr.pdf).

159 See Pathfinder International, *The Global Gag Rule: Undermining Women's Health and US Foreign Policy* (2005), available at [http://www.pathfind.org/site/PageServer?pagename=Advocacy\\_Resources\\_Fact\\_Sheets\\_Gag\\_Rule](http://www.pathfind.org/site/PageServer?pagename=Advocacy_Resources_Fact_Sheets_Gag_Rule).

"No local NGO has the power to stand up to the U.S. government."<sup>160</sup>

## **2. EXCESSIVE ENFORCEMENT OF THE GLOBAL GAG RULE RESTRICTIONS CREATED A CLIMATE OF FEAR AMONGST REPRODUCTIVE HEALTHCARE PROVIDERS IN ETHIOPIA**

One of the most damaging effects of the Global Gag Rule stems from its excessive enforcement in Ethiopia, at every level of the reproductive healthcare system. USAID mission workers enforced Global Gag Rule restrictions at every level, from funding contracts signed by top-level representatives of local NGOs to individual agreements signed by service providers at community health organizations and rural clinics. Saba Kidanemariam, Country Director of Ipas Ethiopia, points out that USAID employed full-time staff members to visit community health organizations and clinics, requiring *individual service providers* to sign agreements confirming compliance with the Global Gag Rule restrictions on safe abortion. Kidanemariam described USAID's position on enforcement, stating that the agency made it clear that "as long as a local service provider was being paid by an organization receiving U.S. funding, even if they were only working on a part-time basis, they were obliged not to work on abortion."<sup>161</sup> This excessive enforcement of Global Gag Rule restrictions intimidated service providers from engaging in any abortion-related service, despite the fact that the Global Gag Rule permitted post-abortion care.

Similarly, higher level health officers and senior staff members at local organizations receiving U.S. funding for reproductive healthcare services also signed contracts with strong language regarding the Global Gag Rule restrictions. For example, a funding contract administered by Pathfinder Ethiopia to the Integrated Service for AIDS Prevention and Support Organization (ISAPSO) included a separate section on the Global Gag Rule restrictions, noting that U.S. policy "strictly prohibits any activity undertaken by a USAID-funded Pathfinder organization or its partners in the area of promoting abortion as one method of family planning ... or supporting other entities that provide or promote abortion services."<sup>162</sup> The contract includes additional information regarding the scope of

the Global Gag Rule, including two sentences emphasizing that health officers may only offer post-abortion care abortion when a "woman is bleeding or in a very critical condition."<sup>163</sup> The contract concludes that if at any time health officers at local NGOs are "suspected or reasonably believed" of violating the Global Gag Rule by colleagues or peer organizations, the local NGO should "cease the health officer's activity," immediately notify the relevant contacts at Pathfinder, who will then investigate the truth of the allegations.<sup>164</sup> Again, this type of forced internal supervision for compliance with the Global Gag Rule deterred staff members at local NGOs from engaging in any safe abortion services.

Country representatives at Pathfinder Ethiopia confirmed that throughout the duration of the Global Gag Rule, USAID staff required periodic assessments of how reproductive healthcare funding was utilized at individual clinics.<sup>165</sup> Tilahun Giday of Pathfinder notes that USAID's cooperating agencies "conducted assessments at local NGOs to determine how the organizations used USAID money."<sup>166</sup>

## **3. THE GLOBAL GAG RULE SIGNIFICANTLY LIMITED THE AVAILABILITY OF SAFE ABORTION SERVICES AT ORGANIZATIONS STILL RECEIVING U.S. FUNDING AND CREATED A CHILLING EFFECT ACROSS THE REPRODUCTIVE HEALTHCARE COMMUNITY IN ETHIOPIA**

Since the majority of local NGOs could not afford to refuse U.S. funding, they were forced to accept the Global Gag Rule restrictions, which resulted in a severe curtailment of safe abortion counseling and related services available to Ethiopian women. Further compounding the negative impact of the Global Gag Rule was a noticeable chilling effect on all abortion-related care provided by local organizations, who were overly cautious in their interpretation of Global Gag Rule language because of their strong desire to maintain U.S. funding.<sup>167</sup> This over-interpretation problem created additional barriers to providing safe abortion services on the ground by eliminating permitted post-abortion care often needed to save the lives of women suffering complications from unsafe or botched abortions.<sup>168</sup>

160 Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

161 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

162 ISAPSO Contract with USAID (administered through Pathfinder Ethiopia) (emphasis added).

163 *Id.*

164 *Id.*

165 Interview with Bogalech Alemu and Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

166 Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

167 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

168 IPAS, *The Global Gag Rule Harms Democracy, Women, and U.S. Interests Abroad* (Aug. 2007), available at [http://www.ipas.org/Publications/asset\\_upload\\_file313\\_3193.pdf](http://www.ipas.org/Publications/asset_upload_file313_3193.pdf).

Saba Kidanemariam of Ipas explains that because the Global Gag Rule resulted in a much-publicized withdrawal of U.S. funding from prominent national reproductive healthcare providers such as FGAE and MSIE, other local reproductive healthcare organizations began to fear that even a remote association with abortion would jeopardize U.S. funding.<sup>169</sup> Demonstrating this trend, a number of local NGOs receiving U.S. funding had limited knowledge of the exceptions for post-abortion care under the Global Gag Rule and instead avoided any type of association with abortion, thus compromising the availability of permissible services to Ethiopian women. For example, local organizations receiving U.S. funding for reproductive healthcare services such as ISAPSO thought that the Global Gag Rule made it illegal to use U.S. funding on any safe abortion services.<sup>170</sup>

Confusion on the ground regarding the scope of Global Gag Rule restrictions, combined with the chilling effect caused by fear of losing U.S. funding, resulted in a practical separation of safe abortion care and permitted post-abortion services, from other reproductive healthcare services in Ethiopia.<sup>171</sup> This separation highlighted the inefficiency and “irrationality” of U.S. foreign policy, which on one hand permitted post-abortion care and funded technical training for the use of post-abortion care equipment (e.g., manual vacuum aspiration (MVA) instruments) but did not allow U.S. funding to be used for the purchase of this equipment, effectively limiting the availability of MVA equipment at USAID-funded clinics and forcing other local organizations to provide it.<sup>172</sup> Because local organizations receiving USAID funding over-interpreted the Global Gag Rule restrictions, they did not engage in any permitted post-abortion care, which forced Ethiopian women to turn to separate facilities and less-qualified service providers for abortion and post-abortion care. Thus, instead of achieving an overall reduction in abortions, by disrupting family planning services the Global Gag Rule likely increased the number of unsafe abortions sought by women in affected countries.<sup>173</sup>

#### 4. THE POLITICAL NATURE OF THE GLOBAL GAG RULE REINFORCES ITS CHILLING EFFECT IN ETHIOPIA

Although the Global Gag Rule is no longer in effect, a number of staff members interviewed at reproductive healthcare organizations felt that the policy was tied to the domestic abortion debate between Democrats and Republicans in the United States. Accordingly, interviewees expressed concern that a future administration could decide to reinstate the Global Gag Rule restrictions.<sup>174</sup> For example, Abebe Kebede of MSIE notes that because the Global Gag Rule is seen as a political issue, losing U.S. funding in the future is “a fear that we continue to have.”<sup>175</sup> Similarly, Tilahun Giday of Pathfinder Ethiopia observes that U.S. foreign policy changes can be like a “yo-yo.”<sup>176</sup> As a result of this uncertainty, local NGOs may still be hesitant to invest resources in much-needed safe abortion care, thus contributing to the Global Gag Rule’s continuing chilling effect and compromising the availability of safe abortion-related services for Ethiopian women.

Addressing this issue, recent developments in Congress indicate support for codifying the lifting of the Global Gag Rule. In July 2009, the Senate Appropriations Committee passed an amendment proposed by Senator Frank R. Lautenberg (D-NJ) to legislatively eliminate the Global Gag Rule.<sup>177</sup> Senator Lautenberg’s amendment to the State Department’s funding bill would put an end to the 25-year debate over the Global Gag Rule, with successive presidents instituting and then rescinding the policy. Lautenberg explains: “It is time to end the dangerous and harmful Global Gag Rule permanently. Health care providers across the globe should be able to care for the health of women and families, without ideological obstacles blocking the way. This amendment will strengthen America’s position as an international leader for women’s rights.”<sup>178</sup> Currently, the Senate is in the process of considering appropriations for foreign aid. A positive Senate vote would represent an important step towards eradicating the negative effects of the Global Gag Rule in Ethiopia,

169 See Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009); see also Center for Reproductive Rights, *Breaking the Silence: The Global Gag Rule’s Impact on Unsafe Abortion* 10 (2003), available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo\\_ggr.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo_ggr.pdf).

170 Interview with Beltu Mengistu, Director, Integrated Service for AIDs Prevention and Support Organization, in Addis Ababa, Ethiopia (Oct. 27, 2009).

171 Ipas, *The Abortion Ban in U.S. Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009); see also Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

172 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

173 Barbara B. Crane & Jennifer Dusenberry, *Power and Politics in International Funding for Reproductive Health: the US Global Gag Rule*, *Reprod. Health Matters* 128, 137 (2004).

174 See Interview with Selamaw Fekade, Program Coordinator, Ethiopian Aid, in Addis Ababa, Ethiopia (Oct. 27, 2009); see also Interview with Dagmawi Selamssa, Program Manager, Hiwot Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009); see also Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

175 Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

176 Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

177 Press Release, Office of Sen. Lautenberg (July 9, 2009), available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=315538>.

178 *Id.*

as well as in other countries receiving U.S. funding for reproductive healthcare.<sup>179</sup>

To achieve this result, Congress should codify President Obama's lifting of the Global Gag Rule by approving the State Department's Foreign Operations and Related Programs Appropriations bill, including Senator Lautenberg's amendment to legislatively eliminate the Global Gag Rule. A permanent ban on the Global Gag Rule would allow foreign aid recipients to address the problem of unsafe abortion without fearing a change in policy. As a result, reproductive healthcare organizations in Ethiopia could finally invest much-needed resources toward safe abortion care for Ethiopian women.

### C. Post-lifting of the Global Gag Rule

Although the Obama Administration's lifting of the Global Gag Rule represents a positive development for NGOs aiming to address safe abortion issues in Ethiopia, the reproductive healthcare community has yet to see any significant change in the provision of safe abortion services. This problem stems from a range of factors, including lack of communication from USAID regarding the lifting of the Global Gag Rule, limited awareness among Ethiopian service providers on the ground, and general confusion regarding the scope of U.S. foreign policy restrictions now that the Global Gag Rule is no longer in place.

#### **1. NO CLEAR COMMUNICATION OR GUIDANCE FROM USAID REGARDING LIFTING OF THE GLOBAL GAG RULE**

When the Obama Administration officially lifted the Global Gag Rule in January 2009, USAID informed its cooperating agencies in Ethiopia (e.g., Pathfinder International and EngenderHealth) of the new development by circulating an email to the cooperating agencies' various global offices.<sup>180</sup> Although this was a logical first step, USAID did not follow through by communicating the lifting of the Global Gag Rule to local NGOs and reproductive healthcare organizations that could now provide safe abortion services to Ethiopian women. In this way, a number of local reproductive healthcare organizations well positioned to address the unsafe abortion crisis in Ethiopia were unable to benefit from the lifting of a major U.S. foreign policy obstacle. Interviewed representatives from organizations that previously received U.S. funding echoed this lack of communication regarding

the lifting of the Global Gag Rule, especially at the local NGO level.<sup>181</sup> Saba Kidanemariam, Country Director of Ipas Ethiopia, comments that reproductive healthcare professionals across Ethiopia "expected that USAID would at least have some type of meeting regarding the lifting of the Global Gag Rule," to help people understand what this change meant and disseminate important information, but instead "USAID has not done anything to talk about or enforce the rescinding of the restrictions."<sup>182</sup>

To address this problem, USAID should distribute information explaining the rescinding of the Global Gag Rule and clarifying the current scope of permitted safe abortion care to the relevant organizations working on reproductive health issues in Ethiopia. This would allow the local reproductive healthcare community to coordinate their efforts with a clear understanding of how the lifting of the Global Gag Rule impacts their ability to provide safe abortion services to Ethiopian women. In particular, USAID should communicate the implications of the Global Gag Rule rescission to a broad base of cooperating agencies and local NGOs, rather than limiting such information to head offices of select cooperating agencies. This type of coordinated effort would help relevant members of the Ethiopian reproductive healthcare community stay informed of U.S. policy. At the very least, USAID should ensure that cooperating agencies such as Pathfinder International and EngenderHealth communicate the rescinding of the Global Gag Rule to staff operating at every level of the affected local NGOs. This would ensure the efficient use of U.S. funding while allowing reproductive healthcare organizations on the ground to effectively address the safe abortion crisis in Ethiopia.

Finally, it is important to note that even those local NGOs receiving U.S. funding that were aware of President Obama's rescinding of the Global Gag Rule did not have a clear understanding of how the change in U.S. policy would impact the scope of safe abortion and post-abortions services. For example, the Director and Program Officer of the Integrated Service for AIDS Prevention and Support Organization (ISAPSO) mentioned that they heard about the lifting of the Global Gag Rule, but did not feel that this changed U.S. policy restrictions on safe abortion services.<sup>183</sup> ISAPSO is a local NGO that previously received USAID funding. Similarly, when Hiwot Ethiopia's Program Manager Dagmawi Selamssa, learned of the implications of rescinding the Global Gag Rule for local NGOs and realized that USAID grantees such as Hiwot could now

179 See EngenderHealth, *Congress Moves to Boost Funding for Global Health Priorities* (2009), available at <http://www.engenderhealth.org/media/press-releases/2009-08-01-appropriations.php>.

180 Interview with Tilahun Giday, Ethiopia Country Representative, Pathfinder International, in Addis Ababa, Ethiopia (Oct. 28, 2009).

181 See Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); see also Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia, in Addis Ababa, Ethiopia (Oct. 30, 2009).

182 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

183 Interview with Beltu Mengistu, Director, Integrated Service for AIDS Prevention and Support Organization, in Addis Ababa, Ethiopia (Oct. 27, 2009).

use non-US funding to provide safe abortion counseling, referrals, and related services, he responded: "If that really exists, then we are so glad."<sup>184</sup> Selamssa's response, and many others like it, highlights the continuing need for USAID to communicate with local recipients of funding regarding changes in U.S. policy, especially when these changes create significant opportunities to provide comprehensive reproductive healthcare services and help save the lives of Ethiopian women.

To help Ethiopia's reproductive healthcare community properly address the country's safe abortion crisis, it is essential that local recipients of U.S. funding not only know about changes in U.S. foreign assistance restrictions but also understand the *implications* of these developments on their provision of abortion-related services. Since this is a substantial task, USAID should lighten its burden by utilizing established local networks such as the Consortium of Reproductive Healthcare Associations (CORHA) and the Christian Relief and Development Association (CRDA) to distribute guidelines that include the following information: (1) a definition of the Global Gag Rule (2) an explanation of when and why the policy was rescinded (3) clarification regarding the new scope of permitted safe abortion care in post-Global Gag Rule Ethiopia, including any continuing restrictions on U.S. funding (i.e., the Helms Amendment), and (4) a description of new opportunities for the provision of safe abortion care using U.S. funding now that the Global Gag Rule no longer applies. This type of outreach would help USAID more efficiently communicate the current scope of U.S. foreign policy to organizations receiving U.S. funding. At the same time, by collaborating with local networks, USAID could help foster understanding among sub-grantees and allow key members of the Ethiopian reproductive healthcare community to coordinate their efforts towards providing permitted safe abortion services.

## **2. NO EFFORTS TO ADDRESS THE FAR-REACHING EFFECTS OF THE STRICT GLOBAL GAG RULE COMPLIANCE PROCEDURES ENFORCED UNDER PREVIOUS ADMINISTRATION**

Since the lifting of the Global Gag Rule, on-the ground interviews revealed that USAID staff has made no significant effort to disseminate the message to community healthcare workers and service providers on the ground that they are no longer subject to the same restrictions as before. Therefore, even though there was a systematic, well-coordinated effort to enforce the Global Gag Rule while it was in place, there has been no parallel

attempt to enforce the rescinding of the policy. As a result, it is possible that some of the service providers forced by USAID to sign individual compliance agreements are not aware that the safe abortion restrictions they previously agreed to follow no longer apply. This lack of post-Global Gag Rule enforcement at the service provider level has a detrimental effect on the extent of safe abortion services available to Ethiopian women.

Expressing frustration with this "lopsided effect" of U.S. foreign policy restrictions, Saba Kidanemariam of Ipas notes "there was so much effort to enforce the Global Gag Rule when it was in place, but nothing when it was rescinded."<sup>185</sup> Further, Kidanemariam observes that even though it is clear that the reproductive healthcare workers who were asked to sign agreements and strictly comply with the Global Gag Rule "should now know 100% that those restrictions are no longer in place, that is not the case ... there has been no balance, no fairness."<sup>186</sup> Abebe Kebede of MSIE echoes this frustration, commenting that when the Global Gag Rule was in place, "there was so much focus on enforcement and everything was controlled, but now that it has been reversed, they [USAID] have a different approach."<sup>187</sup> Ultimately, uneven enforcement of the Global Gag Rule has left many service providers in the dark, which continues to impede Ethiopian women's access to safe abortion services.

To address the far-reaching effects of the strict Global Gag Rule compliance procedures employed under the Bush administration, USAID staff members in Ethiopia should enforce the rescinding of the Global Gag Rule in the same way they enforced the restrictions, from senior staff members at reproductive healthcare organizations to the service providers on the ground. One valuable method for implementing this recommendation involves enhanced documentation and training regarding what type of safe abortion services U.S. fund grantees can and cannot provide to women in post-Global Gag Rule Ethiopia.

In addition to USAID's lack of communication with local NGOs and other organizations regarding the change in U.S. foreign policy restrictions, Ethiopian media outlets did not cover the Obama administration's rescinding of the Global Gag Rule or its implications for local reproductive healthcare organizations and Ethiopian women. This problem contributed to the general lack of awareness regarding the lifting of the Global Gag Rule on the ground.

Ethiopian Journalist Endalkachew H/Michael comments that there was no coverage of the rescinding of the Global

184 Interview with Dagmawi Selamssa, Program Manager, Hiwot Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

185 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

186 *Id.*

187 Interview with Abebe Kebede, Marie Stopes International Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009).

Gag Rule in the local Ethiopian press, even though this change had the potential to drastically affect the reproductive healthcare options available to local women.<sup>188</sup> In addition, Aselefech Getanaw, Program Officer of the Ethiopian Media Women Association (EMWA)—an organization that tracks coverage of women’s issues in the Ethiopian media—confirms that Ethiopian media outlets were not interested in covering the lifting of the Global Gag Rule. In sum, the lack of local coverage regarding President Obama’s lifting of the Global Gag Rule mirrored the lack of communication regarding this development from USAID. This contributed to a general lack of awareness, which extended to many reproductive healthcare providers, and served as an additional challenge for Ethiopian women in need of permitted safe abortion services.

To address this problem, USAID mission workers and local NGOs should utilize grassroots-level strategies to raise awareness regarding the scope of permitted safe abortion care with U.S. funding in rural areas, since increased knowledge among service providers and Ethiopian women in rural areas regarding the availability of permitted safe abortion services is critical to reducing the high rates of unsafe abortion and post-abortion complications across Ethiopia. Not only do community health workers and service providers at rural clinics need to know about the new scope of safe abortion care, but USAID and local organizations need to use an awareness-raising strategy that connects the rescinding of the Global Gag Rule to the reality of Ethiopian women’s reproductive healthcare options on the ground. Ultimately, coordinated action at the grassroots-level would help establish USAID’s presence in local communities and create a positive impression that the United States is committed to addressing Ethiopian women’s reproductive healthcare needs.

### **3. CONTINUING CONFUSION REGARDING PERMITTED SCOPE OF SAFE ABORTION CARE IN POST-GLOBAL GAG RULE ETHIOPIA**

As a result of the factors described above, and because there has been no guidance from USAID regarding what the lifting of the Global Gag Rule means for U.S. foreign policy restrictions as a whole, local NGOs remain unclear about the permitted scope of safe abortion care when funding comes from the United States. As evidenced throughout this report—by comments from pioneer reproductive healthcare organizations such as FGAE and MSIE as well as smaller local NGOs such as ISAPSO and Hiwot Ethiopia—on the whole, reproductive healthcare organizations in Ethiopia receiving U.S. funding remain confused as to how the lifting of the Global Gag Rule affects their provision of safe abortion services to local women. Therefore, despite a promising development in the Ethiopian abortion law, women reliant on services from local NGOs continue to have limited access to much-needed safe abortion services.

In order to put an end to the current confusion, USAID should administer guidelines, organize workshops, and conduct trainings to explain the implications of the Global Gag Rule rescission to staff members working at every level of affected reproductive healthcare organizations in Ethiopia. Now that the Global Gag Rule no longer applies, organizations on the ground must understand how this development creates opportunities to address the need for safe abortion services for Ethiopian women. An effective campaign to provide this type of clarification will necessarily involve cooperation between all the parties involved, including USAID administrators, mission workers on the ground, foreign NGO staff, and employees at every level of affected local reproductive healthcare organizations.<sup>189</sup>

188 Interview with Endalkachew H/Michael, Journalist, in Addis Ababa, Ethiopia (Oct. 26, 2009).

189 Telephone Interview with Patty Skuster, Senior Policy Advisor, Ipas, in New York, N.Y. (Sep. 29, 2009).

## Section III – The Helms Amendment

In addition to the confusion surrounding the lifting of the Global Gag Rule, restrictive interpretation of the 1973 Helms Amendment remains a significant barrier to the effective use of U.S. foreign aid to combat the dangers of unsafe abortion. In contrast to the Global Gag Rule – which prohibited any foreign NGO from receiving U.S. foreign aid if they provided abortion-related services, even if the foreign NGO used distinct, non-U.S. funds for those programs – the Helms Amendment addresses the *direct* use of U.S. foreign aid for abortion-related services by NGOs and governments.<sup>190</sup> The Helms Amendment prohibits any recipient of U.S. foreign aid from using “foreign assistance funds ... to pay for the performance of abortion as a *method of family planning* or to motivate or coerce any person to practice abortions.”<sup>191</sup>

Historically, implementation of the Helms Amendment under past administrations was such that no U.S. funds were used for *any* abortion-related services. The Clinton administration’s interpretation of the Helms Amendment identified exceptions in cases of rape, incest, or if the woman’s life was in danger,<sup>192</sup> and interpretation under the Bush administration continued to recognize these narrow exceptions.<sup>193</sup> In practice, however, U.S. funds are never used for abortion-related services even in these exempted situations.<sup>194</sup> Despite rescission of the Global Gag Rule, the Helms Amendment continues to prevent the use of U.S. funding towards increasing access to safe abortion services in Ethiopia.<sup>195</sup>

Despite the lifting of the Global Gag Rule, the continued existence of the Helms Amendment has created confusion regarding U.S. foreign policy and abortion-related services. Because the language of the Helms Amendment addresses the performance of abortion “as a method of family planning” reproductive health specialists, such as Patty Skuster, Senior Policy Advisor with Ipas USA,<sup>196</sup> argue that the amendment does not restrict the use of U.S. funding for abortions in instances that would *not* be considered “family planning.”<sup>197</sup> Congress should repeal the Helms Amendment. If this is impossible, the Obama administration should interpret the amendment less restrictively in order to support countries like Ethiopia in their efforts to address the public health issues caused by high rates of unsafe abortion.

### A. Background

#### 1. THE HISTORY AND DEVELOPMENT OF THE HELMS AMENDMENT

The history of the Helms Amendment begins with the creation of USAID.<sup>198</sup> The United States Congress passed the Foreign Assistance Act (FAA) on September 4, 1961,<sup>199</sup> to reorganize U.S. foreign assistance programs and to separate military and non-military foreign aid.<sup>200</sup> It was under this act that President John F. Kennedy created USAID to administer foreign economic assistance programs.<sup>201</sup> In 1965, USAID began to support international family planning

190 Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009), available at [http://www.ipas.org/Publications/asset\\_upload\\_file986\\_4330.pdf](http://www.ipas.org/Publications/asset_upload_file986_4330.pdf).

191 Foreign Assistance Act, 22 U.S.C.A. § 2151b(f)(1) (emphasis added).

192 White House, Memorandum-USAID Policy on Abortion (Apr. 28, 1994).

193 White House, Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 28, 2001), available at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf).

194 See, e.g., Global Justice Center, *Still Gagged: The Helms Amendment and U.S. Policy*, available at <http://www.globaljusticecenter.net/news-events/news/2009/Gag%20Rule%20Op%20Ed%202.3.09.pdf>.

195 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/); see also Global Justice Center, *Still Gagged: The Helms Amendment and U.S. Policy*, available at <http://www.globaljusticecenter.net/news-events/news/2009/Gag%20Rule%20Op%20Ed%202.3.09.pdf> (noting that elimination of the Global Gag Rule addresses only a fraction of the U.S. censorship and restrictions on abortion exported by the U.S. to over 170 countries through Helms Amendment stipulations on foreign aid).

196 Ipas is a leading international NGO working on reproductive health issues in Ethiopia.

197 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).

198 See USAID-About USAID, This is USAID, [http://www.usaid.gov/about\\_usaid/](http://www.usaid.gov/about_usaid/).

199 PL 87-195, 75 Stat. 424 (1961).

200 USAID-About USAID, History, [http://www.usaid.gov/about\\_usaid/usaidhist.html](http://www.usaid.gov/about_usaid/usaidhist.html).

201 See *id.* In proposing the 1961 FAA, Kennedy made three arguments: (1) that the programs the U.S. had in place, which had evolved from the Marshall Plan after World War II, were ill-suited to address the needs of the United States and of the developing countries for which they served; (2) economic well-being of developing countries is important and that its collapse would be a national security issue to Americans, as well as “offensive to our conscience”; (3) the 1960s offered a unique opportunity for the industrialized world to help less-developed countries achieve self-sustainable economic growth. The FAA of 1961 setup a number of programs designed to encourage economic development and political stability. This program is now called the “Overseas Private Investment Corporation.” As it was originally enacted in 1961, the FAA contained very few restrictions on how money and services could be used; see also Tobey Goldfarb, *Abstinence Breeds Contempt: Why the US Policy on Foreign Assistance for Family Planning is Cause for Concern*, 33 Cal. W. Int’l L.J. 345, 347 (2003). In the early 1960s the FAA introduced the first U.S. foreign policy on population, and in 1963 Congress authorized funding for research on population problems and family planning through population control programs. In this period, the U.S. began to recognize a connection between family planning and development.

initiatives through grants of foreign assistance, as authorized under the FAA.<sup>202</sup> In 1973, the United States Supreme Court decided *Roe v. Wade* and *Doe v. Bolton*, declaring many state laws on abortion unconstitutional.<sup>203</sup> The Court ruled that states could not regulate abortions during the first trimester if performed by physicians.<sup>204</sup> The ruling further established that states could regulate abortions during the second trimester only to protect the health of the pregnant woman, and could only criminalize abortion in the third trimester if the woman's health was *not* in jeopardy.<sup>205</sup> In response to the Court's ruling, anti-choice groups focused their efforts on restricting government-funded programs from providing abortion services.<sup>206</sup>

Within one week of the *Roe* ruling, multiple proposals were introduced both in the House and the Senate to further the anti-choice agenda and limit the scope of *Roe*.<sup>207</sup> In October 1973, North Carolina Senator Jesse Helms' amendment to the FAA passed in the Senate, prohibiting the use of U.S. foreign aid funds for the performance of "abortion as a method of family planning."<sup>208</sup> Along with its domestic counterpart, the Hyde Amendment (which prohibits the use of federal funds for domestic abortion services),<sup>209</sup> the Helms Amendment reflects the anti-choice movement's attempt to prevent any federal funds from being spent on

abortion-related services, a strategy that primarily affects low-income women's access to safe abortion services, both in the United States and around the world.<sup>210</sup>

The Helms Amendment, as incorporated into the FAA, states in § 104 that "no foreign assistance funds may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any persons to practice abortions."<sup>211</sup> The Amendment applies only to the use of U.S. foreign assistance funds,<sup>212</sup> meaning it restricts the direct use of U.S. aid for abortion-related services by foreign NGOs and governments (in comparison, the Global Gag Rule restricted foreign NGOs receiving U.S. funding from using any resources, even non-U.S. funds, for abortion-related services). Over the years, efforts to interpret the Helms Amendment and the phrase "abortion as a method of family planning" led to broader prohibitions on abortion-related services, including restrictions on the use of U.S. funding for speech that advocates or provides counsel regarding abortion.<sup>213</sup> In 1974, USAID issued guidelines that prohibited the use of U.S. funding for "information, education, training, or communication programs that seek to promote abortion as a method of family planning."<sup>214</sup> This language remains in the standard USAID agreement that every USAID recipient must sign.<sup>215</sup>

202 Tobey Goldfarb, *Abstinence Breeds Contempt: Why the US Policy on Foreign Assistance for Family Planning is Cause for Concern*, 33 Cal. W. Int'l L.J. 345, 347 (2003). The United States was even instrumental in establishing the United Nations Fund for Population Activities (UNFPA) in 1969 and became its largest contributor. The goal of the UNFPA was to "reduce poverty, improve health, and raise living standards around the world." During Nixon's presidency, USAID funding for contraceptive research and the family planning distribution programs grew, including the allocation of money for safe and effective early pregnancy termination programs.

203 Jeannie Rosoff, *Is Support of Abortion Political Suicide?*, Readings on Induced Abortion, Vol.1: Politics and Policies, Alan Guttmacher Institute (Jan. 1, 2000).

204 *Id.*

205 *Id.*

206 Tobey Goldfarb, *Abstinence Breeds Contempt: Why the US Policy on Foreign Assistance for Family Planning is Cause for Concern*, 33 Cal. W. Int'l L.J. 345, 349 (2003).

207 See Jeannie Rosoff, *Is Support of Abortion Political Suicide?*, Readings on Induced Abortion, Vol.1: Politics and Policies, Alan Guttmacher Institute (Jan. 1, 2000). Representative Lawrence Hogan introduced a proposal for a constitutional amendment to affirm the "right to life" of the unborn fetus. North Carolina Senator, Jesse Helms, in a companion proposal in June 1973, introduced a proposal defining "persons" to include "unborn offspring at every stage of their biological development." Also in June 1973, the House adopted a Hogan amendment that prohibited the use of legal assistance funds for abortion litigation, restricting the use of federal funds to pay for abortion-related services for the economically disadvantaged domestically.

208 Tobey Goldfarb, *Abstinence Breeds Contempt: Why the US Policy on Foreign Assistance for Family Planning is Cause for Concern*, 33 Cal. W. Int'l L.J. 345, 350 (2003). The Helms Amendment to the Foreign Assistance Act of 1973 was adopted on December 17, 1973 as PL 93-189, 87 Stat. 714 (1973). The FAA was further amended on November 29, 1999, as PL 106-113, § 1000(a)(2), to incorporate the Foreign Appropriations Act and was enacted into law currently as 22 USCS § 1942 (1999).

209 Julia L. Ernst, Laura Katzive & Erica Smock, *The Global Pattern of U.S. Initiatives Curtailing Women's Reproductive Rights: A Perspective On The Increasingly Anti-Choice Mosaic*, 6 U. Pa. J. Const. L. 752, 766 (2004).

210 See *id.*

211 Legislation on Foreign Relations Through 2002, Committee on International Relations/Foreign Relations, available at <http://www.usaid.gov/policy/ads/faa.pdf>. See also Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women's Lives* (2009), available at [http://www.ipas.org/Publications/asset\\_upload\\_file986\\_4330.pdf](http://www.ipas.org/Publications/asset_upload_file986_4330.pdf). See also USAID-Family Planning, USAID's Family Planning Guiding Principles and U.S. Legislative and Policy Requirements, [http://www.usaid.gov/our\\_work/global\\_health/pop/restrictions.html](http://www.usaid.gov/our_work/global_health/pop/restrictions.html).

212 Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).

213 See Julia L. Ernst, Laura Katzive & Erica Smock, *The Global Pattern of U.S. Initiatives Curtailing Women's Reproductive Rights: A Perspective on the Increasingly Anti-Choice Mosaic*, 6 U. Pa. J. Const. L. 752, 774 (2004); Global Justice Center, *Still Gagged: The Helms Amendment and U.S. Policy*, <http://www.globaljusticecenter.net/news-events/news/2009/Gag%20Rule%20Op%20Ed%202.3.09.pdf>.

214 Center for Reproductive Rights, Briefing Paper No. B019, *The Bush Global Gag Rule: A Violation of International Human Rights* (Sep. 2003).

215 See USAID, *Mandatory Standard Provisions for U.S., Nongovernmental Recipients*, at 26, Jan. 23, 2009, available at <http://www.usaid.gov/policy/ads/300/303maa.pdf>. ("(1)No funds made available under this award will be used to finance, support, or be attributed to the following activities: .... (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning").



In 1987, the Office of Legal Counsel of the President under the Reagan administration issued an opinion stating that the government is permitted to restrict use of federal funds for abortion services, and that any programs receiving U.S. funds could be prohibited from providing counseling and referral for abortion services as a method of family planning.<sup>216</sup> This opinion interpreted the term “method of family planning” very broadly, expanding the scope of the Helms Amendment to restrict the use of U.S. funds for abortions in most instances.<sup>217</sup> The opinion interpreted “abortion as a method of family planning” to mean “all abortions except where the abortion is medically indicated.”<sup>218</sup> The opinion interpreted the term “medically indicated” as instances where abortion counseling was dictated by a medical condition.<sup>219</sup>

In 1994, the Clinton administration issued a brief one-page memo entitled “USAID Policy on Abortion.”<sup>220</sup> This memo reaffirmed that “USAID funds may not be used to either fund abortions as a method of family planning or to motivate any person to have an abortion.”<sup>221</sup> The memo established that exceptions to the Helms Amendment restrictions were permitted in instances of rape, incest, or if the life of the woman was in danger.<sup>222</sup> This memo was the first time that any administration articulated these exceptions to the Helms Amendment. The statement further specified that the Helms Amendment permitted the use of USAID funds to provide post-abortion care in cases where women suffer complications from unsafe or self-induced abortions.<sup>223</sup> In 1994, newly drafted USAID contract language prohibited the purchase of “[a]bortion equipment and services” with USAID funds procured

under the contract.<sup>224</sup> This contract language still appears in every USAID contract. All USAID agreements are subject to standard contract terms that specify the use of funding is not permitted to perform or actively promote abortion as a method of family planning.<sup>225</sup>

In March 2001 the Bush administration issued a memorandum detailing how the administration would interpret and enforce the Global Gag Rule and the Helms Amendment.<sup>226</sup> The memorandum was primarily intended to reestablish the restrictions of the Global Gag Rule, but it did address interpretation of the language in the Helms Amendment as well. The memorandum defined abortion as a “method of family planning when it is used for the purpose of spacing births,” including abortions performed for the physical or mental health of the mother.<sup>227</sup> The memorandum did, however, continue to recognize: (1) the exceptions established by the Clinton administration in instances of rape, incest, or if the life of the woman was in danger; and (2) that the use of USAID funding was permitted to treat post-abortion complications.<sup>228</sup>

## 2. CURRENT STATUS OF THE HELMS AMENDMENT

### a. U.S. Interpretation and Enforcement of the Helms Amendment

After years of evolving interpretation and implementation under past administrations, it is difficult to determine where U.S. interpretation of the Helms Amendment currently stands. Based on the memorandum of both the Clinton<sup>229</sup> and Bush<sup>230</sup> administrations, interpretation of the Helms Amendment by USAID restricts the use of any

216 Opinion of the Office of Legal Counsel, Title X Family Planning Program Proposals, 1987 OLC LEXIS 42 (OLC 1987).

217 *Id.*

218 *Id.*

219 *Id.*

220 White House, Memorandum-USAID Policy on Abortion (Apr. 28, 1994).

221 *Id.*

222 *Id.*

223 *Id.*

224 48 CFR 752.225-70

225 See USAID, Mandatory Standard Provisions for U.S., Nongovernmental Recipients, at 26 (Jan. 23, 2009), available at <http://www.usaid.gov/policy/ads/300/303maa.pdf>. In pertinent part the document reads:

Prohibition on Abortion-Related Activities:

(1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (v) lobbying for or against abortion. The term “motivate”, as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

226 White House, Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 28 2001), available at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf).

227 *Id.*

228 *Id.* “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).”

229 White House, Memorandum-USAID Policy on Abortion (Apr. 28, 1994).

230 White House, Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 28 2001), available at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf).

U.S. funds for abortion-related services, except in instances of rape, incest, or if the woman's life is in danger.<sup>231</sup> But in practice, USAID has never funded any programs or services that would fall under these exceptions.<sup>232</sup> The use of U.S. funds for post-abortion care is permitted.<sup>233</sup> Post-abortion care refers to the treatment of injuries or illnesses caused by legal or illegal abortion.<sup>234</sup> The Clinton administration established that the Helms Amendment permitted the use of USAID funding for post-abortion care,<sup>235</sup> and the Bush administration continued support of this interpretation.<sup>236</sup> Based on a Bush-era memorandum, USAID interprets post-abortion care to include: (1) emergency treatment for complications of induced abortion; (2) post-abortion family planning counseling and services; (3) linking of women from emergency care to family planning and other reproductive health services.<sup>237</sup>

In the annual foreign aid appropriations bills at least some effort is made to address confusing language in the Helms Amendment.<sup>238</sup> For instance, the Leahy Amendment<sup>239</sup> specifies that the term "motivate," as it used in the Helms Amendment in relation to family planning assistance, "shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options."<sup>240</sup> However, this legislative attempt to address how the Helms Amendment effects dissemination of information or counseling regarding safe abortion has *not* been implemented in practice, in part because the Global Gag Rule undermined this provision.<sup>241</sup>

Although the Clinton and Bush administrations identified exceptions to the Helms Amendment, strict enforce-

ment of the Global Gag Rule under the Bush administration and cautious interpretation of the Helms Amendment by organizations that rely on U.S. funding have prevented investment in the training and resources necessary to provide safe abortions in the exempted instances.<sup>242</sup> It remains unclear how the Obama administration will interpret and enforce the Helms Amendment. Because of the lack of clarity provided by the language of the Helms Amendment and confusion regarding interpretation by past administrations, the Obama administration should direct USAID to issue guidelines on activities permissible under the Helms Amendment.<sup>243</sup> USAID should also take steps to encourage grantees to implement the exceptions to the Helms Amendment, in order to bring implementation of the Helms Amendment more closely in line with interpretation of the law.

Although the lifting of the Global Gag Rule suggests the Obama administration is interested in advancing a more progressive interpretation of the Helms Amendment, one possible explanation of why the administration has not taken such action is that USAID did not have a permanent appointee in the position that leads the agency<sup>244</sup> until January 2010 when Dr. Rajiv Shah was sworn in as the Administrator of USAID.<sup>245</sup> It is arguable that the nearly full year it took to fill the Administrator position has affected the ability of the Obama administration to advance a more progressive vision for USAID, including clear implementation of the lifting of the Global Gag Rule and reinterpretation of the Helms Amendment.<sup>246</sup>

- 231 See White House, Memorandum-USAID Policy on Abortion (Apr. 28, 1994); White House, Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 28 2001), *available at* [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf).
- 232 Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).
- 233 USAID-Family Planning, USAID's Family Planning Guiding Principles and U.S. Legislative and Policy Requirements, [http://www.usaid.gov/our\\_work/global\\_health/pop/restrictions.html](http://www.usaid.gov/our_work/global_health/pop/restrictions.html).
- 234 *Id.*
- 234 White House, Memorandum-USAID Policy on Abortion (Apr. 28, 1994).
- 236 USAID, Memorandum on USAID PAC Programming from Duff Gillespie, Deputy Assistant Administrator (Sept. 10, 2001), *available at* [http://www.usaid.gov/our\\_work/global\\_health/pop/duff\\_memo.pdf](http://www.usaid.gov/our_work/global_health/pop/duff_memo.pdf).
- 237 *Id.*
- 238 See Legislation on Foreign Relations Through 2002, Committee on International Relations/Foreign Relations, *available at* <http://www.usaid.gov/policy/ads/faa.pdf>.
- 239 *Id.*
- 240 Legislation on Foreign Relations Through 2002, Committee on International Relations/Foreign Relations, *available at* <http://www.usaid.gov/policy/ads/faa.pdf>; USAID-Family Planning, USAID's Family Planning Guiding Principles and U.S. Legislative and Policy Requirements, [http://www.usaid.gov/our\\_work/global\\_health/pop/restrictions.html](http://www.usaid.gov/our_work/global_health/pop/restrictions.html).
- 241 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).
- 242 See Kirsten Sherk, *Reaching Beyond Our Borders, Because 8-9* (Summer 2009), *available at* [http://www.ipas.org/Publications/asset\\_upload\\_file887\\_4384.pdf](http://www.ipas.org/Publications/asset_upload_file887_4384.pdf).
- 243 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).
- 244 Telephone Interview with Patty Skuster, Senior Policy Advisor, Ipas USA (Sept. 29, 2009).
- 245 See USAID-Press Release, Shah Sworn In As USAID Administrator (Jan. 7, 2010), *available at* <http://www.usaid.gov/press/releases/2010/pr100107.html>.
- 246 See Posting by Mark Landler to The Caucus Blog, <http://thecaucus.blogs.nytimes.com/2009/11/10/officials-us-aid-chief-chosen/> (Nov. 10, 2009, 2:37 PM) ("If Dr. Shah, 36, is confirmed by Congress, his appointment will bring an end to a long period of leadership drift at USAID, which has frustrated Secretary of State Hillary Rodham Clinton. The agency is a high priority for Mrs. Clinton, who has placed development at the heart of her agenda, but she has struggled to find a candidate who can survive the confirmation process.")

Despite the restrictions imposed by the Helms Amendment a more progressive interpretation of the law would allow the performance of activities that were not permitted or pursued in the past due to uncertainty over interpretation. A more progressive interpretation of the Helms Amendment should clarify that the use of U.S. funds is permitted for safe abortion services in instances of rape, incest, or if the life or health of the woman is in danger, and that the procurement of training and equipment to address these exceptions is permitted. Additionally, a more progressive interpretation of the Helms Amendment should clarify that the law does *not* prohibit the use of U.S. funds for programs that (1) raise awareness of the public health problems caused by unsafe abortion, (2) share or publish information about safe abortion options (3) provide counseling and referral services that include information about safe abortion options, and (4) provide healthcare professionals with appropriate equipment and training to address post-abortion complications.<sup>247</sup> Without clear guidelines from the Obama administration that inform recipients of U.S. foreign aid of what activities are permitted and prohibited under the Helms Amendment, it may prove difficult to alter the negative effects of restrictive interpretation and enforcement under past administrations.

#### **b. Current Response of NGOs and Foreign Governments to the Helms Amendment**

Interpretation of the Helms Amendment by NGOs and foreign governments receiving U.S. foreign aid remains cautious due to the effects of traditional implementation of the Helms Amendment.<sup>248</sup> The Helms Amendment forces healthcare programs to create separate reproductive health facilities in order to perform legal abortion procedures<sup>249</sup> and interferes with the efforts of foreign nations to liberalize their abortion laws.<sup>250</sup> It is likely that health care programs that have chosen not to perform abortion-related services to comply with interpretations of the Helms Amendment will be reluctant to change how they operate until there is clear indication from the Obama administration that the Helms Amendment will be interpreted more liberally.

### **3. CONTEMPORARY CRITIQUES OF THE HELMS AMENDMENT**

#### **a. The Helms Amendment Impedes Local Access to Safe Abortions**

Although a number of developing countries that receive U.S. funding, including Ethiopia, have liberalized national legislation to expand the circumstances in which women may legally obtain abortions, the Helms Amendment impedes the effectiveness of these measures by interfering with local efforts to make abortion safe.<sup>251</sup> For example, in 2003 Nepal loosened legal restrictions on abortion, in a liberalization that had widespread support from the public, the Ministry of Health, and a substantial majority in Parliament.<sup>252</sup> Although USAID has helped fund post-abortion care in Nepal by providing training to abortion care specialists and helping construct facilities, the Nepalese government is limited in its ability to provide safe abortion services due to Helms-related restrictions on the use of facilities and equipment for abortion care.<sup>253</sup> Due to the similarities between the equipment and skills required to perform safe abortions and treat post-abortion complications, both services would ideally be performed in the same facility. Because implementation of the Helms Amendment in Nepal prohibits the purchase of equipment to provide abortions, facilities funded by USAID for post-abortion care services are not permitted to provide safe abortions despite being the most appropriate facilities.<sup>254</sup> Implementation of the Helms Amendment in Nepal has prohibited USAID funded facilities, equipment, and health care providers from being used for safe abortion services.<sup>255</sup> The Nepalese government was forced to use its precious resources to build separate facilities for safe abortions or, alternatively, compromise the quality of abortion care by using less suitable facilities.<sup>256</sup>

The Helms Amendment further contributes to a shortage of equipment required to treat women suffering from post-abortion complications by prohibiting the use of U.S. funds to purchase manual vacuum aspiration (MVA) instruments.<sup>257</sup> Despite interpretation of the Helms

247 See Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).

248 Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women's Lives* (2009), available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf).

249 See *id.*; See Cherry Bird, Ipas Case Study Report, *Effects of the Global Gag Rule on Safe Abortion Programming in Nepal*, Nov. 2007, at 3-4 (examples of NGOs in Nepal losing USAID funding for refusing to compromise on their support of abortion rights).

250 See Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women's Lives* (2009), available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf).

251 *Id.*

252 See *id.*

253 See *id.*

254 See *id.*

255 Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, Alternet, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/).

256 *Id.*

257 Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women's Lives* (2009), available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf).

Amendment under both the Clinton and Bush administrations that allows the use of U.S. funds for post-abortion care,<sup>258</sup> the standard language in all USAID contracts with local organizations prohibits the purchase of “abortion equipment” using USAID funds, and MVA equipment is considered prohibited “abortion equipment.”<sup>259</sup> At the same time, USAID recommends that treatment for partial and septic abortions should be conducted via MVA instruments, widely recognized as the safest and most advanced equipment for post-abortion care.<sup>260</sup> Thus, USAID both prohibits the purchase of MVA equipment and recommends MVA equipment be used to treat post-abortion complications.<sup>261</sup> USAID provides funding to train health care providers to use MVA instruments and procedures, but fails to provide the critical financial assistance needed to buy the necessary instruments. Health care programs are left with over-trained staff and under-equipped facilities. A 2001 USAID study documented these problems and concluded that, “in most countries [receiving U.S. assistance] there is a common concern about the sustainability of MVA equipment.”<sup>262</sup>

Along similar lines, the Helms Amendment impedes access to contraceptives for women who have already undergone abortion.<sup>263</sup> Studies indicate that women are more likely to use post-abortion contraception when counseling and family planning services (including distribution of contraceptives) are provided at the same facility where they received abortion care, rather than at a sepa-

rate location.<sup>264</sup> By forcing women to seek counseling and family planning/contraceptive services at separate facilities following their abortion procedure, the current interpretation of the Helms Amendment lessens the likelihood that these women will use contraception in the future, which indirectly contributes to one of the main causes of unsafe abortion (i.e., limited access to contraception).<sup>265</sup>

### **b. The Helms Amendment Censors Information Regarding Safe Abortion and Creates a One-Sided Debate**

According to the current interpretation of the Helms Amendment, healthcare providers working in programs and facilities funded by USAID cannot provide information to clients regarding “their full range of reproductive health options.”<sup>266</sup> In particular, organizations receiving U.S. funding are not allowed to distribute information regarding safe abortion, even in cases where a women’s health is threatened.<sup>267</sup>

As with the Global Gag Rule, the Helms Amendment’s restriction on local advocacy and lobbying regarding safe abortion stifles the dissemination of critical information and propagates a biased dialogue surrounding reproductive healthcare. Allowing only one side of the safe abortion debate to communicate its position, in countries where women’s low social and economic status already limits their reproductive choices, further restricts women’s access to safe abortion, family planning services, and the ability to make informed decisions regarding maternal health.<sup>268</sup>

258 See White House, Memorandum—USAID Policy on Abortion (Apr. 28, 1994); White House, Memorandum for the Administrator of the United States Agency for International Development (Revised) (Mar. 28 2001), available at [http://www.usaid.gov/business/business\\_opportunities/cib/pdf/cib0108r.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/cib0108r.pdf).

259 See USAID, Mandatory Standard Provisions for U.S., Nongovernmental Recipients, at 26 (Jan. 23, 2009), available at <http://www.usaid.gov/policy/ads/300/303maa.pdf> (“(1) No funds made available under this award will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning”); see also USAID, Memorandum on USAID PAC Programming from Duff Gillespie, Deputy Assistant Administrator (Sept. 10, 2001), available at [http://www.usaid.gov/our\\_work/global\\_health/pop/duff\\_memo.pdf](http://www.usaid.gov/our_work/global_health/pop/duff_memo.pdf).

260 See Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009) available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf); see also Laurel Cobb, Pam Putney, Roger Rochat, Julie Solo, Nicole Buono, John Dunlop & Mary Vandenbroucke, *Global Evaluation of USAID’s Postabortion Care Program* (Oct. 2001), available at [http://pdf.dec.org/pdf\\_docs/Pnacn773.pdf](http://pdf.dec.org/pdf_docs/Pnacn773.pdf).

261 See Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009) available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf).

262 Laurel Cobb, Pam Putney, Roger Rochat, Julie Solo, Nicole Buono, John Dunlop & Mary Vandenbroucke, *Global Evaluation of USAID’s Postabortion Care Program* (Oct. 2001), available at [http://pdf.dec.org/pdf\\_docs/Pnacn773.pdf](http://pdf.dec.org/pdf_docs/Pnacn773.pdf).

263 Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009) available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf).

264 Laurel Cobb, Pam Putney, Roger Rochat, Julie Solo, Nicole Buono, John Dunlop & Mary Vandenbroucke, *Global Evaluation of USAID’s Postabortion Care Program* (Oct. 2001), available at [http://pdf.dec.org/pdf\\_docs/Pnacn773.pdf](http://pdf.dec.org/pdf_docs/Pnacn773.pdf).

265 Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009) available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf).

266 *Id.*

267 See Ipas, *The Abortion Ban in U.S. Foreign Assistance: How U.S. Policy Obstructs Efforts to Save Women’s Lives* (2009) available at [http://www.ipas.org/Publications/asset\\_upload\\_file418\\_4329.pdf](http://www.ipas.org/Publications/asset_upload_file418_4329.pdf) (Several examples of this speech-chilling restriction exist: in the mid-1980s, USAID withdrew funding from a Guttmacher Institute publication titled *International Family Planning Perspectives*, because of an internal assessment that two articles—which identified illegal abortion as a cause of maternal mortality in several developing countries—were “motivating” abortion in violation of the Helms Amendment.). See also Patty Skuster, *Repealing the Global Gag Rule is Only the First Step*, *Alternet*, Jan. 13 2009, [http://www.alternet.org/story/119241/repealing\\_the\\_global\\_gag\\_rule\\_is\\_only\\_the\\_first\\_step/](http://www.alternet.org/story/119241/repealing_the_global_gag_rule_is_only_the_first_step/) (In April 2008, administrators of the USAID-funded Popline database made the word “abortion” unsearchable after USAID expressed concern that Popline, the largest database on reproductive health issues, was violating Helms Amendment restrictions by providing abortion advocacy materials. Although “abortion” was later reinstated as a search term in the Popline database, the magazine articles in dispute remain inaccessible.).

268 Dina Bogecho & Melissa Upreti, *The Global Gag Rule—An Antithesis to the Rights-Based Approach to Health*, 9 *Health Hum. Rights* 23 (2006).

## B. Effects in Ethiopia

The Helms Amendment interferes with Ethiopia's efforts to implement its liberalized abortion law, legislation enacted in response to the public health crisis caused by unsafe abortion. Confusion over and over-interpretation of the Helms Amendment by Ethiopian reproductive health NGOs prevents many organizations from providing the safe abortion services made legal under the new law. The Obama administration must clarify the current U.S. policy on the use of U.S. funding for the performance of safe abortion and reinterpret the Helms Amendment in a way that supports Ethiopia's efforts to combat the public health crisis caused by unsafe abortion.

### 1. CONFUSION REGARDING ACCESS TO SAFE ABORTION UNDER THE HELMS AMENDMENT

There is a continuing lack of awareness in Ethiopia regarding how the Helms Amendment affects the ability of women to access safe abortion services. Organizations engaged in providing reproductive health care do not know what safe abortion services they are permitted to provide under the Helms Amendment and what services are prohibited. In Ethiopia there are generally two types of NGOs working on reproductive health issues: (1) cooperating agency NGOs, which receive funding from a wide-array of sources (such as foreign governments, including USAID, or private foundations), are usually part of larger international organizations, and partner with local organizations to implement reproductive health programs; and (2) local NGOs, which work in communities serving specific populations and receive funding from cooperating agencies to implement reproductive health programs. Many cooperating agencies in Ethiopia enter into agreements with USAID and distribute USAID funding through sub-grants to local NGOs. All USAID agreements (both the direct agreements between USAID and cooperating agencies, and the sub-grant agreements between cooperating agencies and local NGOs) are subject to the standard terms contained in every USAID contract. The terms of the standard agreement reflect the language of the Helms Amendment by specifying that any funding procured under the contract is not permitted for use to perform or actively promote abortion as a method of family planning.<sup>269</sup>

Representatives of organizations working at the cooperating agency level are generally aware of the Helms Amendment, how it differs from the Global Gag Rule, and how the law impacts efforts of Ethiopian women to access safe abortion services. Yetnayet Asfaw, of the cooperating agency EngenderHealth, stated that the Helms Amendment "greatly affects the ability of local NGOs to do their work."<sup>270</sup> According to Tilahun Giday, the Country Representative for the cooperating agency Pathfinder International in Ethiopia, "the Global Gag Rule no longer presents a barrier to Pathfinder International implementing programs that provide safe abortion services, but its friend the Helms Amendment is still prohibiting engagement in abortion-related activities, including the purchase of much needed equipment. There is a lot of practical confusion in Ethiopia."<sup>271</sup>

Even among those who understand that the Helms Amendment continues to affect access to safe abortion services after the lifting of the Global Gag Rule, there remains uncertainty regarding what the current U.S. policy permits and prohibits. "The Global Gag Rule and Helms Amendment are two faces of the same coin," according to Abebe Kebede of Marie Stopes International Ethiopia. "If one is lifted then the other needs to be changed as well since they are so intertwined and impose many similar restrictions on safe abortion options."<sup>272</sup>

Representatives of organizations at the local NGO level, including those receiving USAID funding through cooperating agencies, are less aware of the details of the Helms Amendment and express a great deal of confusion regarding the differences between the Helms Amendment and the Global Gag Rule.<sup>273</sup> Saba Kidanemariam, the Country Director for Ipas Ethiopia, said that while cooperating agencies that receive funding directly from USAID "are well-aware of the Helms Amendment restrictions, below that level, no one knows the difference between Helms and the Global Gag Rule."<sup>274</sup> At the local NGO level, organizations are focused on providing services to their communities and are interested in U.S. policy on reproductive health in terms of how it affects their ability to help their constituents. Most people working at local NGOs assume that the U.S. policy on foreign aid for safe abortion is consistent. The concept that the Global Gag Rule could be lifted but another law

269 See USAID, Mandatory Standard Provisions for U.S., Nongovernmental Recipients, at 26 (Jan. 23, 2009), available at <http://www.usaid.gov/policy/ads/300/303maa.pdf>.

270 Interview with Yetnayet Asfaw, Deputy Director Programs and Jemal Kessaw, EngenderHealth, in Addis Ababa, Ethiopia (Oct. 28, 2009).

271 Interview with Bogalech Alemu, Program Advisor, and Tilahun Giday, Country Representative, Pathfinder International-Ethiopia, in Addis Ababa, Ethiopia (Oct. 28, 2009).

272 Interview with Abebe Kebede, Marie Stopes International Ethiopia [MSIE], (Oct. 26, 2009).

273 Representatives from the following local NGOs, which are engaged in a wide-array of reproductive health programs, expressed confusion regarding how the Global Gag Rule and Helms Amendment differed: Family Guidance Association of Ethiopia (FGAE), Hiwot Ethiopia (Hiwot), Amhara Development Association, African Development Aid Association, Ethiopian Aid, and Integrated Service for AIDS Prevention and Support Organization (ISAPSO).

274 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

would still restrict Ethiopian women's access to safe abortion is counter-intuitive to members of local NGOs working in local communities. Desta Kebede, the Program Director of the Family Guidance Association of Ethiopia (FGAE), may have put it best in acknowledging the continued existence of the Helms Amendment when he stated, "if that is the case, then in a way the Global Gag Rule is not lifted."<sup>275</sup>

The lifting of the Global Gag Rule has created a general understanding in Ethiopia that U.S. policy on foreign aid for safe abortion has changed, but there is still confusion among local NGOs that receive USAID funding regarding how the Helms Amendment is currently being interpreted and what restrictions may apply to them through the funding they receive.<sup>276</sup> Some USAID-funded local NGOs that are aware of the Global Gag Rule being lifted, are confused regarding whether the change means U.S. policy no longer imposes restrictions on abortion-related services<sup>277</sup> or if the restrictions of the Helms Amendment were part of the Global Gag Rule and are therefore lifted as well.<sup>278</sup>

The organizations in Ethiopia that are dedicated to providing comprehensive reproductive health care are looking for a clear explanation of whether current U.S. policy supports providing access to safe abortion services. USAID contracts executed since the Global Gag Rule was lifted still contain the same overly restrictive Helms Amendment language that has been included in USAID contracts since the 1980s.<sup>279</sup> The current U.S. policy on foreign aid for safe abortion services is unclear to most Ethiopians working to improve reproductive health services, which creates an obstacle to Ethiopians having access to comprehensive reproductive health care that includes safe abortion.

The confusion surrounding the Helms Amendment creates a number of problems that negatively impact Ethiopia's efforts to address the public health crisis caused by unsafe abortion. U.S. foreign policy should not interfere with Ethiopia's implementation of a liberalized abortion law that was publicly debated and designed to address specific public health problems faced by the country and its citizens. Congress should repeal the Helms Amendment in order to end the confusion caused by the current interpretation of the law in Ethiopia and because the Helms Amendment negatively impacts Ethiopia's efforts to address high rates of unsafe abortion. If Congress does

not repeal the Helms Amendment, the Obama administration should narrowly reinterpret the "method of family planning" language in the Helms Amendment and have USAID clarify which specific services are permitted and prohibited under the law. It is also important that USAID clarify the distinctions between the Global Gag Rule and the Helms Amendment and explain how Helms is interpreted, post-lifting of the Global Gag Rule. USAID should publish guidelines on the distinction between the Helms Amendment and the Global Gag Rule so that NGOs who may be potential partners for USAID understand whether their programs comply with current U.S. policy.

## 2. OVER-INTERPRETATION

The confusion in Ethiopia regarding the current status of U.S. policy on foreign aid for safe abortion and the residual effects of restrictive enforcement during the Bush administration has led to over-interpretation of the Helms Amendment by most of the cooperating agencies who receive USAID funding. Organizations that rely on USAID for funding are very cautious in how they interpret the Helms Amendment because they do not want to jeopardize their funding. These NGOs do not consider the exceptions to the Helms Amendment in how they interpret the law and in turn they do not implement programs using USAID funding that would meet the conditions of the exempted categories.<sup>280</sup> Most cooperating agencies distribute USAID funding very carefully to ensure that they remain in compliance with the Helms Amendment.<sup>281</sup> Additionally, in the wake of the Global Gag Rule being lifted, many cooperating agencies are reluctant to use USAID funds for any reproductive health programs where a conflict may arise.<sup>282</sup> Instead these cooperating agencies use alternate funding sources for reproductive health programs dedicated to including safe abortion services as part of a comprehensive program.<sup>283</sup>

The organization EngenderHealth receives funding from USAID for a program that does not involve abortion and receives funding from alternate sources for a comprehensive reproductive health program that includes the goal of increasing access to safe abortion services through government clinics.<sup>284</sup> EngenderHealth was aware of the Helms Amendment, but not the exceptions to the Helms Amendment that would allow them to use USAID funding for abortion-related services in some instances. In the

275 Interview with Desta Kebede, Program Director, Family Guidance Association of Ethiopia [FGAE], in Addis Ababa, Ethiopia (Oct. 30, 2009).

276 See Interview with Abebe Kebede, Marie Stopes International Ethiopia [MSIE], in Addis Ababa, Ethiopia (Oct. 26, 2009).

277 See Interview with Geta Alem Kassa, Executive Director, Dagmawi Selamssa, Program Manager, Doreen Kansime, Fundraising Officer, Hiwot Ethiopia, in Addis Ababa, Ethiopia (Oct. 26, 2009); Interview with Holie Folie, Consortium of Reproductive Health Associations, in Addis Ababa, Ethiopia (Oct. 30, 2009).

278 See Interview with Bilal Muhe, Bahir Dar Office Director, Amhara Development Association, in Addis Ababa, Ethiopia (Oct. 28, 2009).

279 Agreements entered into as recently as September and Oct. 2009 still include the USAID Mandatory Standard Provisions for U.S., Nongovernmental Recipients, which includes restrictive Helms Amendment language that has been used since the 1980s.

280 See Interview with Yetnayet Asfaw, Deputy Director Programs, Jemal Kessaw, EngenderHealth, in Addis Ababa, Ethiopia (Oct. 28, 2009).

281 See *id.*

282 See *id.*

283 See *id.*

284 See *id.*

absence of any clarification from the U.S. regarding current interpretation of the Helms Amendment the organization would not use any USAID funds directly for safe abortion services.<sup>285</sup> EngenderHealth would potentially expand their abortion related services in the future if there was clarification regarding what circumstances USAID money could be used for abortion-related purposes.<sup>286</sup>

In order to offset the chilling effect caused by over-interpretation of the Helms Amendment and the residual effect of restrictive enforcement during the Bush Administration, the Obama administration needs to communicate a clear message to the reproductive health community of Ethiopia regarding what the current U.S. policy is on the use of foreign aid for safe abortion services. The U.S. needs to make clear what actions are permitted and prohibited under the Helms Amendment. Specifically, USAID should clarify that the use of U.S. funding is permitted for comprehensive reproductive health programs that include safe abortion as an option when providing counseling and referral services. It is essential that members of organizations who receive USAID do not feel restricted from communicating relevant health care information to their clients.

In order to help ensure that Ethiopian women have access to the full range of reproductive rights legally available to them, USAID should distribute information that explains the current state of U.S. policy to all the relevant parties who are working on reproductive health issues in Ethiopia, to ensure that the reproductive health community can coordinate their efforts. USAID should communicate this information to a broad base of cooperating agencies and local NGOs involved in reproductive health services, and not just the organizations USAID directly partners with, in order to more effectively keep the relevant reproductive health community informed of U.S. policy. USAID should work with cooperating agencies, such as Pathfinder International and EngenderHealth, to develop programs that communicate relevant U.S. policy information to the local NGOs these cooperating agencies partner with. USAID should also collaborate with member-based organizations such as the Consortium of Reproductive Healthcare Associations (CORHA) and the Christian Relief and Development Association (CRDA) to disseminate information regarding the Helms Amendment to their member organizations, since these groups have well-developed networks that reach NGOs providing reproductive health services to communities. This would help

USAID more efficiently communicate relevant information to the reproductive health community; identify organizations that are implementing successful reproductive health programs; and help USAID and the Ethiopian reproductive health community more effectively coordinate efforts to provide access to safe abortion services.

### **3. LACK OF ACCESS TO ABORTION SERVICES AT GOVERNMENT LEVEL**

Another significant problem created by the current state of interpretation and implementation of the Helms Amendment is that government health clinics in Ethiopia, which rely on USAID for substantial amounts of funding, are expected to keep USAID funds distinct from alternate sources of funding that may be used for abortion-related services. Pathfinder International Ethiopia asserted that the restrictions imposed by the Helms Amendment on U.S. funding going to government clinics negatively impacts the quality of safe abortion care government facilities are able to provide.<sup>287</sup> Government health clinics may not be able to secure alternative sources of funding or resources to fill the gap created by the restrictions imposed on U.S. funds.<sup>288</sup> Currently the government health clinic system is working to improve the conditions necessary to ensure that safe abortion services are available at these facilities. As of now, however, gaps within the government health clinic system limit the public's access to these services.<sup>289</sup>

In theory, government health clinics should be the primary facilities where Ethiopian women receive safe abortion services and counseling, because, as compared to private facilities, government-run facilities provide free health services, are more conveniently located, and provide women with a degree of anonymity since these facilities provide a wide-array of health services and not just safe abortion services.<sup>290</sup> However, in practice, government health clinics are not yet able to meet the demand for abortion services.<sup>291</sup>

The restrictions imposed by the Helms Amendment interfere with the ability of government health clinics to provide safe abortion services because current interpretation of the law creates confusion regarding what USAID funds may be spent on in terms of equipment, training, and reproductive health counseling services.<sup>292</sup> Current interpretation of the law prohibits governments and NGOs from using USAID funding for much-needed manual vacuum aspiration (MVA) equipment, which is

285 See *id.*

286 See *id.*

287 Interview with Bogalech Alemu, Program Advisor, and Tilahun Giday, Country Representative, Pathfinder International-Ethiopia, in Addis Ababa, Ethiopia (Oct. 28, 2009).

288 *Id.*

289 *Id.*

290 See, e.g. Interview with Shegu Kumsa, Assela Clinic Director, Marie Stopes International Ethiopia [MSIE], in Assela, Ethiopia (Oct. 29, 2009).

291 Email correspondence with Saba Kidanemariam, Country Director, Ipas Ethiopia (Mar. 26, 2010).

292 Interview with Saba Kidanemariam, Country Director, Ipas Ethiopia, in Addis Ababa, Ethiopia (Oct. 27, 2009).

“irrational” and confusing because the use of funding for training in how to use MVA equipment is permitted.<sup>293</sup> As Saba Kidanermariam, Country Director of Ipas Ethiopia, stated: “What good is the training if you cannot provide the equipment?”<sup>294</sup> This type of contradictory message in regards to what is permitted and prohibited under the Helms Amendment is indicative of how the reproductive

health community in Ethiopia perceives U.S. policy regarding safe abortion services. USAID should revise its policy on the purchase of MVA equipment and clarify that the use of U.S. funding is permitted for the purchase of MVA equipment and training for dealing with post-abortion complications. USAID should revise the language in its standard contract agreement to reflect this change in policy.

## Conclusion

This Report analyzes Ethiopia’s attempt to address high rates of unsafe abortion through the liberalization of its abortion law and how the foreign policy of the United States affects these efforts. In seeking a better understanding of how U.S. foreign policy affects Ethiopia’s efforts to combat high rates of unsafe abortion, this Report also proposes practical recommendations that will help reform and clarify U.S. policy in order to better assist the people of Ethiopia in their ongoing efforts to fight high rates of maternal death linked to unsafe abortion.

The United States plays a significant role in Ethiopia through large foreign aid contributions. This type of assistance can have both a positive and a negative affect on the ability of Ethiopia to address public health issues. U.S. foreign policy, in the form of the recently-rescinded Global Gag Rule and the Helms Amendment, is negatively

affecting the availability of comprehensive safe abortion services for Ethiopian women. Unsafe abortion is one of the leading causes of death among women of reproductive age, second only to HIV/AIDS. This is a public health crisis and in response the Ethiopian government adopted a liberalized abortion law in order to try and support the women of Ethiopia. Instead of supporting these efforts, U.S. foreign policy has exported the domestic debate over abortion to Ethiopia, despite the drastically different situation on the ground.

For too long the use of U.S. foreign aid has been politicized as part of the ongoing debate in the United States over abortion. This ideological battle has led to dire consequences for the women and families of Ethiopia. The United States should be a partner in helping the Ethiopian people take steps to improve maternal health and mortality.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*



**Leitner Center  
for International Law and Justice**

Walter Leitner International Human Rights Clinic

**Fordham Law School**

33 West 60th Street, Second Floor

New York NY 10023

212.636.6862

[www.leitnercenter.org](http://www.leitnercenter.org)