COMMENT

The "Global gag rule": Curtailing women's reproductive rights

RUTH MACKLIN

Abstract

The Global gag rule (GGR), originally known as the Mexico City Policy, is a United States policy that limits the reproductive rights of women in many resource-poor countries. In 2018, the US administration of President Donald Trump reinstated this policy, which was first issued by President Ronald Reagan in 1984, and later annulled by two US presidents in the intervening years. The policy prohibits any non-governmental organisation (NGO) outside the US from providing women or couples with family planning information that includes access to abortion, as a condition of receiving US funding. Although the policy is designed to reduce the rate of abortion in countries where NGOs have adopted it, studies have shown the opposite effect. The policy violates fundamental ethical principles, as well as United Nations human rights treaties and action programmes.

The Global gag rule (GGR), originally known as the Mexico City Policy, is a United States policy that limits the reproductive rights of women in many resource-poor countries. The original name for this policy derives from the announcement made by the administration of former President Ronald Reagan at the United Nations International Conference on Population, in 1984 in Mexico City (1). In its initial formulation, the policy required non-governmental organisations (NGOs) outside the US to certify that they will not "perform or actively promote abortion as a method of family planning" with funds from any donor, including their own money, as a condition for receiving US global family planning assistance. When it has been in force, the policy prohibits US aid even if the funds to support access to information come from a non-US source. It came to be known as the "Global gag rule" (a name introduced by its critics) because it prevented physicians, nurses, or other personnel at NGOs from providing information to women seeking reproductive health services. This global policy is a direct reflection of the decades-old political battle surrounding abortion in the United States. It is an example of US imperialism, in the way the government ties its foreign aid to domestic political controversies.

Author: **Ruth Macklin** (ruth.macklin@einstein.yu.edu), Distinguished Professor Emerita, Department of Epidemiology and Population Health, Albert Einstein College of Medicine, Bronx, NY 10461 USA.

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To illustrate: since 1984, every US government administration headed by a president from the Republican party has followed the policy. Every administration headed by a president from the Democratic party has annulled the policy. With few exceptions, Republican politicians are conservatives and opposed to abortion, while Democratic legislators and presidents are permissive on abortion. President Bill Clinton annulled the Mexico City Policy on January 22, 1993. President George W Bush reestablished it in January 2001. President Barack Obama annulled it again on January 22, 2009, and the current US president, Donald Trump, reestablished it in a presidential memorandum on January 23, 2017. New US presidents are inaugurated on January 20 of the year their term of office begins, so it is evident how swiftly these presidents have acted on the policy. Trump renamed the policy "Protecting life in global health assistance." The life in question is, of course, foetal life at any stage of a woman's pregnancy.

The original language of the Mexico City Policy is as follows: ""[T]he 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. …[T]he United States will no longer contribute to separate nongovernmental organizations which perform or actively promote abortion as a method of family planning in other nations" (1).

The rule prohibits institutions throughout the world from receiving US funds if they provide information to women about family planning options that include access to or referral to abortions, whether abortion is legal or illegal in those places. Empirical studies of the effects of the policy during the Reagan and Bush administrations revealed that the results were contrary to the purported goal of the policy. In the countries in which the policy was implemented, no fewer abortions took place. However, there were more unsafe abortions in resource-poor countries. One study documented the results of the policy in Nepal, Kenya, and Zambia: "In each of these places, the Global Gag Rule affected family planning, HIV services, maternal and child health, and even malaria services. And in no place did the policy reduce abortions. In fact, the irony is that this policy led to more unwanted pregnancies" (2). According to another published account,

> *While supporters of the GGR assert that the policy reduces the number of abortions, this is demonstrably false. In 2011, two rigorous studies used quantitative data analysis to evaluate the relationship between the GGR and abortion rates. In one of these studies…during the years the policy was in place, abortion rates did not decrease for any demographic, and*

> *in fact there was a 50–60 percent increase in the likelihood of abortion for women in rural areas of Ghana….[Another study in sub-Saharan Africa] found that women in high GGR-exposed countries had two and a half times the odds of experiencing an induced abortion once the policy was reinstated, compared to their counterparts in low GGR-exposed countries" (3).*

Results of additional studies revealed that family planning organisations lacked funds to provide a variety of services for women, resulting in major reductions in access to contraceptives, sex education, and HIV tests. According to Human Rights Watch, "Under previous versions of the Global Gag Rule, organizations that chose to continue work that meant the loss of their US funding had to cut staff, services, and sometimes to close clinics. On the other hand, health providers in organizations that complied with the restrictions to keep their US funds have talked about being 'gagged' from providing full and accurate information to patients and advocating for changes to restrictive abortion laws" (4).

The current version of the policy issued by the Trump administration expands the previous versions. It threatens global health programmes in sixty countries. The greatest losses are for vulnerable women in resource-poor countries. Unlike wealthier women, they lack resources to travel to a country where abortion is legally available. And even in countries that have strict abortion laws, wealthy women can often obtain access to medical doctors who provide abortions in their private offices—usually for a considerable fee. The expanded policy in the Trump administration affects not only reproductive health programmes, but also other programmes that affect vulnerable populations, including HIV/AIDS, malaria, and child health. According to one report, "The Trump administration's application of the policy extends to the vast majority of US bilateral global health assistance, including funding for HIV under PEPFAR, maternal and child health, malaria, nutrition, and other programs" (1). An analysis by the Kaiser Family Foundation, a US NGO, found that "more than half of the countries in which the U.S. provides bilateral global health assistance allow for legal abortion in at least one case not permitted by the policy; and had the expanded policy been in effect during the FY 2013 – FY 2015 period, at least 1,275 foreign NGOs would have been subject to the policy" (1). In sum, the expanded policy under the Trump administration applies to nearly all US bilateral global health assistance. In monetary terms: "Under previous Republican administrations, the restrictions in the Mexico City Policy applied specifically to US family planning funds, approximately US$ 575 million. Trump's policy extends restrictions to an estimated $8.8 billion in US global health assistance…" (4).

In a separate act with similar consequences, the Trump administration eliminated US funding for the United Nations Population Fund (UNFPA), the largest global provider of family planning and reproductive services (5). It threatens vital programmes to reduce unintended pregnancies and prevent child marriages. These consequences of the newly reinstated Global gag rule are sufficient to demonstrate its negative effects on the health and well-being of vulnerable populations, affecting not only women, but also children and men at risk for HIV in resource-poor countries. Notably, the policy violates key ethical principles as well as human rights treaty provisions.

Violation of ethical principles

The most obvious example is the widely accepted principle *of respect for persons*. This principle requires that individuals be treated as autonomous agents (6). But women cannot act autonomously without having access to relevant information to protect and promote their health. The implementation of the GGR denies women access to information that would otherwise be provided by family planning organisations in their country. The GGR also violates the ethical principle *of beneficence*. This principle states that "persons are treated in an ethical manner not only by respecting their autonomous decisions and protecting them from harm, but also by making efforts to secure their well-being" (6). This is explicated further by the imperative to "maximize possible benefits and minimize possible harms." The principle embodies an obligation on the part of physicians and other health workers, as well as health institutions, to promote the health of their patients and clients. The implementation of the GGR prevents these doctors and institutions from protecting and promoting the health of their women patients who lack independent resources, whether the institutions comply or fail to comply with the rule. If they fail to comply with the rule, they are deprived of the requisite funding that would otherwise provide such resources. And if they comply with the rule, they are prohibited from providing the information the doctors or institution could otherwise give to women in need. It is a no-win situation.

The GGR also violates a third ethical principle, that of *justice*—a nuanced principle with several variations. According to one version of the justice principle focusing on what is deserved, "An injustice occurs when some benefit to which a person is entitled is denied without good reason or when some burden is imposed unduly" (6). Of course, the key to understanding and implementing this version of the principle of justice depends on the interpretation of its key elements: whether women are entitled to the benefit of family planning information that includes access to abortion; and whether the GGR is based on "a good reason" for denying the benefit or whether it "unduly imposes burdens." For opponents of safe, legal abortion, any reason can count as a good reason as long as it has the effect of reducing the incidence of abortion anywhere in the world. As noted above, however, the results of empirical studies of the effects of the GGR when it was in force demonstrate that the rule did not have this effect in countries or institutions where it was implemented.

Ethical principles are general statements of duties and obligations, requiring interpretation and application in specific contexts. Although the principles cited here are widely accepted in their general form, when it comes to applying them in particular circumstances people often disagree.

Because ethical principles do not have the force of laws or regulations, their adoption is up to individuals or institutions in the many contexts in which they are invoked. What is true of ethical principles, however, is not the case for United Nations treaties and formally adopted action plans.

Violation of human rights treaties and action plans

Perhaps more persuasive than "mere" ethical principles in the global scene are the violations of human rights embodied in the GGR. Let's begin with the International Covenant on Civil and Political Rights (ICCPR), in force since 1966. Article 19, Paragraph 2 states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, *regardless of frontiers* [emphasis mine], either orally, in writing or in print, in the form of art, or through any other media of is choice" (7). Although it was obviously not even contemplated back in 1966, a family planning pamphlet or a sign in a clinic that lists an internet address providing information about access to abortion is prohibited under the GGR. The rule applies across national borders, thereby denying to residents of resource-poor countries information that is readily available in countries that have no need of US funds for family planning services or information about access to abortion elsewhere. Without stating so explicitly, this UN human rights provision has implications for global justice, at least for the countries that have signed and ratified it. The United States has signed and ratified the ICCPR and therefore, by promulgating the GGR it is in violation of the treaty.

Another human rights treaty is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the UN General Assembly in 1979 (8). As of January 2018, 187 out of 193 United Nations member states signed and ratified the Convention. The United States is one of only six countries that have not ratified CEDAW. The others are Iran, Sudan, Somalia, Palau, and Tonga (9). It is abundantly clear, however, that numerous countries in which abortion remains largely illegal have ratified the Convention.

A reasonable interpretation can find the GGR in violation of two provisions in this UN treaty. Article 12 says: "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning" (8). Since the vast majority of NGOs that provide family planning services either include access to abortion or information regarding abortion elsewhere, withholding US funds from these organisations violates Article 12. Article 16 says: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (8). Mention of "access to information" is clearly what the GGR denies to those organisations that comply with the Rule. And NGOs that refuse to comply will inevitably lose the US funding that enables them to continue providing family planning services.

The focus in CEDAW on equality of men and women means that in principle, men can also be discriminated against by an NGO's compliance with the GGR. Although historically, men could not get pregnant, things may have changed in today's transgender world. In 2018, *The Guardian* reported pregnancy is increasingly common among trans men (10). In response to the obvious objection that resource-poor countries are unlikely to provide the treatments that would enable the type of surgical and medical interventions necessary for gender transformations provided in wealthy countries, one has only to look at the international development of cross-border assisted reproduction that has enabled women and couples from countries that do not provide such services to travel abroad. And although some resource-poor countries still maintain repressive and even criminal policies for gay and lesbian residents, even that has begun to loosen in some places. While it remains true that assisting transgender men to achieve pregnancy and childbirth is unlikely to become a significant movement, it is still an intriguing prospect for gender equality mandated by international treaties like CEDAW.

An additional United Nations document on reproductive rights emanated from the 1994 International Conference on Population and Development in Cairo (ICPD). Paragraph 7.3 of its Programme of Action includes the statement: "the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health" (11). This outcome of the ICPD does not explicitly mention abortion, and at least some of the governments that endorsed the Programme of Action would not have signed on to a provision that endorsed abortion. Nevertheless, the implications are clear without an explicit mention of abortion.

Concluding observations

The earlier US presidents who promulgated the Global gag rule did so in violation of the same UN treaty provisions as Trump. The current US president's version is more sweeping, however, and has the additional feature of Trump's disdain for the United Nations and other multilateral and global bodies. Add to that Trump's "America First" political stance, and it is clear he could not care less about what happens to men as well as women who reside in borders outside the United States.

A defense of the GGR could come from proponents of the cynical version of the "golden rule." That version is: "the one who has the gold makes the rules." On this view, international aid from the United States or any other wealthy country is a form of charity, not an obligation. No person or country has a "right" to charity, they would say, in the form of aid from the richest country in the world. Trump's withdrawal from the Paris climate agreement in the first year of his presidency

doesn't count as international aid but symbolises his disdain for global efforts to preserve the future health of all residents of the planet. For that matter, Trump and his appointees in the administration have essentially the same view of their fellow Americans in need of financial, medical, nutritional, and other forms of governmental assistance. Along with his fellow Republicans in the US Congress, Trump has tried to overturn the Affordable Care Act (also known as Obamacare), which provides access to healthcare for uninsured Americans (12); as president he has appointed industry leaders as members of his cabinet who are doing everything in their power to reverse recent gains to reduce water and air pollution in the US; he is seeking significant reductions in programmes that provide nutritional support for poor children in the United States, and much more.

Reinstitution of the Global gag rule may appear to some people as a minor issue, given the much larger number of people in the world who are affected by the array of harmful Trump administration policies. But it is more than merely a symbol of US imperialism in today's globalised world. Women constitute one half of the world's population. A US-driven policy that denies a substantial percentage of women the opportunity or, in United Nations terminology, the *right* to control their fertility, is nothing less than a war against vulnerable women in resource-poor countries.

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