

Relics of imperialism: US foreign policy on abortion in the COVID era

Patty Skuster,^a Ram Chandra Khanal,^b Ernest Nyamato^c

a Senior Legal Advisor, Ipas, Philadelphia, PA, USA. *Correspondence:* skusterp@ipas.org

b Senior Advisor, Ipas Nepal, Kathmandu, Nepal

c Associate Director of Quality of Care, Ipas, Nairobi, Kenya

Keywords: abortion, US foreign policy, Kenya, Nepal, COVID-19

US foreign policy dictates limits to abortion care for people in the global South who need it. For nearly 50 years, the Helms Amendment has banned US foreign assistance for abortion. The Trump Global Gag Rule has further limited access to abortion while increasing the need for abortion care, as people are more at risk for unintended pregnancy due to interruption in reproductive health services. COVID-19 and government action to contain the virus also harm both access to abortion and contraceptive services to prevent abortion. People most in need of abortion in the global South face compounded barriers to abortion from the impacts of US foreign policy and COVID-19.

In this commentary we discuss the reinforcing harms of COVID-19 and US foreign policy to abortion in Nepal and Kenya. Both countries are democracies where the government has taken steps to improve abortion access. The US government is a major donor of health assistance in both countries and has slowed efforts to promote health and rights and exacerbates the harm of the global pandemic on people who need abortion.

COVID-19 and abortion

The global pandemic amplifies health inequities, not least for people in the global South who need abortion. Unwanted pregnancy and the need for abortion across the globe is expected to increase with the onset of COVID-19. People have greater difficulty getting contraceptives as supply chains are disrupted, restrictions on travel prevent people from getting to health facilities, and health care workers' time and attention are diverted to

carrying for COVID patients.¹ A number of governments have restricted health care to "essential services" while excluding abortion.² In the COVID era, abortion services are even more out of reach for pregnant people in the global South who already face barriers to health care and discrimination.

In Kenya, the COVID-19 incidence rate is 63.3 per 100,000 people.³ While the government enacted social distancing measures and mask-wearing requirements,⁴ crowded conditions and lack of access to basic sanitation put individuals living in poverty at particularly high risk of being infected with the virus.⁵ The nationwide curfew and stigma associated with COVID-19 have led people to avoid health services, which, along with increased rates of gender-based violence, contributes to expected increases in unplanned pregnancy and need for abortion services.

People in Nepal, where the incidence rate of COVID-19 is 139 per 100,000 people,³ similarly face reduced access to sexual and reproductive health services. Restrictions on movement, fear of COVID-19 transmission, and prioritisation of COVID-19 within the health system have limited access to and use of abortion and contraceptive services.^{6,7} Ipas Nepal conducted a telephonic survey of 254 Ipas-supported facilities from 19 districts and found that during the initial phase of lockdown local governments had redirected the responsibilities of 50% of health facilities that provide abortion services to COVID-19 response. Adding a further burden, high numbers of migrants have returned to Nepal from working abroad, stressing health systems and interrupting their contraceptive care. Supply chains have also been interrupted. People in Nepal are experiencing increased

rates of gender-based violence, including rape, which is likely to lead to further increases in demand for abortion services.

US foreign policy on abortion

For years before the burden of COVID-19 and even the first Global Gag Rule in 1984, the lives of pregnant people in the global South were limited by US foreign policy. In 1973, the year the *Roe v. Wade* decision gave Americans the right to abortion, US Congress enacted the Helms Amendment, which provides 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 person to practice abortions”. The Helms Amendment effectively bans all US funding for abortion-related activities. Unlike the Global Gag Rule, the Helms Amendment is in statute and it applies to all streams of foreign assistance, including US bilateral support for governments. The Helms Amendment has remained in law, unchallenged by Congress, until July of this year when members of Congress introduced an historic bill for its repeal, the Abortion is Health Care Everywhere Act.⁸

In contrast, the Global Gag Rule has been consistently opposed by advocates and removed each time a Democrat assumes the presidency. By galvanising activists and shedding light on the harm of the Global Gag Rule to access to contraception and abortion, advocates have successfully pushed Democrat presidents, as one of their first acts in office, to rescind the Global Gag Rule. Anti-abortion activists and members of Congress have ensured that Republican presidents issue the Global Gag Rule and support the continuation of the Helms Amendment.

Enactment of the Helms Amendment followed decades of independence movements in Africa, Asia, and Latin America. Colonialism was waning and the Nixon aid agency opposed the policy on these grounds.⁹ During that era, many governments throughout the global North were liberalising abortion laws, to ensure reproductive freedom as demanded by their own citizens. When the Helms Amendment was enacted, Nixon’s aid agency wrote, “the amendment would place US 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 US”.⁹ Meanwhile, as stated by legal scholar Michele Goodwin, poor people in the

global South “continued to struggle with repugnant vestiges of colonialism, slavery, and imperialism”.¹⁰

The Helms Amendment ensured that US foreign assistance would slow the pace of change in the global South towards less restrictive abortion laws. Indeed, many African, Asian, and Latin American countries retained restrictive colonial abortion laws through the twentieth century. But despite the Helms Amendment, over the past 20 years, activists in the global South have successfully advocated for liberalisation of abortion laws and governments have taken steps to ensure reproductive freedom.

Abortion policy in Kenya and Nepal

In Kenya, the 2010 Constitution created exceptions to criminalisation of abortion enshrined in the 1970 Penal Code. Article 26(4) of the Constitution permits abortion if “in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law”. The abortion provisions of the 1970 penal code were modelled on nineteenth century law of Great Britain, Kenya’s former coloniser.

Kenyans suffer high rates of unsafe abortion, with nearly 120,000 people admitted yearly to public health facilities for complications.¹¹ To improve the health and rights of people who need abortion, in 2012, following Constitutional reform, the Government of Kenya took steps to provide practical guidance to enable implementation of the abortion law. The Ministry of Health issued Standards and Guidelines, a document that set out requirements for legal abortion services. However, the Kenyan government’s efforts were somewhat limited and politically fraught, as Kenya is host to an active anti-abortion movement.

During the Obama administration, with the Helms Amendment in effect, the US government pushed the Kenyan government to withdraw the Standards and Guidelines by threatening to withhold funding for reproductive health.^{12*} The Trump administration’s reinstatement of the Global Gag Rule then decreased access to contraceptives and increased need for abortion, while

*In 2019 the Government of Kenya was ordered by the Kenyan High Court to restore the Standards and Guidelines.

reducing the number of organisations that are able to provide abortion care.

Nepal legalised abortion in 2002 as part of a package of legal reform to safeguard women's rights. Despite limits to progress posed by the Global Gag Rule and the Helms Amendment, by 2010 the national government implemented the law, making facility-based abortion care available throughout all 75 districts in the country.¹³ In 2018, the Safe Motherhood and Reproductive Health Rights Act was passed and legally strengthened the right to abortion.

But challenges remain. The Safe Motherhood and Reproductive Health Rights Act has not yet been operationalised through regulation. Government action to ensure legal abortion is further challenged by government decentralisation. In 2015, a new Constitution gave provincial and local level governments new authority over abortion services, but the lower-level governments do not yet show strong commitment to ensure abortion services for everyone who needs them. Research from 2014 showed that an estimated 323,100 abortions were performed, but 58% of these services were not provided legally by trained providers, with about 36% of all abortions resulting in complications that required treatment.¹⁴ In 2016, only 41% of women aged 15–49 years were aware that abortion is legal in Nepal. Furthermore, knowledge on the legal status of abortion is even lower among women in rural areas, who are generally illiterate and come from the lowest wealth quintile.¹⁵

US foreign policy has harmed efforts by the Government of Nepal and non-governmental organisations to ensure access to legal abortion is available to everyone who needs one and to improve awareness of legal abortion services. Under the Global Gag Rule, organisations that were promoting awareness of and advocating for access to safe abortion stopped abortion-related activities in order to retain US funding. NGO training materials that were printed with support of the US government omit information on safe abortion and abortion-related content is absent from NGOs'

US-funded projects and events. During the Obama administration and under the Helms Amendment, the Government of Nepal had to build separate facilities for abortion care even though the US-funded government facilities for treating complications of unsafe abortion already had appropriate equipment. In addition, because they were funded by the US government, Nepali government publications and training manuals omitted mention of abortion.¹²

Conclusion

US foreign policy on abortion stands in stark contrast to movement in the global South towards legalisation of abortion and government and civil society efforts to ensure abortion care for everyone who needs one. COVID-19 poses new challenges to governments in Sub-Saharan Africa and South Asia to ensure access to abortion services, particularly for people living in poverty and who face discrimination – the same groups of people who are harmed by US abortion policy. COVID-19 and US abortion policy combine to deepen global reproductive health inequality.

The US government must stop limiting the efforts of civil society and governments in the global South to promote women's rights and health through abortion care. With high rates of complications from unsafe abortion likely to increase from the COVID-19 pandemic, governments in the global South face tremendous challenges in safeguarding the health and rights of pregnant people. The Global Gag Rule and the Helms Amendment are vestiges of imperialism, limiting the democratic will of black and brown people in the global South. Only after these harmful policies are gone will everyone be free to work toward reproductive rights, health, and justice, no matter where we live.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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