

Policing Beyond the Border

9.1 THE HELMS AMENDMENT: LIMITING USE OF FUNDS FOR ABORTIONS

In 1973, by a 52–42 vote, the U.S. Senate adopted the Helms amendment, a law that prohibits the use of federal foreign assistance funding for abortion research and procedures.¹ Congress did not hold a single hearing related to the legislation, despite the seriousness of family planning access and the fact that women’s reproductive healthcare was at stake. Only months before, the U.S. Supreme Court ruled in *Roe v. Wade* that the right to terminate a pregnancy was a fundamental constitutional right rooted in privacy and protected under the Fourteenth Amendment’s Due Process Clause.

In dramatic contrast, the Helms amendment effectively conditioned U.S. foreign aid policy on the antiabortion platform long advocated by the legislation’s author, “the late, stridently antiabortion Sen. Jesse Helms (R-NC).”² Senator Helms, a former journalist, was a master of rhetoric. He claimed, “My amendment would . . . stop the use of U.S. Government funds to promote and develop ways of killing unborn children.”³

Senator Helms harangued colleagues to vote for the amendment, and then did not vote for it himself, likely because of his hostility toward foreign aid altogether.⁴ In fact, during his career in the United States legislature, Senator Helms repeatedly and aggressively asserted an unwillingness to promote or endorse legislation to advance women’s reproductive and safety rights internationally.⁵ According to Helms, treaties to protect women’s rights were being “negotiated by radical feminists with the intent of enshrining their radical anti-family agenda into international law.”⁶

Helms, a proud segregationist and widely described and known as racist, excelled at race-baiting and politicking on the bases of Southern white fear and resentment. Racism served as the foundation for his rise in politics from a radio newsman to working on the Senate campaign for another unapologetic segregationist, Willis

Smith. According to a *Wall Street Journal* commentary written by Chuck Smith,⁷ “Mr. Helms is credited with inventing the description of UNC, the University of North Carolina, as the ‘University of Negroes and Communists.’” Smith’s campaign ran inflammatory advertisements with wording such as: Do you want Negroes working beside you and your wife and daughter, eating beside you, sleeping in the same hotels, teaching and disciplining your children in school, occupying the same hospital rooms, using your toilet facilities?

Helms frequently pandered to racial and sexual fears, biases, stereotypes, and tensions. Chuck Smith writes about another political campaign advertisement that “featured a doctored photo of the incumbent’s wife dancing with a black man,” and although Helms denied involvement, “a newspaper advertising manager told Helms biographer Ernest Furgurson that Mr. Helms personally cut up the photos.” Helms was surely well aware that at the time such incendiary images and innuendoes could lead to the harm of others. The violation or perceived violation of sexual mores in the South, such as interracial intimacy, could result in racial terrorism directed at Black communities, ranging from harassment and threats of physical violence to the bombings of churches, homes, and businesses and lynchings. Emmett Till’s heinous murder serves as a powerful example. In his case, the fourteen year old allegedly whistled at a white woman in a rural Mississippi store. Days later, his body was discovered in a river with a cotton gin tied around his neck.

Senator Helms was unabashed in exploiting white resentment and triggering violence. Indeed, it is what made Senator Helms dangerous. Helms once said, “The Negro cannot count forever on the kind of restraint that’s thus far left him free to clog the streets, disrupt traffic, and interfere with other men’s rights.”

Helms grew up in a North Carolina household where his father, Jesse Helms, Sr., served as the local police chief, a position with considerable local power in a racially segregated community in the thick of Jim Crow. In the widely hailed biography of civil rights leader Robert Williams, the historian and biographer Timothy Tyson⁸ writes that, as a young child, Williams saw Helms, Sr., punish a Black woman by unmercifully beating and dragging her along concrete to jail with “her dress up over her head.” This image and her tortured screams haunted Mr. Williams for the rest of his life.

Senator Helms would come to wield enormous power in Washington, D.C., much like his father had in their small, Southern town of Monroe, North Carolina. However, he held little political regard for women of any race, regardless of their rank. Upon seeing Senator Carol Mosley-Braun (an African American) in an elevator, he commented to fellow Republican senator Orrin Hatch of Utah, “Watch me make her cry. I’m going to make her cry. I’m going to sing ‘Dixie’ until she cries.” According to Chuck Smith, “He then proceeded to sing the song about the good life during slavery.”

He expressed a particularly potent disregard for gays and lesbians, once announcing that “homosexuals, lesbians, [are] disgusting people, marching in the streets,

demanding all sorts of things, including the right to marry each other.” Yet Helms’s power and influence went beyond juvenile taunts. He used his political power and influence to block funding for AIDS research. And, as chair of the Senate Foreign Relations Committee, on International Women’s Day he once again announced his opposition to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and effectively stalled its ratification. To this day, the United States is one of only eight nations that has not ratified the CEDAW.

For all of the senator’s racism, sexism, and homophobia, he was also a master maneuverer and effective strategist. The Helms amendment bears this out. In the 1970s, just as now, the Senate did not reflect population demographics in the United States; it was overwhelmingly male. It was nearly all white. At the time, no women were among its membership and only two nonwhite members served in the Senate: Senators Edward Brooke of Massachusetts and Joseph M. Montoya of New Mexico. Representative Bella Abzug of New York, one of the few women in Congress at the time, expressed serious concerns regarding inclusion of a restriction on abortion in USAID funding, warning that “[t]he emotional prohibition of abortion is a misuse of the legislative process and of the aid program.”⁹ She stated, “I regret that the section does seem to place us in the questionable position of imposing on women abroad a restriction recently overturned by our Supreme Court and constitutes a serious interference with the internal affairs of other countries.”¹⁰ She was right.

Even the Nixon administration opposed the Helms amendment. Nixon’s “U.S. Agency for International Development (USAID) issued a statement to Congress expressing its strong opposition” to the amendment.¹¹ According to the Guttmacher Institute, “USAID protested that following an era of decolonization, this new restriction was at odds with the fundamental philosophy of U.S. population assistance policy, because of its seemingly imperialistic and hypocritical overtones.”¹² USAID officials urged Congress to consider the urgency and value of reproductive healthcare services for poor women and reject the Helms amendment. USAID staffers logically feared that the policy “could amount to a form of coercion” in developing countries.¹³ After all, the United States was forging a duplicitous double standard. For women in the United States, abortion was at that time, and continues to be, constitutional and private. This was not the case for poor women living in developing nations – many of which continued to struggle with repugnant vestiges of colonialism, slavery, and imperialism.

The Helms amendment represented a fundamental shift in the Foreign Assistance Act. Helms knew that nations desperate to relieve poverty would likely concede to the coercive demands of the United States. He said, “Foreign countries already understand that assistance is received only if they adhere to reasonable conditions,”¹⁴ which include “social reform” mandated by “the host country.”¹⁵ And while the United States typically engaged in soft law practices (economic incentives or sanctions) to advance the rule of law or forge constitutional standards

similar to those adopted in the United States, the Helms amendment and its progeny directly broke with that practice.

The new law undermined the foundational principle of foreign aid legislation – namely, to relieve endemic conditions of poverty and aid in the promotion of the rule of law. USAID officials amplified these concerns, explaining that the law “explicitly acknowledges that every nation is and should be free to determine its own policies and procedures with respect to population growth and family planning.”¹⁶ They said, “the amendment would place U.S. restrictions on both developing country governments and individuals in the matter of free choice among the means of fertility control . . . that are legal in the U.S.”¹⁷

In an attempt to win votes, Senator Helms claimed that his amendment would benefit poor women in developing nations, because that is what foreign aid does. He denounced skeptics who predicted that the amendment would negatively affect U.S. relationships abroad.¹⁸ As Senator Helms put it, the amendment was a limited proposal,¹⁹ because the United States could be even more aggressive about ending access to abortion in developing countries. He said, “We could, in fact, go far beyond the present amendment and require all abortion activities, from whatever funds, to be stopped before our assistance could be received.”²⁰ Eventually, the United States adopted that approach with the Mexico City Policy (MCP) during the Reagan administration.²¹ Given its broad expansion under the Trump administration, the MCP now represents the most regressive foreign aid policy tied to reproductive healthcare of any developed nation.

9.2 THE HELMS AMENDMENT AND ITS PROGENY:

HOBBLING RESEARCH

The birth control pill revolutionized family planning, just as long-acting contraceptives – medications to halt ovulation and prevent pregnancies – and even safe hysterectomies did. In reality, research plays a vital role in expanding women’s reproductive healthcare options and promoting safety. Without medical research many of the advancements in women’s healthcare would not exist. For example, the very existence of Plan B – one of the few medications now available in the United States that inhibit pregnancies after sex, including rape – is the result of medical research. Similarly, medication-based abortion, which can be safely performed at home through the administration of pills, reflects the progress of medical research in recent decades. Imagine, however, if these advancements did not exist due to bans on research. The Helms amendment and its progeny now extend antiabortion restrictions beyond the procedures to include hobbling research, which ultimately negatively impacts women’s health and safety.

More than forty years ago, Senator Helms’s proposed halt to abortion-related research (as a condition for receiving aid from the U.S. government) failed. That provision failed to garner sufficient votes in 1973, but years later resurfaced in

Senator Joe Biden's amendment to the Foreign Assistance Act of 1961 (FAA). Like the Helms amendment, Senator Biden's legislation also called for bans related to abortion and appears to have been added to the law for "emphasis."²² Enacted in 1981, the Biden amendment states:

None of the funds made available to carry out this part may be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.²³

The Biden amendment extends beyond the FAA and "has also been included in foreign operations appropriations acts."²⁴ In 2016, during the Obama administration, it was included in the Department of State, Foreign Operations, and Related Programs Appropriations Act and, as such, "applies to all foreign assistance activities authorized by . . . [the] FAA," particularly development assistance.²⁵ Moreover, the language is broad and could be interpreted to ban research related to abortion procedures, fetal tissue research, and technologies associated with ending a pregnancy. Not only do these bans target women, they also undermine the work of the scientific and medical communities.

The Biden amendment's protective aims related to involuntary sterilizations could be lauded, because the history of forced sterilizations under U.S. policies is quite shameful, albeit instructive. On close inspection, this amendment also hurts women, medical research, and ultimately society. Why? Restricting research on abortion essentially means precluding the advancement and enhancement of the medical technologies associated with the procedure, including making it the safest, least invasive, and most efficient and accessible procedure available to women.

Other subsequent amendments further constrain reproductive rights abroad. Like the Helms and Biden amendments, Representative Mark Siljander's amendment bans the use of any federal funds for lobbying "for abortion."²⁶ Representative Siljander identified himself as part of the so-called silent majority, supported by "morally concerned citizens who are sick of the situation" in the United States.²⁷ According to *Time* magazine, Siljander championed "the Christian's role in American government."²⁸ True to his opposition on women's rights, he even publicly criticized President Reagan's nomination of Sandra Day O'Connor to the U.S. Supreme Court, telling reporters that he was "very angry" about her nomination because she lacked a track record on ultraconservative values.²⁹ Subsequent amendments to the FAA include the Tiahrt amendment (1998) and the Livingston amendment (1986).³⁰

The efficacy and goals of these amendments remain an important point of discussion and deserve clarification. For example, the amendments did not stop pregnancy terminations, but dangerously drove abortions underground. Data shows that women who experience violence, including in developing countries, are nearly twice as likely to have an abortion, regardless of the availability of safe abortions.³¹

Adolescent girls in disaster or conflict zones face heightened risks of sexual violence because of increased exposure to coerced sex, early marriage, and forced childbearing.³² Moreover, while legal abortions, particularly in the West, are very safe, roughly 55 percent of abortions in developing nations are unsafe, and data suggests that, despite a decline in the overall abortion rate, “the proportion of unsafe abortions is on the rise, especially in developing nations.”³³

Mexico City Policy: Undermining Structural Developments in Women’s Health

Another setback to women’s reproductive rights abroad came in the form of a presidential executive order issued by the Reagan administration in 1984: the Mexico City Policy (MCP), also known as the “global gag rule.” This section argues that the MCP is more than a mere temporary financial mandate or mild financial incentive invoked during Republican administrations. To the contrary, the MCP operates in deeply coercive ways that condition speech on cooperation with U.S. financial mandates, ultimately stripping NGOs (working on behalf of women) of speech. Second, it articulates the MCP’s longer-term and more devastating effects in undermining women’s advancement, including by erecting barriers to building infrastructures that address women’s health.

In August 1984, President Reagan announced the MCP at the Second United Nations International Conference on Population in Mexico City.³⁴ The MCP is referred to as the global gag rule because, in addition to prohibiting NGOs operating in poor countries from using U.S. funds for voluntary abortion services, it prevents those organizations from using their own funds to provide advice or information on a public or private basis.

In this way, the MCP expanded reproductive health restrictions beyond the constraints previously established and policed by the Helms amendment. Under Helms and its progeny, no federal dollars could be used to promote, educate about, provide information on, or fund abortions. The MCP imposes additional restrictions, tethering U.S. funds to other foreign dollars. “While the Helms amendment limits the use of U.S. foreign aid dollars directly, the gag rule went far beyond that by disqualifying foreign NGOs from eligibility for U.S. family planning aid entirely by virtue of their support for abortion-related activities subsidized by non-U.S. funds.”³⁵ The current policy “denie[s] grants to international family-planning organizations for any purpose if they also perform[] abortions or promote[] abortion rights.”³⁶ It mandates that NGOs certify that they will not “perform or actively promote abortion as a method of family planning” using funds from any source, as a condition for receiving funding from the U.S. government.

The MCP asserts that “[a]ttempts to use abortion, involuntary sterilization, or other coercive measures in family planning must be shunned, whether exercised against families within a society or against nations within the family of man . . . [and that] the United States does not consider abortion an acceptable element of family

planning programs.”³⁷ Further, the policy restricts NGOs’ use of funding that relates to:

- 1) procurement or distribution of equipment intended to be used for inducing abortions as a method of family planning; 2) special fees or incentives to women to coerce or motivate them to have abortions; 3) payments to persons to perform abortions or to solicit persons to undergo abortions; 4) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and 5) lobbying for abortion.³⁸

An analogy may help to illustrate what this means. Imagine if the federal government conditioned foreign aid to reduce or eliminate HIV/AIDS on NGOs not mentioning the words “sex,” “intercourse,” “homosexuality,” “prostitution,” or “sex work.” It would be all the more coercive and repugnant if the government went further and prohibited the use of the words “male latex contraceptives,” “vaccines,” “circumcision,” or “antiretroviral therapy (ART),” all of which demonstrably reduce or prevent the spread of HIV/AIDS. And it would be deadly if the government forbade NGOs from using resources from other nations to provide ARTs or condoms. Or imagine if the federal government in its contracts involving de-escalation of terrorism abroad insisted that NGOs, organizations, governments, and subcontractors never mention the words “war,” “missiles,” “terrorism,” “weapons of mass destruction,” “refugees,” “peace and reconciliation,” and the like. It would be impossible for such organizations to effectively carry out their missions. It would be even worse if the United States barred such organizations from using funds from other allied nations to advance antiterrorism efforts.

Ironically, President Reagan cited the United Nations Declaration of the Rights of the Child as the foundation for the law. He claimed that because the Declaration of the Rights of the Child “calls for legal protection for children before birth as well as after birth . . . the United States does not consider abortion an acceptable element of family planning programs and will no longer contribute to those of which it is a part.” Ironically, the United States has never ratified the Convention on the Rights of the Child.³⁹ Today, it remains the only nation to reject even the symbolic value of embracing a doctrine that establishes rights for living, born children. As one commentator recently wrote, “The United States can learn from other member nations on how to reduce poverty, ensure women’s rights, improve education and educational access, and healthy living conditions, for starters.”⁴⁰

After the Reagan presidency, each Republican President has implemented the MCP through executive action, while every Democratic President, including Presidents Clinton and Obama, rescinded the policy.⁴¹ President Clinton repealed the MCP on his first day in office. In a memorandum, he wrote that the MCP “undermined efforts to promote safe and efficacious family planning programs in foreign nations.”⁴² President Clinton directed USAID to remove all conditions “not

explicitly mandated by the Foreign Assistance Act or any other law” from current and future grants.⁴³

Arguably, to a significant degree, women’s reproductive health in developing countries has been determined by a stroke of a pen – in the United States. The consequence is a dramatic and arbitrary contraction and diminution of access to and provision of healthcare at the turn of an administration. As healthcare options diminish for poor women in Africa, Asia, Central America, and South America, harmful impacts expand – not only for pregnant women but also their children, especially with regard to rape, incest, and miscarriages.⁴⁴

Indeed, U.S. policy has undermined the creation of vital reproductive health infrastructures and resulted in the full-scale ban of abortion and, sometimes, difficulties in obtaining contraception. In some developing countries that receive U.S. foreign aid, abortion is simply illegal and criminalized even in cases of rape and incest. Not surprisingly, then, in countries like El Salvador and Nicaragua, miscarriages are treated with suspicion and can lead to arrest and incarceration.⁴⁵

The devastating report published by the *Los Angeles Times* in 2015 highlighted cases of rape victims jailed in El Salvador after miscarriages and stillbirths, cruelly handcuffed to hospital beds, and then carted off to jail.⁴⁶ The journalist investigating the story also uncovered a particularly disturbing case of a teenager sentenced to thirty years in prison after experiencing a miscarriage.⁴⁷ In that case, like many others, she was a rape victim.⁴⁸

As antiabortion politics play out strategically in the United States through policies like the MCP and the Helms amendment, nations come to adjust to those economic conditions by curtailing reproductive access and failing to build vital and safe infrastructures for reproductive health. The MCP is particularly pernicious as it applies to the application of non-U.S. aid. At the structural level, it imposes significant disincentives to build reproductive healthcare infrastructure. Thus, even with the revocation of the MCP, during democratic administrations, reproductive healthcare facilities in some nations that receive U.S. foreign assistance remain woefully underdeveloped, contributing to the notion that women’s healthcare rights are more illusory than real under Republican administrations.

To better understand why women’s rights organizations strongly oppose U.S. foreign policy on reproductive healthcare, consider the inconstant nature of that policy. The global gag rule was first revoked by President Clinton and then reinstated by President George W. Bush. President Bush expanded the scope of the MCP from USAID funding to all population planning assistance by any agency, bureau, or office. President Barack Obama⁴⁹ rescinded the policy, and it was later reinstated by President Donald J. Trump almost immediately after his inauguration.⁵⁰

Furthermore, when President Trump reinstated the global gag rule, his administration expanded its scope to include “global health assistance furnished by all departments or agencies.”⁵¹ Trump wrote, “I further direct the Secretary of State

to take all necessary actions” to carry out the order.⁵² This means that the global gag rule “will apply to assistance provided by USAID, the Department of State, and the Department of Health and Human Services (principally the National Institutes of Health and the Centers for Disease Control and Prevention).”⁵³ As one human rights organization advocating on behalf of girls and women describes:

Foreign NGOs receiving U.S. government health assistance for family planning, maternal and child health, nutrition, HIV/AIDS (including PEPFAR), infectious diseases, malaria, tuberculosis, and neglected tropical diseases, will now be required to certify that the organization does not provide abortion services, counsel or refer for abortion, or advocate for the liberalization of abortion laws with non-U.S. funds as a condition of receiving assistance from the U.S. government.⁵⁴

The monetary impact of the MCP under the Trump administration “means that more than 16 times the amount of funding may be impacted than if [the global gag rule] was applied only to bilateral family planning assistance.”⁵⁵ In raw numbers, groups estimate that previous levels of aid amounting to roughly \$575 million could be exponentially multiplied to \$9.5 billion “for global health assistance, government-wide.”⁵⁶

And, while neither President Clinton nor President Obama made any substantive changes to the MCP other than rescinding it during their terms in office, the cast was set. During both administrations, women in developing countries where U.S. aid is distributed experienced high rates of unintended pregnancies. Some suffered and died from abortions performed under perilous and often unsanitary conditions and others endured significant rates of infant mortality. Sadly, maternal mortality remains a glaring problem, both domestically and abroad.

By imposing broad restrictions on funding for foreign NGOs, the MCP effectively forces organizations to choose to accept funding to provide essential health services with restrictions that can jeopardize the health of their patients, or reject the policy and lose a major source of financial support. The Helms amendment and the global gag rule belie the foundational principles and values on which the rule of law is founded. In essence, the funding exacerbates inequalities, distributing and suppressing rights according to social status. Ultimately, the U.S. antiabortion campaigns abroad undermine women’s autonomy, as well as that of the governments and NGOs impacted by its policies.

In fact, the Center for Health and Gender Equity reports that

[d]ocumentation and analysis of the impact of the global gag rule has shown that the policy restricts a basic right to speech and the right to make informed health decisions, as well as harms the health and lives of poor women by making it more difficult to access family planning services. It has also been found that the policy does not reduce abortion.⁵⁷

Given its scope and scale, the Trump version of the MCP threatens women's health in far deeper and broader ways than previous versions. Under Trump, agencies and departments that receive direct appropriations for global health include:

- 1) the Department of State (including the Office of the Global AIDS Coordinator, which oversees and coordinates U.S. global HIV funding under the President's Emergency Plan for AIDS Relief (PEPFAR));
- 2) two operating divisions of the Department of Health and Human Services: Centers for Disease Control ("CDC"), the Food and Drug Administration ("FDA") and the National Institutes of Health ("NIH"); and
- 3) the Department of Defense ("DoD").⁵⁸

Arguably, the restrictions on funding applied to subrecipients of USAID and others effectively impose similar restrictions on U.S. NGOs.⁵⁹ Some advocates stress that loopholes exist in the law to permit some limited consultations on abortion.⁶⁰ For example, they stress that where legal abortions were available pre-MCP, USAID's funding restrictions allow foreign NGOs to passively respond to a question about where a safe and legal abortion may be obtained.⁶¹ Even so, there are conditions relating to the manner of the question and the status of the women.⁶² That is, an NGO may "passively" respond if the question is asked by a woman meeting the following criteria: (a) the woman is already pregnant; (b) she clearly states she has already decided to have a legal abortion; and (c) the family planning counselor reasonably believes that the medical ethics of the country requires a response to where an abortion may be safely obtained.⁶³ In reality, however, U.S. foreign policy has contributed to nations having a negative view of abortion and, at worst, criminalizing the procedure.

Decades after the Helms amendment and MCP became law, unsafe, illegal abortions continue to be performed in developing countries receiving U.S. aid. In other words, the laws failed to reduce the incidence of abortion. After all, women continue to have abortions and some NGOs refuse to receive U.S. government aid in order to provide urgent care to girls and women who need it most, including in cases of rape, incest, and to save women's lives.

In many ways, however, the Helms amendment and the MCP also represent five enormous victories for antiabortion forces in the United States. First, Congress and a succession of Republican Presidents successfully politicized abortion to the degree that some nations continue to outlaw the practice, despite the safety of legal abortions. Second, abortion continues to be stigmatized in developing countries (and the United States) to such a degree that even where it may be legal, women are discouraged from seeking or obtaining them, even in life-threatening situations. Third, NGOs that receive U.S. government funds do not offer any information, counseling, or abortion-related services. Moreover, many of the NGOs that rejected U.S. aid have been shuttered and disbanded, unable to meet the needs of women

who so desperately require their services. Fourth, the United States has effectively restricted the speech of poor women of color in developing countries, even though domestically such restraints would not be acceptable under U.S. law. Fifth, the United States has succeeded in creating a culture of punishment, fear, and shame for pregnant girls and women who seek abortions. Given these effects, it is not surprising that abortion services in developing countries are primarily underground, often illegal, and frequently unsafe.

Earlier parts of this Chapter addressed the laws that govern foreign aid policy and that determine rules on the ground concerning information about and access to women's reproductive healthcare. next section addresses the costs of this policy abroad, including maternal mortality due to unsafe, illegal abortions, criminalization of abortion, and the real-life tragedies of women and girls. It also casts light on the discriminatory effects of seemingly neutral policies.

9.3 AGGRAVATING THE EFFECTS OF RAPE, WAR, AND DISASTER

Forced sex is one key contributing factor to high rates of unwanted pregnancies in developing countries. In some nations, rape does not exist in the vocabulary. And even where rape exists in the local nomenclature, it may apply only between strangers, but not between husband and wife. In Afghanistan, for example, the word rape lacks the significance and meaning attributed to it in many other parts of the world:

There are no words for “rape” either in Dari or in Pashto. The phrase “sexual attack” (*tajawuz-e jensi*) is used but not in the context of marital rape. To an Afghan raping one's wife is nonsense. Men do “it” whenever they feel like. It does not matter whether she likes it or not. If a wife went to court and complained, the judge would laugh and tell her not to make a fool of herself. For the same reason, Pashto and Dari have no word for “foreplay.” This is because females are perceived as property and sex objects for the pleasure of men.⁶⁴

Ironically, sometimes states' efforts to address ending violence against women and girls further undermine their sexual and reproductive security. Consider a 2009 Afghan law on the elimination of violence against women. The law does not clearly differentiate between rape and adultery, both of which the government considers crimes. As an unfortunate result, rape victims have actually been accused of and criminally charged for committing adultery, which is a punishable offense. Activists and civil society organizations strive to “remove the concept of ‘adultery’ from the definition of rape;” however, these notions of female (victims') culpability in sexual violence remain deeply entrenched in cultural, and now legal, understandings.⁶⁵

The consequences of such policies speak for themselves. According to one news account, authorities in Afghanistan charged a sixteen-year-old rape victim with “‘adultery by force’ – a ‘crime’ that carried a 12-year jail sentence.”⁶⁶ Subsequently,

the girl became pregnant and gave birth in prison. According to a prominent NGO in the region, Women for Afghan Women (WAW), 90 percent of their clients were survivors of violence. Their “clients have been raped, sold, beaten, starved and mutilated – primarily at the hands of a family member, or in some cases, multiple family members.” Afghanistan receives significant USAID resources, but the American government has been notoriously silent about child rape and pregnancies in Afghanistan.⁶⁷

The problem for marginalized women and girls in developing nations is that local laws may not address their suffering, even when they encounter extreme sexual victimization. Women and girls may be subject to sexual violence at home and in society. Sexual violence and rapes are exacerbated during conflict; rape is a horrific spoil of war – which governments do too little to change.

Although accurate information about the incidences of rape is especially difficult to obtain in conflict zones, researchers and aid workers confirm high occurrences. Compelling research exists that documents the use of rape as a weapon and tactic of war in at least thirty-six different conflicts.⁶⁸ Researchers and NGOs estimate that between 250,000 and 500,000 girls and women suffered rapes during the 100-day Rwandan genocide.⁶⁹ They report that the West Pakistan army raped 200,000 Bangladeshi women in 1971.⁷⁰ Approximately 20,000 children in Rwanda and 25,000 children in Bangladesh were born as a result of the aforementioned rapes.⁷¹ In the conflict between Bosnians, Croats, and Serbs in the former Yugoslavia, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia found camps “specially devoted to rape, with the aim of forcing the birth of Serbian offspring.”⁷²

In the abstract, the concerns over foreign women and girls articulated in this Chapter may be more difficult to grasp in the United States or even in the developing nations. For example, the local government’s response to a recent case in Paraguay is not atypical: “We’re totally against interrupting the pregnancy The girl is getting assistance permanently in a shelter and the pregnancy is progressing normally without a problem.”⁷³ In that case, government officials ordered the eleven-year-old to undergo a cesarean section and then placed her in a shelter for troubled and difficult youths. The victim’s stepfather had raped her. However, such cases, particularly involving rape and incest of little girls and teenagers, occur with far greater frequency than described in legal scholarship.

Ultimately, the consequences of restrictive health services can be deadly. In Latin America, girls under sixteen suffer maternal death at a rate that is “four times higher” than that of older women.⁷⁴ According to the United Nations, annually “an estimated 70,000 adolescents in developing countries [die] from complications related to pregnancy and childbirth.”⁷⁵ The European Parliament, which commissioned a study on this issue, reports that “[s]exual violence against minors is a major problem in Latin America.”⁷⁶ The study’s authors concluded that girls are at risk

not only at home but also at school and within the larger community.⁷⁷ High rates of physical and sexual violence against girls can (and often does) continue into adulthood: “46.3% of Ecuadorian and 70% of Peruvian women experience physical, sexual and/or emotional violence in their lifetime.”⁷⁸

Data shows that women living through such conditions are nearly twice as likely as other women to obtain abortions, regardless of the availability of safe abortions. Data also shows that adolescent girls in disaster or conflict zones faced a heightened risk of sexual violence because of their increased exposure to coerced sex, as well as early and forced marriage and childbearing. However, these conditions of war, including rape and sexual assault of girls and women, occur with such frequency that they should not escape lawmakers’ attention. If the poor women who suffer such fates abroad lived in the United States, federal dollars would pay for their abortions as they arise in cases of rape. Thus, what does the United States’ silence on these issues signify to governments abroad?

According to the WHO, a legal abortion is as safe as a penicillin shot.⁷⁹ Clearly, the same is not true of illegal, criminal abortions, which the organization considers “unsafe.” That is, an “unsafe abortion” occurs when “terminat[ion] [of] an unintended pregnancy [is] carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.”⁸⁰ Obtaining accurate data for abortions is challenging, even more so for unsafe abortions, and many abortions are undocumented. However, researchers attribute 13 percent of worldwide maternal mortality to unsafe abortions.

In raw numbers, each year nearly 20 million unsafe abortions take place.⁸¹ And while nearly 3 percent of abortions in Western nations are unsafe, 55 percent of abortions in developing nations are unsafe. Further, empirical research shows that, despite a decline in the overall abortion rate, the proportion of unsafe abortions is rising, especially in developing nations. At the very least, the impact of the Helms amendment is the loss of opportunity for the United States – the largest bilateral donor for family planning and reproductive health programs globally – to save millions of lives.

On the one hand, the Helms amendment and the MCP result in less accessible legal abortions in developing countries that receive foreign aid from the United States. On the other hand, women in developing countries continue to terminate their pregnancies – albeit under unsafe conditions and mostly illegal circumstances, driven underground by these policies. Very likely, these policies will never end abortions, but their being driven underground puts women’s lives at greater risk.

For example, a study of reproductive outcomes for women in Ghana between 1972 and 2007 showed that while the MCP was in effect, there was no reduction in the use of abortions in urban areas, but there was a substantially larger reduction in rural areas.⁸² Similarly, a 2011 study of twenty countries by Bendavid, Avila, and Miller showed that in the period between 1994 and 2008 the induced abortion rate *rose* while the MCP was in effect.⁸³ Countries with high exposure to the MCP

experienced sharp increases in abortions after the MCP was reinstated in 2001 during the Bush administration. Very likely, this is because NGOs that provide holistic women's healthcare, including counseling and contraception, are negatively impacted by Helms and the MCP, resulting in closures.

Furthermore, women living in countries with high exposure to the MCP were more than three times likely to have an induced abortion after the MCP was reinstated than during the period from 1994 to 2000 (when the MCP was not in effect) or than women living in less exposed countries.⁸⁴

These policies also impact contraceptive use. The Bendavid, Avila, and Miller study also showed that the use of contraceptives declined in high-exposure countries while the MCP was in effect.⁸⁵ Consistently, the data reported lower prevalence of contraceptives usage in high-exposure countries than in low-exposure countries. In other words, the research revealed that U.S. policies produced perverse effects on reproductive health. Similarly, a 2015 study conducted by the International Food Policy Institute (IFPI) demonstrated an overall reduction in the availability of contraceptives in Ghana while the MCP was in effect.⁸⁶ Likewise, Population Action International (PAI) reported that by 2002 family planning associations in sixteen developing countries no longer received USAID-donated contraceptives because they declined to sign the policy.⁸⁷

Taken together, the Helms amendment and the MCP place NGOs and nations in a difficult position. If they forego U.S. funding, they risk crippling access to and development of urgent resources. Yet, by accepting U.S. foreign aid funding, including the attendant conditions, they could contribute to the unnecessary and preventable deaths of girls and women in the country.

9.4 CONCLUSION

Some of the most dangerous international reproductive health policies can be tied to Senator Helms, a Southern segregationist notorious for his lifelong racism, sexism, and homophobia. Of course, he alone is not responsible for the amendment that bears his name, which conditions foreign aid on abortion policies. He was one man, with one vote. Rather, the complicity and duplicity of an overwhelmingly male, nearly all-white senate was persuaded by his coercive agenda.

Senator Helms feigned an interest in the lives of poor women abroad, cautioning that USAID funding practices potentially targeted them as abortion research subjects. Yet, as history demonstrates, Senator Helms theatrically and vehemently opposed legislation and international protocols of all kinds to advance women's equality and safety domestically and abroad. He was not a sympathizer of women's health, rights, or safety.

Senator Helms claimed foreign aid for abortion research abroad was a ruse and underhanded strategy for abortion proponents in the United States to perfect the technology abroad and then make it domestically available. According to him,

USAID funds were simply “the guise” for an “alleged” benefit to foreign nations. Helms claimed that after effective and safe abortion techniques were developed abroad, those technologies would come to the United States. And while that might have been true, abortion was already legal in the United States. If anything, Helms undermined research efforts to make contraception and abortion safer and more effective.

In this context, Senator Helms was likely less concerned with women abroad serving as research subjects for American interests than he was focused on denying women throughout the world the right to govern their bodies. As Nina Crimm writes, “having failed domestically to legislatively reverse the impact of *Roe v. Wade*, pro-life groups took a path of lesser resistance and partially derailed the momentum of U.S.-supported international population assistance,” by enlisting the help of Senator Jesse Helms, a staunch, “ultra-conservative,” Southern Baptist.⁸⁸

The Helms amendment catalyzed the promulgation of federal antiabortion policy directed at developing countries and nongovernmental organizations (NGOs) serving those nations. It was simply the first in a wave of problematic U.S. foreign policies related to abortion. Helms demonstrated that legislation could be a powerful weapon against reproductive rights. By 1974, “despite President Nixon’s strong support for global population programs, USAID created policy . . . against providing U.S. funding for ‘information, education, training, or communication programs that seek to promote abortion as a method of family planning.’”⁸⁹