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Why Reproductive Health Rights Should No Longer Be A Partisan Issue: A Call To Invest in Family Planning

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Why Reproductive Health Rights Should No Longer Be A Partisan Issue: A Call To Invest in Family Planning

Sofia Waterhouse[†]

The concepts of family planning and reproductive health rights are often obscured by the controversy that surrounds the topic of abortion. This controversy has substantially impacted the U.S.'s outlook on reproductive health rights and its support toward family planning organizations, often limiting funding and aid depending on each administration's political views. While international law has recognized the importance of reproductive health rights and the necessity of family planning programs, the U.S. continues to fall behind when it comes to promoting such rights. This article calls for a bipartisan effort to end these regressive and harmful anti-abortion policies so that the U.S. can direct its aid to pursue positive health outcomes for women. Despite the politics of each administration, women's health and the right to reproductive self-autonomy are human rights that should not be contingent on a political agenda.

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I. INTRODUCTION

“Denying women control over their own bodies and their own reproductive capacity may well be the most effective way to disempower them.”¹ The longstanding battle over women’s autonomy and control over their reproductive decision making has always been about much more than women’s health and safety.² Historically, male power, control, and domination over women’s reproduction has served political purposes which in turn has shaped social and cultural norms, framing women’s capacities narrowly to merely reproducing and mothering.³ Even as the modern idea of family planning emerged, the topic of women’s reproductive health remained controversial because of its association with sex, contraception, and abortion.⁴ Nevertheless, enacting such strong anti-abortion regulation hampers the dissemination of essential information to women about their safe, legal options⁵ and deprives women and girls of reproductive privacy, autonomy, and equality.⁶

Former President Donald Trump eliminated American support for women’s reproductive health not only in the U.S., but everywhere else in the world.⁷ Domestically, on January 23, 2017, Trump enacted a new Title X Family Planning Program regulation—what became known as a “gag rule” by its opponents—that includes a statutory prohibition on funding programs where abortion is a method of family planning.⁸ Due to the regulation, Planned Parenthood, the largest single provider of Title X services, withdrew

¹ Barbara Stark, *Mr. Trump’s Contribution to Women’s Health*, 24 ILSA J. INT’L & COMP. L. 317, 336 (2018).

² Michele Goodwin, *Challenging the Rhetorical Gag and Trap: Reproductive Capacities, Rights, and the Helms Amendment*, 112 NW. U. L. REV. 1417, 1418 (2018).

³ *Id.*

⁴ Sarah Primrose, *The Attack on Planned Parenthood: A Historical Analysis*, 19 UCLA WOMEN’S L.J. 165, 187 (2012).

⁵ Kristi Uhrinek, *Mending Broken Promises: Analyzing the Legality of U.S. Withdrawal of United Nations Population Fund Appropriations and the Need for Binding UN Commitments*, 32 GA. J. INT’L & COMP. L. 861, 863 (2004).

⁶ Goodwin, *supra* note 2, at 1424.

⁷ Stark, *supra* note 1, at 336.

⁸ *HHS Releases Final Title X Rule Detailing Family Planning Grant Program*, U.S. DEP’T. HEALTH & HUM. SERVICES (Feb. 22, 2019), <https://www.hhs.gov/about/news/2019/02/22/hhs-releases-final-title-x-rule-detailing-family-planning-grant-program.html> [hereinafter *HHS Final Title X Rule*].

from the federal program on August 19, 2019.⁹ The lack of federal funding impacts four million people that rely on the federally funded program, particularly vulnerable low-income women, from receiving basic health care such as access to birth control, cervical and breast cancer screenings, STD testing or treatment, pelvic exams, or sex education.¹⁰

Internationally, the U.S. aggressively invested in depriving and divesting women and girls of basic human health rights under the Trump administration.¹¹ The Mexico City Policy, also known as the “Global Gag Rule,” banned international NGOs from providing abortion services or offering information about abortions if they receive U.S. funding.¹² Additionally, Trump withdrew funding from the United Nations Population Fund (“UNFPA”) for a fourth consecutive year—even amidst a global pandemic.¹³ The UNFPA is the world’s largest provider for contraceptives and provides reproductive health services to approximately 12.5 million women.¹⁴

On January 28, 2021, just eight days after President Biden took office, Biden signed a presidential memorandum rescinding of the gag rule.¹⁵ However, rescinding the global gag rule is only a short-

⁹ Nakisa B. Sadeghi & Leana S. Wen, *After Title X Regulation Changes: Difficult Questions for Policymakers and Providers*, HEALTH AFFAIRS (Sept. 24, 2019), <https://www.healthaffairs.org/doi/10.1377/forefront.20190923.813004/full/>.

¹⁰ Moira Donegan, *Trump’s New Rule to Defund Family Planning Hits the Most Vulnerable*, THE GUARDIAN (Feb. 26, 2019, 6:00 AM), <https://www.theguardian.com/commentisfree/2019/feb/26/trump-administration-title-x-abortion-funding>.

¹¹ See Goodwin, *supra* note 2, at 1424.

¹² Molly Redden, ‘Global Gag Rule’ Reinstated by Trump, Curbing NGO Abortion Services Abroad, THE GUARDIAN (Jan. 23, 2017, 2:23 PM), <https://www.theguardian.com/world/2017/jan/23/trump-abortion-gag-rule-international-ngo-funding>.

¹³ *Statement on the United States Decision to Again Withhold Critical Funding for UNFPA, Amid Global Pandemic*, UNFPA (July 1, 2020), <https://www.unfpa.org/press/statement-united-states-decision-again-withhold-critical-funding-unfpa-amid-global-pandemic>.

¹⁴ Liz Ford & Nadia Khomami, *Trump Administration Halts Money to UN Population Fund Over Abortion Rules*, THE GUARDIAN (Apr. 4, 2017, 2:02 AM), <https://www.theguardian.com/global-development/2017/apr/04/trump-administration-un-population-fund-abortion>.

¹⁵ Ruth Dawson, *Trump Administration’s Domestic Gag Rule has Slashed the Title X Network’s Capacity by Half*, GUTTMACHER INSTITUTE (April 15, 2021)

term solution to a reoccurring issue.¹⁶ On the same day that Biden took executive action to rescind the gag rule, the Global Health, Empowerment and Rights (Global HER) Act was reintroduced in the House and Senate.¹⁷ The Global HER Act serves to prevent future presidents from unilaterally reinstating the global gag rule via executive action and ultimately end the policy's intermittent use. With the introduction of this bill, the Biden administration is currently presented with opportunity to pass legislation that would effectively end the global gag rule and allow U.S. funds to be used for the full range of reproductive health services, including safe abortion care.¹⁸

This article will address the implications of Trump's policy decisions to defund family planning organizations both domestically and abroad, focusing specifically on developing areas in Latin America, a region with some of the most restrictive reproductive health laws and policies in the world.¹⁹ Part II of this article will outline both the domestic and international organizations that provide family planning and other health services to women, and the measures that the Trump administration took to defund them. Part III of this article will then explore how such cutbacks specifically affect women abroad in Latin American, taking a particular look at certain countries in the region. Part IV of this article will focus on the U.S.'s obligations to comply with international law and its duty to promote, protect, and fulfill people's fundamental rights rather than infringe such rights by withdrawing funding and support. Finally, this article will conclude by noting that although the Biden administration's approach seems promising, different administrations continue to either fund or defund these organizations depending on each administration's political views. As such, it is imperative that the Biden administration prioritize the opportunity to

<https://www.guttmacher.org/article/2020/02/trump-administrations-domestic-gag-rule-has-slashed-title-x-networks-capacity-half>.

¹⁶ Elizabeth A. Sully & Zara Ahmed, *The Case for Ending the "Global Gag Rule" and the Helms Amendment*, GUTTMACHER INSTITUTE (Feb. 22, 2021) <https://www.guttmacher.org/article/2021/02/case-ending-global-gag-rule-and-helms-amendment>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Alyssa Julian, *Redefining LGTBQ and Abortion Rights in Latin America: A Transitional Toolkit*, 53 VAND. J. TRANSNAT'L L. 275, 276 (2020).

support and successfully pass the Global HER Act to avoid the historic back-and-forth debate surrounding the global gag rule.

This article strenuously recommends the passing of the legislation such as the Global HER Act so that women's health and the right to reproductive self-autonomy should no longer be conditioned on an administration's political agenda. Thus, this article calls for a bipartisan effort to end the use of regressive and harmful anti-abortion legislation that imposes restrictions on abortion and withdraws important funding. Instead, the U.S. should direct its efforts and aid to pursue positive health outcomes for women, as well as respect and promote reproductive health rights both domestically and abroad.

II. PRESIDENT TRUMP'S DOMESTIC AND INTERNATIONAL POLICIES

a. *Domestic Policy: Trump's Title X Regulation*

In 1916, Margaret Sanger created a birth control organization that would later grow into the organization now known as Planned Parenthood.²⁰ The contraceptive rights movement arose in a political climate which was not friendly to the rights of women nor concerned with women's unique health needs.²¹ However, Sanger believed that "the foundation of the Feminist or Women's Movement should be how to release a women from her sexual bondage of childbearing and place it on the plane of a voluntary and conscious undertaking so that she may be approximately equal to man."²² Sanger further noted that restrictions on birth control information created a class injustice, as lower income women lacked preventative health care options and could not afford abortions.²³

²⁰ Primrose, *supra* note 4, at 166.

²¹ Primrose, *supra* note 4, at 166–68 ("Engrained in the Planned Parenthood debate are women's rights concerns, and reproductive rights consideration . . . critics primarily portray Planned Parenthood as an abortion provider . . . but the organization is quick to note that such services only constitute three percent of the organization's operations . . . ninety-seven percent of the organization's services are family planning, pap smears, immunizations, cancer screening, sexually transmitted disease testing, and other forms of preventative care.").

²² *Id.* at 178.

²³ *Id.*

President Lyndon B. Johnson became the first U.S. president to advocate for federal legislation supporting contraceptives for the poor during the mid 1960s.²⁴ This effort continued on into the Nixon administration with the initiation of the Title X Public Health Services Act, which authorized grants to establish voluntary family planning projects.²⁵ The Title X Family Planning Program, established in 1970, became the federal grant program for low-income patients to receive family planning and reproductive health services.²⁶ Prior to Trump's gag rule, over than four million people relied on federal Title X funding to access contraception and other essential health care, such as wellness exams, cervical and breast cancer screenings, contraception education, as well as testing and treatment for sexually transmitted diseases and HIV.²⁷ The only method of birth control not included in the funding package was surgical abortion because it was not considered a preventative service.²⁸ Planned Parenthood was previously the largest single provider of Title X services, with over 600 health centers around the country.²⁹ Unfortunately, Planned Parenthood announced its decision to withdraw from the federal program because of Trump's Title X Regulation.³⁰

The U.S. Department of Health and Human Services published the new regulation in January 2020.³¹ While Title X already prohibited the use of funds for abortions, the new rule contains two key changes: the first revision, referred to as the "gag rule" by its opponents, prohibits Title X recipients from providing referrals for abortion care even when requested by the patient; the second revision requires Title X funded centers to "establish and maintain physical separation" from the provision of abortion.³² As a result, rather than comply with the new regulation, Planned Parenthood and several

²⁴ *Id.* at 192.

²⁵ *Id.*

²⁶ Sadeghi & Wen, *supra* note 9.

²⁷ *Title X: The Nation's Program for Affordable Birth Control and Reproductive Health Care*, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/issues/health-care-equity/title-x> (last visited Feb. 24, 2022).

²⁸ Primrose, *supra* note 4, at 192.

²⁹ *Id.*

³⁰ Sadeghi & Wen, *supra* note 9.

³¹ *See HHS Final Title X Rule*, *supra* note 8.

³² Sadeghi & Wen, *supra* note 9.

hundred other providers have decided to forgo the program's funds.³³

Although it may take more time to definitively ascertain the effects of Trump's regulation, the policy change had the potential to impact the millions of people who relied on the program, especially since those who receive the federally funded services are among the most vulnerable: disproportionately young, low-income, uninsured women.³⁴ Several health centers across the nation have since closed due to the lack of funds, and others face severe staff reduction.³⁵ Moreover, the health centers that opted out of Title X have noted that they will have to make up for the lost revenue by charging patients additional fees and limiting hours of operations.³⁶ Several states, major family planning organizations, and the American Medical Association have filed legal challenges in federal courts to block the implementation of the final Title X Regulation, noting that this anti-abortion legislation will only cause harm to those who are in need of basic health services.³⁷ However, on May 17, 2021, after the Biden administration had commenced the process of rescinding the rule, the Supreme Court denied the motions to intervene and dismissed the cases from its docket.³⁸ The Supreme Court explained

³³ *Id.*

³⁴ Donegan, *supra* note 10.

³⁵ Sadeghi & Wen, *supra* note 9.

³⁶ *Id.*

³⁷ Laurie Sobel & Alina Salganicoff, *Litigation Challenging Title X Regulations*, KAISER FAM. FOUND. (Nov. 21, 2019) <https://www.kff.org/womens-health-policy/issue-brief/litigation-challenging-title-x-regulations/>. See also Brief for Petitioner, *Oregon v. Azar*, No. 20–539 (9th Cir. Oct. 2020) (“The case *Oregon v. Azar* was consolidated with *California v. Azar*. In the petition, a coalition of twenty-one states and the District of Columbia ask the Court to resolve the current circuit split regarding the new Title X rule that prohibits clinics that receive funds through the Title X program from providing referrals for abortions. Petitioners argue that the Ninth Circuit erred in upholding the rule.”).

³⁸ Amy Howe, *Court Dismisses Abortion “Gag Rule” Cases, Adds Arbitration and Habeas Cases to Docket*, SCOTUS BLOG (May 17, 2021) <https://www.scotusblog.com/2021/05/court-dismisses-abortion-gag-rule-cases-adds-arbitration-and-habeas-cases-to-docket/>.

that due to Biden's actions, litigation over Trump's gag rule was no longer necessary.³⁹

b. International Policies: Implementation of the Mexico City Policy and Defunding the United Nations Population Fund

i. The Mexico City Policy

Aid to developing countries became a significant issue throughout the U.S. presidential campaign of 1960 because of America's and Congress' lack of support toward the existing funding programs.⁴⁰ Once President John F. Kennedy was elected, his administration firmly committed to the reorganization of foreign assistance programs and established the Foreign Assistance Act ("FAA").⁴¹ Shortly thereafter, President Kennedy established the United States Agency for International Development ("USAID"), a foreign assistance agency focused on providing long range economic and social development support for developing nations worldwide.⁴² President Lyndon B. Johnson continued to encourage foreign aid and actively promote population control in developing countries by amending the FAA to expand the capabilities of USAID in an effort to promote birth control in developing countries.⁴³

Despite Congress's eagerness to provide aid in new categories such as family planning, in 1973, Republican Senator Jesse Helms sponsored the Helms Amendment which signed into law as an amendment to the FAA.⁴⁴ "The Helms Amendment prohibits the use of American dollars for the performance of abortion, to encourage or compel a person to practice abortion, or to research abortion."⁴⁵

³⁹ *Joint Statement on U.S. Supreme Court's Dismissal of Title X "Gag Rule" Cases*, ACLU (May 17, 2021) <https://www.aclu.org/press-releases/joint-statement-us-supreme-courts-dismissal-title-x-gag-rule-cases>.

⁴⁰ Yvette Aguilar, *Gagging on a Bad Rule: The Mexico City Policy and Its Effects on Women in Developing Countries*, 5 SCHOLAR 37, 41 (2002).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 42.

⁴⁴ *Id.*

⁴⁵ Aguilar, *supra* note 40, at 42–43 ("Essentially, the Helms Amendment restricts governmental organizations and NGOs from using funds received from USAID to perform, encourage, compel, practice, or research abortion. However,

During the Reagan administration, the Amendment was expanded to forbid funding of international family planning services which either provided or advocated for abortions.⁴⁶ These restrictions on U.S. funding abroad were introduced at the International Conference on Population in Mexico City in August 1984; the guidelines became known as the “Mexico City Policy” or the “Global Gag Rule,” as referred to by the policy’s opponents.⁴⁷ By imposing broad restrictions on funding for foreign NGOs, the policy forces organizations to choose between accepting funding to provide essential health services with restrictions that can jeopardize the health of their patients, or rejecting the policy and losing a major source of financial support.⁴⁸ The implementation of this policy has led many foreign NGOs to distance themselves from any abortion activity over fear that they could lose funding from USAID.⁴⁹ However, contrary to the policy’s objectives, a Stanford University study found that countries most affected by the Global Gag Rule had a significantly increased rate of induced abortions, whereas the rates remained relatively stable in countries less affected by the policy.⁵⁰ Thus, evidence suggests that restricting family planning funds conversely results in more unplanned pregnancies, abortions, and higher maternal deaths.⁵¹

Republican President George H. Bush continued to enforce the Mexico City Policy until 1993, when Democratic President Bill Clinton repealed the policy.⁵² Like his father, Republican President George W. Bush reenacted the policy upon his election, stating that “taxpayer funds should not be used to pay for abortions or advocate

governmental organizations and NGOs were free to use their own, non-USAID funds, for family planning services of their choice, including abortion.”)

⁴⁶ *Id.* at 41.

⁴⁷ *Id.* at 43.

⁴⁸ Goodwin, *supra* note 2, at 1443.

⁴⁹ Aguilar, *supra* note 40, at 51.

⁵⁰ *Trump’s ‘Mexico City Policy’ or ‘Global Gag Rule’*, HUM. RTS. WATCH (Feb. 8, 2018), <https://www.hrw.org/news/2018/02/14/trumps-mexico-city-policy-or-global-gag-rule#>; see also Eran Bendavid, Patrick Avila, & Grant Miller, *United States Aid Policy and Induced Abortion in Sub-Saharan Africa*, BULLETIN THE WHO (Sept. 27, 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3260902/>.

⁵¹ *Id.*

⁵² Aguilar, *supra* note 40, at 43–44.

or actively promote abortion, either here or abroad.”⁵³ The enforcement of this policy quickly became a partisan issue, largely enacted or repealed through presidential executive orders upon taking office.⁵⁴ Following this pattern, Democratic President Barack Obama rescinded the Mexico City Policy,⁵⁵ but in 2017 Republican President Donald Trump eagerly reinstated the policy just a few days after taking office.⁵⁶

But President Trump did not just reenact the policy—his order to reinstate the Mexico City Policy dramatically expanded the policy in comparison to other previous Republican administrations.⁵⁷ Under the previous administrations, the restrictions in the policy applied specifically to U.S. family planning funds, which totaled to approximately \$757 million.⁵⁸ Trump’s policy extended restrictions to an estimated \$8.8 billion in all U.S. global health assistance,⁵⁹ exceeding that of prior republican administrations by “nearly 15 times.”⁶⁰ This assistance included: funding support for family planning and reproductive health; maternal and child health; nutrition; HIV/AIDS; prevention and treatment of tuberculosis; malaria; infectious diseases; neglected tropical diseases; as well as water, sanitation, and hygiene programs.⁶¹

In 2021, the Human Rights Watch projected that the withdrawal of such crucial funds would have profoundly damaging impacts, such as:

⁵³ *Id.* at 44.

⁵⁴ Taylor Lewis, *United States Foreign Policy Harms Women’s Reproductive Rights Around the World: The Impact on Latin America*, COUNCIL ON HEMISPHERIC AFFS. (Mar. 8, 2017), <https://www.coha.org/united-states-foreign-policy-harms-womens-reproductive-rights-around-the-world-the-impact-on-latin-america/>.

⁵⁵ *Statement of President Barack Obama on Rescinding the Mexico City Policy*, THE WHITE HOUSE (Jan. 23, 2009), <https://obamawhitehouse.archives.gov/the-press-office/statement-president-barack-obama-rescinding-mexico-city-policy>.

⁵⁶ *Presidential Memorandum Regarding the Mexico City Policy*, THE WHITE HOUSE (Jan. 23, 2017), <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-regarding-mexico-city-policy/>.

⁵⁷ *Trump’s ‘Mexico City Policy’ or ‘Global Gag Rule’*, *supra* note 50.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Goodwin, *supra* note 2, at 1430.

⁶¹ *Trump’s ‘Mexico City Policy’ or ‘Global Gag Rule’*, *supra* note 50.

Undermine the progress on improving health;

Provide less access to contraceptive for women and girls, resulting in more unintended pregnancies and unsafe abortions;

Create a rise in easily preventable maternal deaths, both due to unsafe abortions and increase in unplanned pregnancies in places where rates of maternal mortality are already high;

Services that lost U.S. funding may have to cut services linked to newborn, infant, and child health;

Curtail the speech and activities of activists and health providers in other countries, preventing them from sharing health information with patients about abortion or discussing potential reforms to abortion laws.⁶²

Supporters of Trump's policy expansion have argued that these measures are necessary to prohibit the use of U.S. funds for abortion-related activities.⁶³ Nevertheless, qualitative and quantitative evidence suggests that the policy does not do what it purports to accomplish and instead undermines the democratic process abroad.⁶⁴

ii. The United Nations Population Fund

The UNFPA is the primary UN organization with a principal objective of carrying out the policies of the 1994 International Conference on Population and Development of Cairo ("ICPD").⁶⁵ The Programme of Action was introduced at the ICPD to ensure the human

⁶² *Id.*

⁶³ See generally Sneha Barot, Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment, GUTTMACHER INSTITUTE (Sept. 13, 2013), <https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment> ("Specifically, the policy prohibits foreign assistance from paying for the 'performance of abortion as a method of family planning' or to 'motivate or coerce any person to practice abortions.'")

⁶⁴ Samantha Lalian, *Policing the Wombs of the World's Women: The Mexico City Policy*, 95 IND. L. J. 977, 992 (2020).

⁶⁵ Uhrinek, *supra* note 5, at 865–66.

right to development among the international population and requires total commitment from participating governments of the UN.⁶⁶ Thus, the UNFPA became the largest internationally funded source to provide population aid⁶⁷ and describes itself as “the United Nations sexual and reproductive health agency.”⁶⁸

“The three main goals of the UNFPA policies are: (1) commitment to reproductive rights; (2) gender equality and male responsibility; and (3) autonomy and empowerment of women.”⁶⁹ Overall, the policy firmly objects and does not tolerate any method of coercion of reproductive control.⁷⁰ Instead, the UNFPA supports reproductive health care for women and youth in more than 150 countries.⁷¹ This support includes caring for pregnant women, providing reliable access to modern contraceptives, training health workers to ensure that all childbirths are supervised by skilled attendants, preventing gender-based violence, ending female genital mutilation, preventing teen pregnancies, ending child marriage, delivering life-saving materials to survivors of conflict and natural disaster, and collecting data and analysis.⁷²

The entire source of income for the UNFPA is purely voluntary, making it imperative that dependable donors assure their support.⁷³ Contributors to the UNFPA include governments, individual alliances, NGOs, foundations, and corporations.⁷⁴ The U.S. has played a central role in the creation and launch of the UNFPA in 1969 and has been an active member of the UNFPA Executive Board for more than forty-five years.⁷⁵ However, the underlying effects of the Global Gag Rule have since carried over to UNFPA funding.⁷⁶ In 1984, President Reagan required the UNFPA to provide “concrete

⁶⁶ *Id.* at 866.

⁶⁷ *Id.* at 867.

⁶⁸ *About Us*, U.N. POPULATION FUND, <https://www.unfpa.org/about-us> (last visited Mar. 18, 2022).

⁶⁹ Uhrinek, *supra* note 5, at 867.

⁷⁰ *Id.*

⁷¹ *About Us*, *supra* note 68.

⁷² *Id.*

⁷³ Uhrinek, *supra* note 5, at 867.

⁷⁴ *Id.* at 867–68.

⁷⁵ U.N. POPULATION FUND, *United States of America*, <https://www.unfpa.org/data/donor-contributions/united-states-america> (last updated 2019).

⁷⁶ Uhrinek, *supra* note 5, at 864.

assurances that it is not engaged in, or does not provide funding for, abortion or coercive family planning programs.”⁷⁷ This requirement was motivated by the administration’s opposition to China’s one-child family policy,⁷⁸ which began in 1979 in efforts to maintain a comfortable standard of living for its population.⁷⁹ China’s policy had a controversial requirement mandating women to be fit with intrauterine devices after the delivery of their first child; thus, when a woman becomes pregnant with her second child, she must endure an abortion and if a woman gives birth to two or more children, she will be sterilized.⁸⁰

In 1985, Congress amended the Foreign Assistance and Related Programs Appropriations Act by passing the Kemp–Kasten Amendment.⁸¹ The amendment states that no funds are to be made available to “any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.”⁸² Thus, the Reagan administration used this amendment and its opposition to China’s one-child policy to deny all U.S. funding to the UNFPA.⁸³ Prior to this Amendment, the U.S. had provided almost one-third of the UNFPA’s yearly funding.⁸⁴ Like the Mexico City Policy, this policy was reinstated throughout Republican administrations due to concerns about whether UNFPA supported China’s coercive population policies.⁸⁵ However, there is no evidence to date

⁷⁷ Rachel Farkas, Note, *The Bush Administration’s Decision to Defund the United Nations Population Fund and its Implications for Women in Developing Nations*, 18 BERKELEY WOMEN’S L. J. 237, 245 (2003).

⁷⁸ *Id.*

⁷⁹ Uhrinek, *supra* note 5, at 869.

⁸⁰ *Id.* See Stephen McDonnell, *China Allows Three Children in Major Policy Shift*, BBC (May 31, 2021), <https://www.bbc.com/news/world-asia-china-57303592#:~:text=China%20scrapped%20its%20decades%20old,has%20deterred%20many%20Chinese%20couples> (noting that in 2016, China removed its one-child family policy and replaced it with a two-child limit, but it will now allow couples to have three children after census showed a steep decline in birth rates).

⁸¹ Farkas, *supra* note 77, at 245.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *UNFPA Funding & Kemp–Kasten: An Explainer*, KAISER FAM. FOUND. (May 14, 2021), <https://www.kff.org/global-health-policy/fact-sheet/unfpa-funding-kemp-kasten-an-explainer/> [hereinafter *UNFPA Funding & Kemp–Kasten*].

that UNFPA supports coercive abortion or involuntary sterilizations.⁸⁶ The UNFPA has repeatedly made it clear that it does not promote abortion as a method of family planning or fund abortion services.⁸⁷

Shortly after his inauguration, President Trump invoked the Kemp–Kasten Amendment in order to withhold U.S. funding from the UNFPA.⁸⁸ The letter from the U.S. State Department declared that it was dropping the funding because the UNFPA “supports, or participates in the management of, a program of coercive abortion or involuntary sterilization.”⁸⁹ Furthermore, a memorandum on the policy decision stated that:

[W]hile there is no evidence that UNFPA directly engages in coercive abortions or involuntary sterilizations in China, the agency continues to partner with China’s National Health and Family Planning Commission on family planning, and thus can be found to support, or participate in the management of China’s coercive policies for purposes of the Kemp–Kasten Amendment.⁹⁰

In response, the UNFPA released a statement claiming that this decision is based on an erroneous claim, that UNFPA refutes this claim, and that all of its work promotes the human rights of individuals and couples to make their own decisions, free of coercion or discrimination.⁹¹

On July 1, 2020, UNFPA released another statement announcing that the U.S. had decided to withhold funds for the fourth consecutive year.⁹² The statement further noted that no humanitarian

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *U.S. Withdraws Funding for U.N. Population Fund*, REUTERS (Apr. 3, 2017, 8:21 PM), <https://www.reuters.com/article/us-usa-un-populationfund/u-s-withdraws-funding-for-u-n-population-fund-idUSKBN17600T>.

⁹⁰ UNFPA Funding & Kemp–Kasten, *supra* note 85.

⁹¹ *Statement by UNFPA on U.S. Decision to Withhold Funding*, U.N. POPULATION FUND (Apr. 4, 2017), <https://www.unfpa.org/press/statement-unfpa-us-decision-withhold-funding>.

⁹² *Statement on the United States Decision to Again Withhold Critical Funding for UNFPA, Amid Global Pandemic*, *supra* note 13.

exemption had been made to the ban on funding despite the COVID–19 pandemic.⁹³ Regrettably, the U.S. continued to withhold funds throughout the Trump administration although the U.S. remained a part of the Executive Board⁹⁴ and previously played a key role in the organization’s launch.⁹⁵ The UNFPA heavily relies on voluntary donations, especially from crucial donors who make up a large part of those donations like the U.S. —who in 2015 was the third largest donor, giving \$76 million in core budget and earmark contributions.⁹⁶ UN officials warned at the time not only that abrupt funding cuts of this nature could trigger more global instability,⁹⁷ but that the effects will be “devastating” to the health of women, girls, and families in the 150 countries the UNFPA assists.⁹⁸ However, on January 28, 2021, Biden directed the Secretary of State to take the necessary steps to resume funding to the UNFPA.⁹⁹

III. THE INTERNATIONAL EFFECTS OF THE MEXICO CITY POLICY’S RESTRICTIONS AND THE DEFUNDING OF THE UNFPA: REPERCUSSIONS IN LATIN AMERICA

The effects of domestic anti–abortion legislation has surpassed U.S. borders with the reinstatement of the Global Gag Rule, which now influences whether women in poorer countries can access abortions and other sexual health services.¹⁰⁰ While the Global Gag Rule is intended to reduce abortion rates, past applications of the policy actually demonstrate an *increase* in the number of abortions in

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *UNFPA Funding & Kemp–Kasten*, *supra* note 85.

⁹⁶ *Id.*

⁹⁷ *U.S. Withdraws Funding for U.N. Population Fund*, *supra* note 89.

⁹⁸ Carol Morello, *Trump Administration to Eliminate its Funding for U.N. Population Fund Over Abortion*, WASH. POST (Apr. 4, 2017), https://www.washingtonpost.com/world/national-security/trump-administration-to-eliminate-its-funding-for-un-population-fund-over-abortion/2017/04/04/d8014bc0-1936-11e7-bcc2-7d1a0973e7b2_story.html.

⁹⁹ *UNFPA Funding & Kemp–Kasten*, *supra* note 85.

¹⁰⁰ Nicky Armstrong, et al., *Trump’s Reinstatement and Expansion of the Global Gag Rule Has Harmful Effects for Women, Men, and Children*, LONDON SCH. ECON. U.S. CTR. (Jan. 11, 2019), <https://blogs.lse.ac.uk/usappblog/2019/01/11/trumps-reinstatement-and-expansion-of-the-global-gag-rule-has-harmful-effects-for-women-men-and-children/> [hereinafter *Armstrong*].

countries affected most by the withdrawal of healthcare funding and where abortion laws are strictest.¹⁰¹ This can be attributed in large part to the fact that lack of U.S. funding instead results in reduced discussion related to sexual and reproductive health and rights, reduced access to contraception, and with it, an increase in unintended pregnancies.¹⁰² Consequently, “the failure of the United States and other countries to fully support access to safe abortion services contributes to more than 35 million unsafe abortions that occur annually in low- and middle-income countries, leading to 23,000 preventable maternal deaths.”¹⁰³

This policy forces NGOs to choose between providing safe and legal abortion services and accepting U.S. global health funding.¹⁰⁴ The NGOs that opt to turn down U.S. funding are forced to find replacement funding from other sources, leading to health facilities closing, frequent contraceptive stockouts, stay layoffs, and salary cuts.¹⁰⁵ Thus, the real effect of this policy is that NGOs must comply with the Global Gag Rule in order to receive funds or face the risk of shutting down facilities and curtailing its services.

For those NGOs that have elected to forgo U.S. funding, the application of this policy has arguably “crippled family planning programs” that refuse to let the U.S. government restrict their abortion advocacy efforts and dictate the services and counseling that they

¹⁰¹ Armstrong et al., *supra* note 100 (“When President Bush instated the Global Gag Rule in 2001, women in highly exposed countries were more likely to have an abortion compared to women in less exposed countries. On the contrary, evidence from countries where abortion services are safe, legal, and accessible show that abortion related deaths and complications are greatly reduced.”); see also Erika Guevara-Rosas, *Trump’s Global Gag a Devastating Blow for Women’s Rights*, AMNESTY INT’L (Jan. 25, 2017), <https://www.amnesty.org/en/latest/news/2017/01/trumps-global-gag-a-devastating-blow-for-womens-rights/>.

¹⁰² Terry McGovern, *US Global Gag Rule Increases Unsafe Abortion*, THE LANCET (July 4, 2020) [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30921-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30921-1/fulltext).

¹⁰³ *Sully & Ahmed, supra* note 16.

¹⁰⁴ Bath Daley, *Insights Into How the US Abortion Gag Rule Affects Health Services in Kenya*, THE CONVERSATION (Sept. 30, 2020) <https://theconversation.com/insights-into-how-the-us-abortion-gag-rule-affects-health-services-in-kenya-145777>.

¹⁰⁵ *Id.*

may provide.¹⁰⁶ Because the U.S. is the largest funder of global health programs worldwide, the “disruption this aid effort will suffer is massive,” as several health providers have been forced to reduce staff and services as well as shut down clinics.¹⁰⁷

The relationship between the U.S. government and the UNFPA has followed a path similar to that of the Mexico City Policy in terms of both its politics and its counterproductive impact.¹⁰⁸ Premised solely on political and ideological reasons, President Trump misused a law that was created to protect human rights to instead deny them by blocking support for the UNFPA’s crucial work.¹⁰⁹ Even if the U.S. is adamant about sending a message to the Chinese government, the choice to defund UNFPA does not hurt China, but rather the other roughly 150 countries in which UNFPA works, which suffer as a result.¹¹⁰ Moreover, the dissemination of information on pregnancy termination and the provision of safe abortion procedures are only a fraction of the assistance that the UNFPA provides to over 150 countries.¹¹¹

The UNFPA presence and strategy in each country is responsive and tailored to national needs.¹¹² The UNFPA Programme Countries are classified based on each country’s relevant development indicators or, in other words, the need and ability of each country to finance their own development.¹¹³ Thus, funds are essential for the

¹⁰⁶ Joan Caivano & Jane Marcus-Delgado, *The Global Gag Rule: Women’s Health at Risk in Latin America?*, GLOB. AMS. (Mar. 17, 2017), <https://theglobalamericans.org/2017/03/global-gag-rule-womens-health-risk-latin-america/>.

¹⁰⁷ *Id.*

¹⁰⁸ Sneha Barot & Susan A. Cohen, *The Global Gag Rule and Fights Over Funding UNFPA: The Issues That Won’t Go Away*, GUTTMACHER INST., Policy Review Vol. 18 No. 2 at 30 (June 3, 2015).

¹⁰⁹ Thalif Deen, *US Defunds UNFPA for Third Consecutive Year—On Misconceived Assumptions*, INTER PRESS SERVICE (Jul. 17, 2019), <http://www.ipsnews.net/2019/07/us-defunds-unfpa-third-consecutive-year-misconceived-assumptions/>

¹¹⁰ Barot, *supra* note 108, at 31.

¹¹¹ See Farkas, *supra* note 77, at 240.

¹¹² U.N POPULATION FUND, *UNFPA Strategic Plan 2018–2021*, <https://www.unfpa.org/strategic-plan> (last visited Mar. 1, 2021).

¹¹³ *Id.* (the country classification ranks red countries as the highest need and the lowest ability to finance, followed by orange, then yellow, and finally pink, which has the lowest needs and some ability to finance).

UNFPA to carry out each program's objectives and goals.¹¹⁴ With the U.S. being one of UNFPA's largest donors, Trump's decision was set out to cut the voluntary contributions of the UNFPA by up to 40 percent, further widening the funding gap that the UNFPA is already facing.¹¹⁵ As Biden has now resumed UNFPA funding, the effects of Trump's funding gap are still being evaluated.¹¹⁶

a. The Mexico City Policy in Latin America: A Counterproductive Policy

Latin America has some of the most restrictive abortion laws in the world.¹¹⁷ The restrictive laws may be attributed to the fact that in general, Latin America is socially and religiously conservative in part because of the enduring influence of authoritarian regimes throughout the region.¹¹⁸ Additionally, women's reproductive rights are often framed as social and moral issues, with conservatives making a claim that legalizing abortion will "demoralize" society and disrupt the traditional notions of a "natural family."¹¹⁹ Despite abortions being illegal altogether or allowed with limited exception in most countries, abortions in Latin America are commonplace, albeit highly unsafe and carry with it the highest unsafe abortion rate of any region.¹²⁰

Furthermore, in several Latin American countries, the practice of abortion itself is criminalized—both the women seeking abortions and their doctors may face significant prison sentences.¹²¹ The consequences of criminalizing abortion include high maternal mortality and morbidity rates due to unsafe abortions that disproportionately affect women and girls living in poverty.¹²² These consequences have been particularly acute in Latin America,¹²³ where

¹¹⁴ *Id.*

¹¹⁵ Ford, *supra* note 14.

¹¹⁶ *UNFPA Funding & Kemp–Kasten*, *supra* note 85.

¹¹⁷ Armstrong et al., *supra* note 100.

¹¹⁸ Julian, *supra* note 19, at 276.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 279–80.

¹²¹ *Id.* at 280.

¹²² Guevara–Rosas, *supra* note 101.

¹²³ *Id.*

more than 95 percent of procedures take place illegally and clandestinely.¹²⁴

While the Global Gag Rule was in effect in 2001, abortion rates rose in Latin America despite the restrictive legal regimes of the countries and the U.S.'s implementation of the policy.¹²⁵ Specifically, women in Latin America became three times more likely to get an abortion.¹²⁶ As a result, there is a high demand for abortion-related health services, which have traditionally been provided by NGOs since the stringent regional policies in place limit access to such services.¹²⁷ Women will continue to find a way to have an abortion if needed, even if the means are unsafe, dangerous, or expensive.¹²⁸ In the impoverished and indigenous regions of Latin America, where contraception and reproductive service in general are already scarce, women suffer a dangerous disadvantage when NGOs lack the funds to provide safe and sufficient support.¹²⁹ Therefore, the Global Gag Rule does not achieve its objectives. Instead, the policy has proven to be counterproductive by placing lives at risk.¹³⁰

i. El Salvador: Country Case Study

In terms of abortion rights, El Salvador is one of the least progressive countries with some of the most restrictive laws.¹³¹ Since 1998, El Salvador has enforced a complete prohibition on abortion.¹³² This complete prohibition does not recognize cases of rape, incest, fetal abnormality, or even instances where the mother's life is in danger as possible exceptions.¹³³ Under this ban, a women

¹²⁴ Caivano, *supra* note 106.

¹²⁵ Armstrong et al., *supra* note 100.

¹²⁶ Armstrong et al., *supra* note 100. (“A main reason for the increase in the likelihood of abortion can be attributed to the major disruptions to family planning services brought on by the withdrawal of healthcare funding. These funding cuts resulted in clinic closures, health personnel layoffs, fewer services, and reduced contraceptive supplies, overall reducing the access to contraceptives which ultimately led to more unintended pregnancies and thus higher abortion rates.”)

¹²⁷ Lewis, *supra* note 54, at 3–4.

¹²⁸ Armstrong et al., *supra* note 100.

¹²⁹ Lewis, *supra* note 54, at 3.

¹³⁰ *Id.*

¹³¹ Julian, *supra* note 19, at 283.

¹³² *Id.*

¹³³ Anastasia Moloney, *No Options for El Salvador's Pregnant Girls Raped in Lockdown*, REUTERS (Aug. 31, 2020, 6:17 PM), <https://www.reuters.com>

charged with the crime of abortion can face a penalty of two to eight years in prison, while the medical professional assisting in the procedure can face a six to twelve year sentence.¹³⁴ Furthermore, because El Salvador's Constitution establishes that human life begins at conception, a woman charged with the crime of unlawful abortion may also be convicted of aggravated homicide, a crime that carries a thirty to fifty year prison sentence.¹³⁵

This total ban has caused women and girls to seek unsafe, clandestine abortions that frequently result in serious medical complications.¹³⁶ The Ministry of Health has reported 19,290 abortions in El Salvador between 2005 and 2008, more than a quarter of them undergone by girls under the age of eighteen.¹³⁷ According to the World Health Organization, 11 percent of women and girls who underwent a clandestine abortion in El Salvador died as a result.¹³⁸ However, due to the secrecy surrounding the practice and the unreliability of government statistics, these figures are likely much higher.¹³⁹

The ban is also obstructing the provision of post-abortion care and care for other pregnancy related complications.¹⁴⁰ When such complications occur, women and girls are afraid to seek medical help for fear that they will be arrested for violating the abortion ban.¹⁴¹ In 2013, the Ministry of Health reported that 32 percent of all pregnancies in El Salvador are those of adolescents, rendering El Salvador the country with the highest rate of teenage pregnancy in Latin America.¹⁴² These young girls are particularly at risk of

/article/us-health-coronavirus-el-salvador-aborti/no-options-for-el-salvadors-pregnant-girls-raped-in-lockdown-idUSKBN25R2YY.

¹³⁴ Julian, *supra* note 19, at 283.

¹³⁵ *Id.*

¹³⁶ Linda Veazey, *What El Salvador's Total Abortion Ban Means for Women and Girls*, AMNESTY INT'L (Feb. 2, 2016), <https://www.amnestyusa.org/what-el-salvadors-total-abortion-ban-means-for-women-and-girls/>.

¹³⁷ *El Salvador: On the Brink of Death: Violence Against Women and the Abortion Ban in El Salvador* 21, AMNESTY INT'L (Sept. 25, 2014), https://www.amnestyusa.org/wp-content/uploads/2017/04/on_the_brink_of_death.pdf [hereinafter *Amnesty Int'l Report*].

¹³⁸ *Id.* at 21.

¹³⁹ *Id.* at 21.

¹⁴⁰ *Id.* at 33.

¹⁴¹ Veazey, *supra* note 136.

¹⁴² *Amnesty Int'l Report*, *supra* note 137, at 26.

complications arising from miscarriages since their bodies are not yet fully developed.¹⁴³ Additionally, the women and girls who suffer from miscarriages are often reported to the authorities and interrogated by the police, sometimes resulting in homicide prosecutions.¹⁴⁴ The Agrupación Ciudadana por la Despenalización del Aborto en El Salvador (“Agupación Ciudadana”), a multidisciplinary organization formed to raise public awareness in order to change existing legislation on abortion in El Salvador, identified 129 women who were charged with abortion or aggravated homicide between 2000 and 2011, reporting that some of these women had abortions while others suffered miscarriages.¹⁴⁵

The story of twenty-year-old Imelda Cortez illustrates some of the horrors women and girls face daily in El Salvador.¹⁴⁶ In 2017, Imelda was imprisoned after giving birth to the child of her abusive stepfather in a latrine.¹⁴⁷ She was charged with attempted murder on suspicion of attempting to have an abortion.¹⁴⁸ Despite the lack of medical evidence, Imelda was held for over eighteen months, denied legal advice, and prevented from seeing her child.¹⁴⁹ While it took months for charges to be filed against her rapist, Imelda faced a potential forty year prison sentence.¹⁵⁰ Imelda was finally released after months of well-organized public protests with support and assistance from domestic and foreign NGOs.¹⁵¹ There are still several women, however, who remain imprisoned and many more at risk of facing the same abusive, inhumane treatment, but the NGOs capable of helping women like Imelda are restricted from acting or providing the support that the government refuses to offer because of the restrictions placed by the gag rule.¹⁵²

¹⁴³ *Id.* at 33.

¹⁴⁴ *Id.* at 35.

¹⁴⁵ *Id.*

¹⁴⁶ See Daniel Odin Shaw, *Trump’s Global Gag Rule: Rolling Back Reproductive Rights in Central America*, NEW PRETENDER (Feb. 27, 2019), <http://new-pretender.com/2019/02/27/trumps-global-gag-rule-rolling-back-reproductive-rights-in-central-america-daniel-odin-shaw/>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² See Shaw, *supra* note 146.

One of the smallest, poorest, and most densely populated countries in Central America, El Salvador faces extreme poverty, pervasiveness of violence against women and girls, a lack of access to the full range of modern contraception, and lack of quality sexual and reproductive health information and education—all factors which have altogether intensified the impact of the abortion ban in El Salvador.¹⁵³ However, “the Global Gag Rule makes no distinctions for countries where abortion is legal, thus leaving women who rely on NGO family planning clinics with unequal access to reproductive health services.”¹⁵⁴ Thus, women living in countries like El Salvador with harsh anti-abortion laws are the ones most in need of abortion reform, but the restrictions brought on by the Global Gag Rule currently prohibit activists and service providers from making any progress.¹⁵⁵ Not only are NGOs prohibited from mentioning the possibility of termination or providing other methods of contraception,¹⁵⁶ the rule also prohibits NGOs from lobbying a foreign government to liberalize abortion laws altogether.¹⁵⁷

The NGOs are necessary to serve as a voice for the women in El Salvador.¹⁵⁸ The claims attributing a decrease in abortion rates to the Global Gag Rule are unsubstantiated.¹⁵⁹ A 2020 analysis by Guttmacher institute shows that if the Helms Amendment were to be repealed and U.S. support helped ensure that all abortions were provided safely in the countries where abortion is legal on at least some grounds and where the United States is already supporting family planning programs:

There would be 19 million fewer unsafe abortions each year;

There would be 17,000 fewer maternal deaths each year;

¹⁵³ *Amnesty Int’l Report*, *supra* note 137, at 13.

¹⁵⁴ Aguilar, *supra* note 40, at 52.

¹⁵⁵ *Id.*

¹⁵⁶ Shaw, *supra* note 146.

¹⁵⁷ Aguilar, *supra* note 40, at 53–54.

¹⁵⁸ *See id.* at 78.

¹⁵⁹ *Id.* at 79.

The overall number of maternal deaths due to abortion in these countries would decline by 98%; and

There would be 12 million fewer women each year who have abortion-related complications requiring medical treatment.¹⁶⁰

The policy does, however, endanger the lives of women in countries like El Salvador by restricting their access to family planning services, which plays a major role in diminishing the abortion and high maternal mortality rate in developing countries.¹⁶¹ As several of the policy's opponents have recognized, "the rule does not protect women from human rights abuses in family planning" and "ignores the hardships faced by women in developing countries."¹⁶²

b. Defunding the UNFPA: A Dangerous Lack of Aid for Latin America

Latin America is composed of upper and lower middle-income countries where adolescents and youth still face insufficient coverage and quality of sexual and reproductive health services, and gender inequality continues to limit women and girls' freedoms.¹⁶³ The UNFPA's Regional Interventions Action Plan For Latin America and the Caribbean 2018–2021 reports that recently, economic growth combined with implementation of inclusive social policies has lifted about seventy million people out of poverty.¹⁶⁴ However,

¹⁶⁰ Sully & Ahmed, *supra* note 16.

¹⁶¹ *Id.* at 79–80.

¹⁶² *Id.* at 74. See generally Tara A. Gellman, *The Blurred Line Between Aiding Progress and Sanctioning Abuse: United States Appropriations, the UNFPA, and Family Planning in the P.R.C.*, 17 N.Y.L. SCH. J. HUM. RTS. 1063, 1094 (2001) (noting that back in 2001, several members of congress expressed concern over the "gag" language of the rule, and based on the overwhelming need of family planning funds, conditioning how organizations may use the money in the programs is unacceptable).

¹⁶³ *Regional Interventions Action Plan for Latin America and the Caribbean 2018–2021* 1, 3, U.N POPULATION FUND https://www.unfpa.org/sites/default/files/admin-resource/Final_RIAP_LACRO.pdf (last visited Mar. 1, 2021).

¹⁶⁴ *Id.*

while income inequality has decreased, Latin America remains the most equal region in the world.¹⁶⁵

The UNFPA works to advance the promotion and protection of human rights through means such as legislative and policy frameworks. Yet, “a resurgence and strengthening of conservative positions that aim to delegitimize sexual reproductive health and rights and gender equality add to the challenges, presenting critical barriers.”¹⁶⁶ Moreover, because most countries in the region are classified as middle-income, programmes are expected to be largely funded or co-financed by host-governments and private foundations.¹⁶⁷

Low-income countries and even progressing high-income countries are placed at a serious disadvantage of regressing on progress made toward helping the world’s most vulnerable women and girls when substantial donors like the U.S. end funding for groups that seek to promote safe childbirth and maternal health, end female genital mutilation and child marriage, and help victims of violence.¹⁶⁸ The recent Country Development Programmes for Bolivia and Uruguay serve as examples of the aid the UNFPA has to offer and the goals that can be achieved with the help of the funds invested in each tailored programme.

i. Bolivia: UNFPA Country Development Programme

Bolivia is a lower middle-income country and one of the poorest and most unequal countries in the region.¹⁶⁹ The UNFPA classifies Bolivia as an “orange” country, meaning, a country classified as second highest in need with the lowest ability to finance.¹⁷⁰ The current UNFPA Country Program for Bolivia is set to run through a five

¹⁶⁵ *Id.* See also *Regional Interventions Action Plan for Latin America and the Caribbean 2022–2025*, U.N. POPULATION FUND, https://www.unfpa.org/sites/default/files/board-documents/DP.FPA_2021.8_-_UNFPA_strategic_plan_2022-2025_-_Annex.8_-_Latin_America_and_the_Caribbean_-_FINAL_-_23Jul21.pdf.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 11.

¹⁶⁸ See Morello, *supra* note 98.

¹⁶⁹ *Country Programme Document for the Plurinational State of Bolivia 2*, U.N. POPULATION FUND (July 3, 2017), <https://digitallibrary.un.org/record/1317593?ln=en> [hereinafter *Bolivia CDP*].

¹⁷⁰ See *UNFPA Strategic Plan 2018–2021*, *supra* note 112.

year period from 2018–2022, making it the sixth cycle of assistance for Bolivia.¹⁷¹ The programme’s proposed UNFPA assistance is set at \$14 million.¹⁷² This country programme “will contribute to sustainable development in Bolivia, providing technical assistance and establishing integrated pilot interventions in the areas of adolescence and youth, sexual and reproductive health and reproductive rights, and gender, which are acknowledged by national objectives as enabling factors in poverty and inequality reduction.”¹⁷³

A milestone achievement for the country of Bolivia is its recognition of sexual and reproductive rights of women and men.¹⁷⁴ During the Country Programme 2013–2017, the UNFPA supported and assisted Bolivia in the development of a favorable regulatory framework for sexual and reproductive health, reproductive rights, and gender based violence, particularly sexual violence.¹⁷⁵ Specifically, in passing Law 348 to guarantee a life free from violence, Law 342 on Youth and the Multisectoral Plan for the Prevention of Adolescent Pregnancies, and the Law on Gender Identity.¹⁷⁶ “However, despite advances in legal and policy frameworks, key implementation gaps still hamper the full enjoyment of those rights. High maternal mortality rates, adolescent pregnancy, and gender-based violence represent major challenges.”¹⁷⁷

Although various public policies and norms address maternal and neonatal health, Bolivia has the second highest maternal mortality rate in Latin America.¹⁷⁸ One third of maternal deaths occur among women below age twenty–four and 14 percent among adolescents aged fifteen–nineteen years.¹⁷⁹ Furthermore, 18 percent of adolescents are already mothers or pregnant, as the unmet need for family planning among adolescents and youth is at 38 percent.¹⁸⁰

¹⁷¹ *Bolivia CDP*, *supra* note 169, at 1.

¹⁷² *Id.*

¹⁷³ *Id.* at 2.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 3.

¹⁷⁶ *Id.*

¹⁷⁷ *Bolivia CDP*, *supra* note 169, at 2.

¹⁷⁸ *Id.* (the maternal mortality ratio for Bolivia is 160 deaths per 100,000 live births; unfortunately, this ratio is four times higher among indigenous communities).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 3.

Adolescent pregnancies, especially in girls below the age of fifteen, are often associated with sexual abuse and have a higher risk of death during pregnancy and childbirth.¹⁸¹ While the rates of sexual violence and femicide are among the highest in Latin America, Bolivia in particular has one of the highest number of cases in human trafficking, mostly affecting women, young girls, and children.¹⁸²

Overall, the current cycle of assistance in Bolivia seeks to combine advocacy and policy dialogue, knowledge management, and capacity development in support of the government efforts to reduce geographic, socio-economic, gender, cultural, and generational inequalities in the areas of maternal mortality reduction, prevention of adolescent pregnancy and sexual violence.¹⁸³ The programme lists the following outputs as vital to achieve its goals in Bolivia: (1) strengthened capacities to ensure universal access to high-quality integrated sexual and reproductive health information and services; (2) increased capacity to provide youth and adolescent girls, particularly those at risk of early unions, adolescent pregnancy, and sexual violence with skills and knowledge on sexual and reproductive health rights, including the right to comprehensive sexuality education; (3) strengthened capacities to advance gender equality and empower women and young girls to exercise their sexual reproductive rights and be protected from gender-based and sexual violence; and (4) strengthened capacities of population data systems to map and address inequalities.¹⁸⁴

ii. Uruguay: UNFPA Country Development Programme

Uruguay is one of the smallest countries in South America, but it is classified as a high-income country and thus has a “pink” country classification by the UNFPA.¹⁸⁵ The UNFPA just completed its third cycle of assistance in Uruguay, a programme that ran from

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Bolivia CDP*, *supra* note 169, at 3.

¹⁸⁴ *Id.* at 4–5.

¹⁸⁵ *Country Programme Document for Uruguay 2*, U.N. POPULATION FUND (Nov. 30, 2015), https://www.unfpa.org/sites/default/files/portal-document/en-CPD_for_Uruguay_2016-2020.pdf [hereinafter *Uruguay CDP Cycle 3*]. See also *UNFPA Strategic Plan 2018-2021*, *supra* note 112.

2016–2020.¹⁸⁶ Despite Uruguay’s political and economic success, the programme’s proposed UNFPA assistance was set at \$5.25 million, as persistent social and economic disparities in the country still hamper the full realization and enjoyment of these rights for all population groups, specifically, children, young women and girls, and afro–descendants.¹⁸⁷

In 2021, the UNFPA presented its Country Development Programme for Uruguay, which like the previous programme, was set to run for a period of five years starting this year with a similar proposed indicative UNFPA assistance set at \$5.3 million.¹⁸⁸ The programme acknowledges Uruguay’s substantial progress regarding sexual and reproductive health rights as well as its advanced affirmative policies toward more vulnerable groups.¹⁸⁹ Most notably, Uruguay stands out in the region for its low maternal mortality ratio, 14.9 deaths per 100,000 live births in 2018, with deaths mainly due to non–preventable causes.¹⁹⁰

However, even the progressive country of Uruguay is susceptible to decline due to its persistent poverty and intersectional inequalities, now exacerbated by the impact of the COVID–19 pandemic.¹⁹¹ Furthermore, limited access to sexual and reproductive health services within the context of the pandemic has caused greater restrictions to access and shortage of contraceptive methods, as well as increased gender–based violence—a major problem in Uruguay, which records one of the highest femicide rates in South America.¹⁹²

Thus, during Cycle 4, while sustaining important achievements in maternal mortality reduction, UNFPA focuses on the prevention and reduction of gender–based violence by addressing violence in all its forms, including intimate partner violence, sexual violence, femicide, and obstetric violence, among others.¹⁹³ “The programme

¹⁸⁶ *Uruguay CDP Cycle 3*, *supra* note 185, at 1.

¹⁸⁷ *Id.* at 1–2.

¹⁸⁸ *Country Programme Document for Uruguay 1*, U.N. POPULATION FUND (Dec. 16, 2020), https://www.unfpa.org/sites/default/files/board-documents/main-document/DP.FPA_CPD_URY_4_-_Uruguay_CPD_-_FINAL_-_16Dec20.pdf [hereinafter *Uruguay CDP Cycle 4*].

¹⁸⁹ *Id.* at 2.

¹⁹⁰ *Id.* at 3.

¹⁹¹ *Id.* at 2.

¹⁹² *Id.* at 3.

¹⁹³ *Id.* at 4–5.

will underpin this focus by strengthening national capacities to generate evidence and disaggregated data to visualize the situation of these groups, as well as design, implement, monitor, and evaluate evidence-based public policies.”¹⁹⁴ The programme also strives to strengthen national and subnational capacities to deepen the implementation of Uruguay’s inclusive healthcare model, expanding universal access to sexual and reproductive health services, especially for low-income women and youth, Afro-descendants, LGTBI groups, and people with disabilities.¹⁹⁵

IV. THE IMPLEMENTATION OF REGRESSIVE FAMILY PLANNING POLICIES IS IMPEDING WITH THE U.S.’S COMMITMENT TO ITS INTERNATIONAL DUTIES AND OBLIGATIONS

Reproductive rights are well established under international law and include the right to health, the right to family planning, the right to reproductive self-determination, and the principle of non-discrimination, which ensures that reproductive health care services are provided to all.¹⁹⁶ As outlined by various international treaties, reproductive rights require governments to refrain from interfering with the individual’s reproductive autonomy and seek to ensure against others’ interference with it.¹⁹⁷ Lack of access to family planning, reproductive health services, and health information is a violation of human health rights and the right to self-autonomy.¹⁹⁸ Similarly, a government’s refusal to enact a legislative framework to facilitate access to reproductive health information and services is also a governmental violation of health rights, specifically against those

¹⁹⁴ *Uruguay CDP Cycle 4*, *supra* note 188, at 5.

¹⁹⁵ *Id.* at 6.

¹⁹⁶ *International Family Planning and Reproductive Health Programs: When Will the U.S. Government Fulfill Its Commitments?*, CTR. FOR REPROD. RTS. 3 (July 1, 2001), <https://reproductiverights.org/international-family-planning-and-reproductive-health-programs-when-will-the-u-s-government-fulfill-its-commitments/> [hereinafter *U.S. Commitments*].

¹⁹⁷ *Id.* at 4 (“The four treaties most broadly relevant are the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child.”)

¹⁹⁸ *Id.* at 3.

who lack the information and economic means to exercise their rights.¹⁹⁹

The Supremacy Clause of the U.S. Constitution declares treaties to be the “supreme Law of the Land,” just as the Constitution and federal statutes are.²⁰⁰ By virtue of this clause, treaties are presumptively enforceable in court, depending on whether treaties are self-executing or non-self-executing.²⁰¹ Regardless of a treaty’s enforceability in a U.S. court, the foundations of international human rights law lay down obligations which States are bound to respect.²⁰² “By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights.”²⁰³

a. International Treaties the U.S. Has Ratified:

i. United Nations Charter

The U.S. was one of the first States to sign the UN Charter, which as an instrument of international law, is binding on all UN Member States.²⁰⁴ The Charter lays the conceptual foundation for the development of international human rights law.²⁰⁵ Articles 55

¹⁹⁹ *Id.* at 4.

²⁰⁰ Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 HARV. L. REV. 599, 601–02 (2008).

²⁰¹ *See generally id.* at 601–11 (noting that a self-executing treaty becomes judicially enforceable upon its ratification, while a non-self-executing treaty becomes judicially enforceable through legislative implementation. Issues of interpretation may arise in these situations).

²⁰² U.N., *The Foundation of International Human Rights Law*, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html#:~:text=By%20becoming%20parties%20to%20international,the%20enjoyment%20of%20human%20rights>.

²⁰³ The Foundation of International Human Rights Law, *supra* note 202 (“The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect requires States to protect individuals and groups against human rights abuses; and finally, the obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.”).

²⁰⁴ *What We Do: Uphold International Law*, UNITED NATIONS, <https://www.un.org/en/sections/what-we-do/uphold-international-law/> (last visited Feb. 14, 2022).

²⁰⁵ *U.S. Commitments*, *supra* note 196, at 4.

and 56 of the Charter establish the basic obligations to which UN Member States have agreed, including the promotion and “universal respect for, and observance of . . . human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”²⁰⁶ By signing the UN Charter, the U.S. has undertaken the obligation to take action in cooperation with the UN to promote “solutions of international economic, social, health, and related problems.”²⁰⁷

ii. Universal Declaration of Human Rights

The Universal Declaration of Human Rights is generally agreed to be the foundation of international human rights law.²⁰⁸ The U.S. was one of the leaders in creating the Universal Declaration of Human Rights (“UDHR”), signed in 1948.²⁰⁹ The UDHR recognizes the right of each individual to health, as well as a women’s right to special protection and care in connection with their roles as mothers.²¹⁰ The UDHR also has several provisions that are specifically implicated when access to family planning services and information is lacking, including provisions outlining an individual’s right to privacy, the right to marry and found a family on a basis of equality, and the right to freedom from discrimination on the basis of sex.²¹¹

Like the UN Charter, the UDHR contains a non-discrimination provision which provides that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²¹² As the UDHR provides that everyone is entitled to a social and international order in which the rights and freedoms of the Declaration can be fully realized, the U.S. has committed to do its part internationally to ensure these rights and freedoms for all.²¹³

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *The Foundations of International Human Rights Law*, *supra* note 202.

²⁰⁹ *History of the Declaration*, UNITED NATIONS, <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (last visited Feb. 3, 2022).

²¹⁰ *U.S. Commitments*, *supra* note 196, at 4.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

iii. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) was ratified by the U.S. in 1992.²¹⁴ Under Article 2, “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.”²¹⁵

The ICCPR protects the rights to individual liberty, privacy, and the right to marry and to found a family, as well as the right to life.²¹⁶ It further enumerates the individual’s right to reproductive self-determination,²¹⁷ and under Article 1, the State Parties “shall promote the realization of the rights of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”²¹⁸ The ICCPR, like the international instruments aforementioned, also provides essential protections for free expression, speech, and association.²¹⁹

b. *International Treaties the U.S. Has Not Yet Ratified:*

i. The International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) was adopted in 1966 alongside the ICCPR.²²⁰ While the ICESCR has been ratified by more than 150 countries, the

²¹⁴ *Id.* at 4–5.

²¹⁵ See International Covenant on Civil and Political Rights art. 2, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

²¹⁶ *U.S. Commitments*, *supra* note 196, at 5.

²¹⁷ *Id.* at 5.

²¹⁸ International Covenant on Civil and Political Rights art. 1.3, Dec. 19, 1966, 999 U.N.T.S. 171, 173 (hereinafter “International Covenant”).

²¹⁹ *United States of America: Submission to the United Nations Universal Periodic Review Thirty-Sixth Session of the UPR Working Group of the Human Rights Council*, GLOB. JUST. CTR. 1, 6 (2020), https://www.globaljusticecenter.net/files/Global_Justice_Center_Final_US_UPR_Submission.pdf (hereinafter Global Justice Center Review); see also International Covenant, *supra* note 218, at art. 19.

²²⁰ *U.S. Commitments*, *supra* note 196, at 5.

U.S. has yet to ratify it.²²¹ Under the ICESCR, States recognize the right of all people to enjoy the highest attainable standard of physical and mental health.²²² Furthermore, the ICESCR commits State Parties to “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind”, including sex.²²³

The ICESCR specifically states that in working for the achievement of the right to health, nations must take steps to reduce the rates of stillbirth and infant mortality for the healthy development of the child.²²⁴ The ICESCR also states that State Parties to the Covenant recognize the right of everyone to enjoy the benefits of scientific progress and its applications.²²⁵ “Thus, the Covenant’s provisions encompass the right of women to health services and information to prevent unintended pregnancies that could jeopardize their physical or psychological well-being.”²²⁶

ii. The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) is the world’s primary legal document on women’s equality.²²⁷ The CEDAW provisions cover all aspects of women’s right to equality, such as equal pay for equal work, domestic violence, access to health care, paternal leave, and discrimination linked to parenting responsibilities.²²⁸ Notably, CEDAW provides a clear definition of discrimination and equality, and spells out State obligations with regard to guaranteeing

²²¹ *Universal Declaration of Human Rights: History of the Declaration*, UNITED NATIONS, <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (last visited Feb. 13, 2022).

²²² *U.S. Commitments*, *supra* note 196, at 5.

²²³ *Id.*

²²⁴ *Id.* (citing International Covenant on Economic, Social and Cultural Rights art. 12(2)(a), Dec. 16, 1966, 993 U.N.T.S. 3, 8).

²²⁵ International Covenant on Economic, Social and Cultural Rights, *supra* note 224, art. 15(1)(b).

²²⁶ *U.S. Commitments*, *supra* note 196, at 5.

²²⁷ *United States Ratification of International Rights Treaties*, HUM. RTS. WATCH (July 24, 2009, 12:24 PM), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#>.

²²⁸ *Id.*

women's enjoyment of their human rights on an equal footing with men.²²⁹

The CEDAW Convention most clearly recognizes that pervasive cultural and social norms often deny women equality within marriage and in family relations, as well as the threat that unintended pregnancies pose to women's health and lives, and to their equal status in other spheres of life.²³⁰ As such, the CEDAW has been ratified by 189 States.²³¹ However, the U.S. has not ratified CEDAW, placing it in the company of Iran, Palau, Somalia, Sudan, and Tonga as the last states yet to ratify.²³²

iii. The Convention on the Rights of the Child

The Convention on the Rights of the Child obliges nations to respect and ensure the human rights of children and adolescents under age eighteen.²³³ The Convention also obligates national governments to "recognize the right of the child to the enjoyment of the highest attainable standard of health," and to "strive to ensure that no child is deprived of his or her right of access to . . . health care services."²³⁴ The recognition of this right includes the children who may suffer if their parents lack access to services and information that could enable them to prevent the health risks of early or unintended pregnancies, as well as any strains that the pregnancy may impose on one's ability to provide adequately for their children.²³⁵ The right also extends to adolescents who themselves have the right to access family planning services in order to avoid the risk of early pregnancy and exercise the right to privacy in deciding whether or not to bear children.²³⁶ While the Children's Right Convention is one of the most quickly and widely adopted conventions, the U.S. has yet to ratify it, making it one of only three countries in the world

²²⁹ *Id.*

²³⁰ *U.S. Commitments*, *supra* note 196, at 6.

²³¹ *CEDAW in your daily life: What is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?*, U.N. HUM. RTS. OFF. HIGH COMM'R, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DailyLife.aspx> (last visited Feb. 13, 2022).

²³² *U.S. Ratification of International Human Rights Treaties*, *supra* note 227.

²³³ *U.S. Commitments*, *supra* note 196, at 7.

²³⁴ *U.S. Ratification of International Human Rights Treaties*, *supra* note 227.

²³⁵ *U.S. Commitments*, *supra* note 196, at 7.

²³⁶ *Id.*

not to do so.²³⁷ The U.S.' failure to ratify Conventions such as the ICESCR and CEDAW reflects not only an unwillingness to uphold and promote such human rights, but a lack of recognition of these rights altogether.

c. The U.S. is Not Only Failing to Uphold Existing Duties and Obligations Under International Law, But Should Be Doing More to Invest in Family Planning and Protect Reproductive Health Rights

Both the restrictions imposed by the Mexico City Policy and the implementation of the Kemp–Kasten Amendment to defund the UNFPA not only ignore the U.S.'s own obligations under international law, but violate a broad array of women's rights, deny them essential services, and put their lives at risk.²³⁸ The implementation of these policies burden women and girls to such an obvious and grave degree in developing nations that the U.S.'s own allies and the United Nations condemn both policies.²³⁹ Foreign aid should contribute toward the uplift of societies and yet, through its various anti-abortion amendments, U.S. foreign aid constrains the possibility of forging substantively better opportunities for women.²⁴⁰

Not only is the U.S. refusing to enact a policy framework to facilitate access to reproductive health information and services, it is instead enacting a counterproductive policy that conflicts with the obligations the U.S. has undertaken under the UN Charter to take action and cooperate with the UN to promote solutions to issues of international health.²⁴¹ The funding cuts and multiple restrictions demonstrate that the U.S. has ultimately failed to fulfill its commitments internationally to ensure the rights and freedoms provided in the UDHR and those set out in other international treaties by the UN, such as the right to health, family planning, privacy, and reproductive self-determination.²⁴² Additionally, the policies and restrictions impede the U.S.'s ability to comply with its obligations under the ICCPR by restricting health providers from speaking

²³⁷ *History of the Declaration*, *supra* note 209.

²³⁸ Global Justice Center Review, *supra* note 219, at 7.

²³⁹ Goodwin, *supra* note 2, at 1454.

²⁴⁰ *Id.* at 1451.

²⁴¹ *See U.S. Commitments*, *supra* note 196, at 4.

²⁴² *Id.* at 12–13.

honestly and truthfully regarding an individual's health and reproductive rights.²⁴³ This is notwithstanding the fact that forcing women and rape victims to carry unwanted or risky pregnancies without adequate medical care itself is cruel and inhumane treatment that violates all aspects of international law.²⁴⁴

Apart from failing to commit to its existing duties and obligations under international law, the U.S. continually demonstrates a reluctance to ratify international human rights treaties.²⁴⁵ The U.S. is alone among other industrialized Western countries in its failure to ratify significant human rights treaties like the ICESCR, CEDAW, and the Convention on the Rights of the Child.²⁴⁶ Refusing to ratify human rights treaties weakens U.S. international leadership and influence, and deprives individuals the rights and protections they deserve.²⁴⁷ It is unsettling that the U.S., a country that was once a global leader in human rights, has not yet ratified key treaties to protect some of the world's most vulnerable populations, including women and children.²⁴⁸

It is difficult to take U.S. commitments to human rights seriously when it regularly favors domestic political concerns over the international human rights community.²⁴⁹ U.S. support for international family planning and reproductive health programs has been "inconsistent, insufficient, and mired with burdensome, offensive restrictions."²⁵⁰ Moreover, the funding for family planning and reproductive health has overall been deficient relative to both the tremendous need for such services and the size of the U.S. budget as a whole.²⁵¹ The U.S. must support a dramatic increase in family planning assistance funding not only to promote women and children's health around the globe, but to abide by its international

²⁴³ Global Justice Center Review, *supra* note 219, at 6.

²⁴⁴ See Goodwin, *supra* note 2, at 1455–56.

²⁴⁵ See Marie Wilken, *U.S. Aversion to International Human Rights Treaties*, GLOB. JUST. CTR. BLOG (Jun. 22, 2017), <https://globaljusticecenter.net/blog/773-u-s-aversion-to-international-human-rights-treaties>.

²⁴⁶ *Id.*

²⁴⁷ See *id.*

²⁴⁸ See *id.*

²⁴⁹ *Id.*

²⁵⁰ *U.S. Commitments*, *supra* note 196, at 1.

²⁵¹ *Id.*

commitments and maintain its role in the development and promotion of human rights as well.²⁵²

V. CONCLUSION

“Historically, the United States has used foreign aid to facilitate stability abroad, encourage change in other governments, and export democratic ideals.”²⁵³ However, the U.S. falls short in respecting and promoting reproductive health rights and family planning assistance, if it does not ignore these rights altogether. The U.S. government instead places extraneous conditions on its foreign aid in order to further its own policy goals.²⁵⁴ While foreign aid is “perhaps the best tool that exists, to get other governments, especially poor and weak ones, to act in the ‘right way,’” the use of foreign aid as foreign policy is especially problematic when restrictions on aid undermine democratic processes abroad.²⁵⁵ Like previous Republican administrations that have imposed this view, Trump’s foreign aid restrictions “play politics with the lives of women around the world.”²⁵⁶

For quite some time now, international law has upheld and recognized the importance of sexual and reproductive health rights. States, international organizations, and NGOs have all stressed the ongoing need for aiding family planning programs because it is well recognized that protecting women’s access to reproductive healthcare is both necessary and vital to achieve gender quality and human development, especially in developing countries. As noted above, “the rights, needs, and aspirations of people in relation to sexual and reproductive rights in Latin America are far from being fulfilled.”²⁵⁷ Given the vast inequality across ethnic, socioeconomic, and geographic lines, the progressive realization of sexual and reproductive health and rights in Latin America is a pressing human

²⁵² *See id.*

²⁵³ Lalian, *supra* note 64, at 977.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 979.

²⁵⁷ Emma Richardson & Anne–Emanuelle Birn, *Sexual and Reproductive Health and Rights in Latin America: An Analysis of Trends, Commitments and Achievements*, 19 REPRODUCTIVE HEALTH MATTERS 183, 183 (Nov. 4, 2011).

rights issue.²⁵⁸ Further, this persistent gender discrimination and inequality is at the root of women and girls' inability to exercise their human rights.²⁵⁹

Although it will take time to conclude the precise effects of Trump's policy application during the Biden presidency, "it is long past time for the U.S. to repeal these regressive and harmful policies, direct their aid to pursue positive health outcomes for women, and to realize women's fundamental rights under international human rights and humanitarian law."²⁶⁰ Because while discrimination against women is evident in almost all areas of life, it is in the area of sexual and reproductive health that it reaches shocking levels.²⁶¹

The transition to the Biden administration is promising, as President Biden quickly repealed Trump's gag rule and pledged his support and commitment to protect women's health and advance gender equality at home and around the world.²⁶² However, and particularly in light of the Global HER Act pending congressional passage, this note continues to call for bipartisan support rather than an ongoing policy imbalance due to shifting administrations and conflicting political views. During his presidency, Obama stated, "for too long, international family planning assistance has been used as a political wedge issue, the subject of back and forth debate that has served only to divide us. I have no desire to continue this stale and fruitless debate."²⁶³ In accordance with that statement, the U.S. government must end this divide by passing legislation such as the Global HER Act and join the rest of the world in recognizing the significance of reproductive health care and efforts to end this pervasive discrimination on women – regardless of party affiliation. Women and girls

²⁵⁸ *See id.* at 192.

²⁵⁹ *See* Guevara–Rosas, *supra* note 101.

²⁶⁰ Global Justice Center Review, *supra* note 219, at 7.

²⁶¹ Guevara–Rosas, *supra* note 101.

²⁶² *See generally* Sarah McCammon, *Biden Administration Prepares to Overturn Trump Abortion Rule*, NPR (Jan. 21, 2021, 10:45 PM), <https://www.npr.org/sections/president-biden-takes-office/2021/01/21/959170860/biden-administration-prepares-to-overturn-trump-abortion-rule> (reporting that President Biden is preparing to revoke the Mexico City Policy).

²⁶³ Barack H. Obama, Statement on Mexico City Policy and Assistance for Voluntary Population Planning (Jan. 24, 2009) (transcript available at <https://www.govinfo.gov/content/pkg/DCPD-200900018/html/DCPD-200900018.htm>).

will not reach true equality until they have the means to freely access contraception, safe abortion, maternal health care, and education and information about family planning.