

REPEALING THE GLOBAL GAG RULE AND THE POLITICIZATION OF ABORTION: SEARCHING FOR A PANACEA TO WOMEN'S REPRODUCTIVE AND SEXUAL HEALTH RIGHTS

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Abstract

The Mexico City Policy, also known as, the Global Gag Rule (GGR) is a policy employed by the United States of America in politicizing abortion not only in America, but, globally. It has been applied since January 2001; and it restricts international Non-Governmental Organizations (NGOs) from administering family planning funds provided by the U.S. Agency for International Development (USAID) for abortion services, counseling or advocacy. However, the restrictions became stricter during Trump's administration in 2017 when it applies GGR restrictions to nearly all federal global health assistance, including, family planning and reproductive health, maternal and child health, and for the first time, HIV funding; hence, negatively impacting women's sexual and reproductive health (SRH) rights in developing countries, particularly those with restrictive abortion laws like Nigeria. The article examines the significance of the politicization of abortion on women's SRH and opines the repealing of the GGR as a major, but not the only step in promoting the right of women to safe abortion. Other strategies must be combined by affected foreign governments, international NGOs and institutions in repealing various national restrictive abortion laws and securing a global protection of women's SRH rights for all women.

Keywords: Global Gag Rule, Politicization, Abortion, Family Planning, Sexual and Reproductive Health, Women.

1. Introduction

In every society, women reproductive and sexual health has been at the center of every reproductive debate. Over many decades and in many societies, religious, customary and moralistic laws and legislation by politicians have been restrictive and censorious on any form of human intervention in the natural process of reproduction and have condemned abortion and any human process that seemed to subvert or devalue the natural gift of conception or birth.¹ For example in England the first legislation on abortion has been traced to as early as 1803. The right of women to self-determination in relation to abortion and other related reproductive health services may be a well-worn debate but its

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¹ RJ Cook, BM Dickens, MF, Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law*. (1st ed, Clarendon Press 2003). p. 155.

contemporary relevance in the global concern to protect and promote women's rights to health and welfare cannot be ignored. The abortion debate is a two sided coin fronting the pro-choice and the pro-life argument for and against abortion. The unending debate of abortion has brought about the polarization of governments, political and economic allies, non-governmental organizations, advocacy groups and other stakeholders along the pro-life and pro-choice argument. For example, the United States of America have swayed between the two debates depending on the party political interests and agenda. The two political parties that have ran successive governments in the United States; the Republicans are known for a pro-life conservative stance and policies on abortion, while the Democrats lend support to pro-choice, a more liberal stance on abortion and policies relating to abortion. With successive governments in the United States abortion policies have swung between liberalism and conservatism. One major US government policy that has impacted abortion is the conservative Global Gag Rule also known as the Mexico City policy. This rule was introduced by President Ronald Regan in 1984 and has since been enforced or repealed by successive US governments. With the recent change in administration however, the President Joe Biden and his Vice Kamala Harris are taking the more liberal stance by enacting an Act to repeal the conservative Global Gag Rule which was expanded and reinforced by the out gone administration of President Donald Trump.

Therefore, this article discusses the Global Gag Rule, continued politicization of abortion and its implication for women's reproductive and sexual health rights in developing countries, particularly those with restrictive abortion laws. The article posits that while the repealing of the Global Gag Rule is a major step in promoting the right of women to safe abortion, it is not a guarantee for a global liberalization of abortion and repealing of restrictive abortion laws. In order to effectively engage this discourse, the article will attempt to provide answers to the following pertinent questions:

What is the Global Gag Rule?

Is it constitutional?

How has the Global Gag Rule impacted the right of women to reproductive health especially access to safe abortion?

Why is reproductive health of women particularly abortion so politicized?

Would a repeal of the Global Gag Rule lead to the liberalization of abortion in countries with restrictive abortion laws?

What other measures should be taken other than a repeal of the Global Gag Rule on abortion?

2. What is the Global Gag Rule?

The Mexico City Policy is a policy of the USA Government that prohibits funding for foreign NGOs that perform or promote abortion as a method of family planning in USAID recipient countries, or that provide financial support to another foreign NGO that does. The policy applies not only to primary recipients of applicable foreign assistance

but also to foreign NGO sub recipients.² Thus, NGOs that provide abortion related counselling, referrals, and advocacy for liberalization or decriminalization are denied funding. The rule supports restrictive abortion laws which only allow abortion on specifics such as when the life of a woman is at risk, or abortions committed in cases of rape and incest. It seeks to ensure the pro-life stance on abortion and dissuade countries, organizations and other agencies from advocating or promoting the pro-choice right to unrestricted abortion and other related reproductive health services.

Significantly, the policy explicitly allows NGOs to continue to treat the complications of unsafe abortions (post-abortion care). It also allows referral of a pregnant woman elsewhere if she specifically asks where a safe, legal abortion can be obtained. Abortion-related research is also permitted.³ Besides, emergency contraception is permitted as is not a form of abortion.⁴ Moreover, the GGR does not apply to other non-family planning USA assistance such as child survival.⁵ Also, the GGR exempts governments receiving USA assistance as well as USA-based NGOs, whose activities are not limited if they are using non-USAID funds. But, if USA NGOs are implementing overseas programmes with US funding, they are legally responsible for enforcing the Gag Rule's restrictions on their NGO partners in those countries.⁶

Historically, abortion rights and federal funding of abortion-related activities have long been contentious issues in American policy⁷ and Congress. Until 1973, political efforts focused only on the domestic policy of the USA,⁸ but, by 1973, the Helms Amendment was enacted to prohibit the use of federal funding for abortion services in the USA, it also applied to the Foreign Assistance Act of 1961, thus, restricting the use of federal funding in foreign development assistance.⁹ Accordingly, policies became more

² Population Research Institute *The Mexico City Policy: An Introduction* Brief No. 1 (2017) 1-3 <[The-Mexico-City-Policy-factsheet.pdf \(pop.org\)](#)> accessed 01 March 2021.

³ Population Action International *What You Need to Know About the Global Gag Rule Restrictions: An Unofficial Guide* (PAI Washington DC, 2001).

⁴ Population Action International *Emergency Contraception and the Global Gag Rule: An Unofficial Guide* (PAI Washington DC, 2002).

⁵ US Executive Office of the President *Assistance for Voluntary Population Planning, Memorandum for the Secretary of State* 29 August 2003.

⁶ BB Crane and J Dusenberry, 'Power and Politics in International Funding for Reproductive Health: the US Global Gag Rule' [2004] (12) (24) *Reproductive Health Matters*, 128-137.

⁷ L Nowels, Foreign Affairs, Defense, and Trade Division. *Population Assistance and Family Planning Programs: Issues for Congress*. p. 3 <[IB96026 \(unt.edu\)](#)> accessed 01 March 2021.

⁸ G Feldt, *The War on Choice: the Right-Wing Attack on Women's Rights and How to Fight Back*, ISBN 978-0-553-38292-1 (2004) p. 221 <[The War on Choice by Gloria Feldt: 9780307418616 | PenguinRandomHouse.com: Books](#)> accessed 01 March 2021.

⁹ L Nowels, *Population Assistance and Family Planning Programs: Issues for Congress*. n. 7, p. 4.

ambitious, and in 1984 during Reagan's presidency, the Global Gag Rule was introduced by Executive Order.¹⁰ The Original Language of the Mexico City Policy 1984 provides:

[T]he United States does not consider abortion an acceptable element of family planning programs and will no longer contribute to those of which it is a part...[T]he United States will no longer contribute to separate nongovernmental organizations which perform or actively promote abortion as a method of family planning in other nations.¹¹

The Gag Rule went even further than the Helms Amendment and prohibited family planning centers and health care advocates from using their own, non-USA money to discuss the impact of abortions, educate women on the availability of abortions, or advocate to their own governments for changes in restrictive abortion laws.¹²

The Gag Rule remained in effect until 1993, when President Clinton revoked the order within two days of being sworn into office.¹³ However, this respite was short lived; beginning in 1995, the Republican-controlled Congress pledged to make reinstatement of the Gag Rule a priority and pushed to enact it legislatively every year following its suspension.¹⁴ Congress was finally able to reinstate the Gag Rule in 1999 by holding up a congressional bill that provided over one billion dollars in back dues to the UN in exchange for reenactment of the regulations.¹⁵ Threatened with the loss of the United States' General Assembly vote in 2000,¹⁶ President Clinton accepted reinstatement of the Gag Rule for one year.¹⁷ Nonetheless, in an attempt to limit its effect, President Clinton instructed USAID, the main implementing agency of the Gag Rule, to interpret its requirements in the least invasive manner.¹⁸ When foreign NGOs were informed of the new U.S. policy, a vast majority of recipient organizations agreed to certify an agreement not to participate in abortion-related activities or advocacy in exchange for continued

¹⁰ SA Cohen, 'Abortion Politics and US Population Aid: Coping with a Complex New Law' (26)(3) *International Family Planning Perspectives*, 137-139 <<http://www.agi-usa.org/pubs/journals/2613700.pdf>> accessed 01 March 2021.

¹¹ 'Policy Statement of the United States of America at the United Nations International Conference on Population' Second Session (Mexico City, Mexico, August 6-14, 1984). Undated, <https://www.jstor.org/stable/1973537?seq=1>. accessed 01 March 2021.

¹² S Wildman, Abort Mission, *American Prospect* (1 Jan 2004) 1 <[TAP : The American Prospect - The American Prospect](#)> accessed 01 March 2021.

¹³ SA Cohen, Abortion Politics and US Population Aid: Coping with a Complex New Law. n. 10, p. 137.

¹⁴ Ibid. 137-138.

¹⁵ Ibid. 137.

¹⁶ Ibid. 137.

¹⁷ Ibid. 145.

¹⁸ L Nowels, *Population Assistance and Family Planning Programs: Issues for Congress*. n. 7, p.5.

U.S. funding,¹⁹ but many clearly expressed that they were doing so ‘neither willingly nor easily.’²⁰

Afterwards, Clinton’s liberal interpretation of the Gag Rule was abandoned by President Bush,²¹ who reenacted the Gag Rule in its strictest sense on his first business day in office.²² Ironically, this day was also the 28th anniversary of *Roe v Wade*, the United States Supreme Court decision upholding the right to an abortion in the United States.²³ In reinstating the Gag Rule, Bush announced that it was his ‘conviction that taxpayer funds appropriated should not be given to foreign nongovernmental organizations that perform abortions or actively promote abortion as a method of family planning in other nations.’²⁴ According to a White House spokesman, the reinstatement and renewed commitment to limiting foreign funding to promote U.S. political ideals signified a new approach to global family planning policy.²⁵

On 23rd January, 2017, Donald Trump issued a stricter policy, called, ‘Protecting Life in Global Health Assistance Policy,’²⁶ by applying GGR restrictions to nearly all federal global health assistance, including, for the first time, HIV funding through the President's Emergency Plan for AIDS Relief (PEPFAR).²⁷ It also applied to maternal and child health, malaria, nutrition, and other U.S. programs,²⁸ and potentially encompassed \$7.3 billion in FY 2020 alone, to the extent that such funding was ultimately provided to foreign NGOs, directly or indirectly (family planning assistance accounted for approximately \$600 million of that total).²⁹

¹⁹ RE Seevers. ‘The Politics of Gagging: The Effects of the Global Gag Rule on Democratic Participation and Political Advocacy in Peru’ [2006] (31) (3) *Brook. J. Int'l L.*

²⁰ SA Cohen. Abortion Politics and US Population Aid: Coping with a Complex New Law. n. 10, p. 138.

²¹ G Feldt. *The War on Choice: the Right-Wing Attack on Women's Rights and How to Fight Back*. n. 8, p. 203.

²² See Center for Reproductive Rights, *The Bush Global Gag Rule: Endangering Women's Health, Free Speech and Democracy*, (July 2003) 1 <[bp_GGRbush_0701.qxd \(reproductiverights.org\)](#)> accessed 02 March 2021. (Also known as ‘The Bush Global Gag Rule’).

²³ *Ibid.*

²⁴ Presidential Memorandum on Restoration of the Mexico City Policy, (66 Fed. Reg. 61, 17303) (28 March 2001).

²⁵ R. Boucher, *White House Daily Briefing* (Jan. 23, 2001) <[Daily Press Briefing \(state.gov\)](#)> accessed 01 March 2021.

²⁶ Executive Office of the President, Memorandum of January 23, 2017, *The Mexico City Policy* (Federal Register 82, no. 15, Jan 25, 2017): 82 FR 8495.

²⁷ Editorial, ‘The devastating impact of Trump's global gag rule’ *The Lancet* (JUNE 15, 2019) 393 (10189, P2359) <[The devastating impact of Trump's global gag rule - The Lancet](#)> accessed 02 March 2021.

²⁸ Such as family planning and reproductive health, tuberculosis, neglected tropical diseases, global health security, and certain types of research activities.

²⁹ Global Health Policy, *The Mexico City Policy: An Explainer* (Jan 28, 2021) <[The Mexico City Policy: An Explainer | KFF](#)> accessed 02 March 2021.

3. Is the Global Gag Rule Constitutional?

The GGR may seem unconstitutional on the surface, but, it is actually constitutional. In fact, the Mexico City Policy has been challenged numerous times, but federal and appellate courts have ultimately sided with the Government every time a case has been brought against it. In *Center for Reproductive Law and Policy v Bush*,³⁰ the court opined ‘the Supreme Court has made it clear that the government is free to favor the anti-abortion position over the pro-choice position, and can do so with public funds.’³¹ Further, section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. §2151b (b)) grants the President the ability to determine how family planning assistance is allocated:³² ‘the President is authorized to furnish assistance, on such terms and conditions as he may determine, for voluntary population planning.’³³ Another similar subsequent provision in Section 104 appears to grant the President the ability to also apply conditions on health assistance in general:³⁴ ‘the President is authorized to furnish assistance, on such terms and conditions as he may determine, for health programs.’³⁵

However, the constitutionality or otherwise of the GGR is debatable. This is because the GGR undermines USA efforts to promote democracy around the world. It is called a ‘gag’ rule because it stifles public debate on abortion related issues, requiring private organizations overseas to choose between continuing their non-USA funded efforts to change public policy around abortion in their countries, and receiving U.S. family planning funds.³⁶ Hence, restricting their freedom to engage in public policy debates undermines a central tenet of USA foreign policy (the promotion of democracy abroad) and its core principle of free and open debate.³⁷

Besides, The GGR restricts foreign organizations from engaging in activities that are legal in their own countries and in the United States. USA law currently preserves the right to safe and legal abortion services. Many of the same countries receiving USAID family planning assistance also permit abortion for reasons other than to save the life of the woman, rape or incest. Indeed, the global trend is toward laws that support more comprehensive access to reproductive health services. Also, the GGR compels local providers in developing countries to disregard their national laws set in place by their governments and comply with the restrictive USA policies if they choose to accept USA funds. This restriction on the activities of foreign partner organizations would run counter

³⁰ 304 F.3d 183 (2d. Cir. 2002).

³¹ Ibid.

³² *Planned Parenthood Federation of America Inc v. Agency for International Development*. 915 F.2d 59 (2d. Cir. 1990).

³³ 22 U.S.C. §2151b(b).

³⁴ Population Research Institute.

³⁵ 22 U.S.C. §2151b(c)(1).

³⁶ Impassioned Advocates for Girls and Women (pai.org), *Policy & Issue Brief: How the Global Gag Rule Undermines U.S. Foreign Policy and Harms Women’s Health* <[PAI-Gag-PIB.pdf](#)> accessed 02 March 2021.

³⁷ Ibid.

to the Global Health Initiative's and foreign assistance reform emphases on country ownership.³⁸

4. The Impact of the Global Gag Rule on Women's Reproductive and Sexual Health

During the Trump administration, two official assessments by the U.S. Department of State were released.³⁹ Additionally, a report released in March 2020 by the U.S. Government Accountability Office (GAO) provided new information on the number of projects (awards) and NGOs affected by the expanded policy during the Trump administration. It found that from May 2017 through FY 2018:

- the policy had been applied to over 1,300 global health projects, with the vast majority of these through USAID and CDC, and
- NGOs declined to accept the policy in 54 instances, totaling \$153 million in declined funding – specifically, seven prime awards amounting to \$102 million and 47 sub-awards amounting to \$51 million (more than two-thirds of sub-awards were intended for Africa) – across USAID and CDC; the Department of State and Department of Defence (DoD) did not identify any instances where NGOs declined to accept the policy conditions.⁴⁰

In other words, some international NGOs like Marie Stopes International, due to their determination rejected the GGR as a matter of principle, and few others lost funding; whereas, hundreds of NGOs are known to be receiving USAID assistance under the constraints of the GGR in the more than 50 countries that receive USA family planning assistance.⁴¹ The harmful impacts of the GGR on women's SRH varies from one country to the other. The effects are determined by the political economy of reproductive health in that country – including how large a role is played by NGOs in both services and advocacy, the presence of other reproductive health donors, the salience of abortion as a policy issue, and the commitment of the national government to reproductive health.⁴² For instance, by 2019, Nigeria suffered low supplies of family planning products provided by the United Nations Population Fund after the USA pulled funding from the agency within two years because the administration of President Trump accused the UNFPA of cooperating with coercive abortions or involuntary sterilization as part of the Chinese government's one-child policy, which has now been phased out. According to Dr. Eugene Kongnyuy, the interim representative of UNFPA, the cut in funding affected

³⁸ Ibid.

³⁹ See Department of State, 'Protecting Life in Global Health Assistance Six-Month Review' Report, (Feb. 6, 2018) <<https://2017-2021.state.gov/protecting-life-in-global-health-assistance-six-month-review/index.html>> accessed 02 March 2021.

⁴⁰ Global Health Policy. *The Mexico City Policy: An Explainer*. Jan 28, 2021

⁴¹ BB Crane and J Dusenberry, 'Power and Politics in International Funding for Reproductive Health', n. 6, p. 130.

⁴² Ibid, 131.

not only family planning; but other areas such as malaria and tuberculosis.⁴³ Funding data puts the shortage into broader perspective. In 2016, when UNFPA got its last support from the U.S. government, it was able to spend \$15,444,880 on family planning in Nigeria. In 2017, it spent just \$6,132,632. UNFPA Nigeria lost over 60 percent of its family planning funds within one year, in a country that is facing a potentially crippling population boom.⁴⁴

Moreover, the politicization of women's reproductive health rights was quite exceptional during the administration of President Trump; attempting a global extension of the rule, the United States led the other 30 states out of 193 member states to be signatories to the unpopular 'Geneva Consensus Rule'. This new rule aside from the GGR calls on states to promote women's rights and health but without access to abortion.⁴⁵ While, the aim for the Geneva Consensus Rule have been stated to be the promotion of women's right and health, it is the opinion of this article that this rule like all others in the past have sought to control women reproductive and sexual health rights but marauding as protecting and promoting women's right and health. According to Eran Bendavid et al, reinstatement of the GGR have impacted poor women negatively, caused an increase in maternal mortality and unsafe abortion which has consequently led to an increase in infant mortality and poor child health. In their research, the authors were able to establish that the reinstatement of the GGR is consistent with the timing of rise in induced abortion and abortion rates in sub-Saharan Africa.⁴⁶ In Africa only 10 out of the 54 countries have liberalized abortion laws. Out of these 10 countries with the exception of Zambia, only three countries namely; Cape Verde, South Africa and Tunisia laws permit abortion services on request and for any reason.⁴⁷ In the successive years of the GGR, African countries with restrictive abortion laws have imposed stricter measures on abortion and related procedures for fear of losing funding and falling into political disfavour with the United States.

To what extent has the GGR impacted access to family planning, maternal and child health, and HIV/AIDS prevention? Unfortunately, the GGR forced closures and cutbacks by leading family planning groups. Family planning providers that declined USA funding while the GGR was in place were forced to close clinics, cut services, and increase fees. They were unable to obtain donated contraceptives to meet the needs of the communities that they served. In a number of countries, established health care referral networks

⁴³ P Adepoju, 'In Nigeria, Trump administration policies bite hard' *Devex.com* (February 05 2019) <[In Nigeria, Trump administration policies bite hard | Devex](#)> accessed 02 March 2021.

⁴⁴ Ibid.

⁴⁵ <[www.srhrforall.org](#)> accessed 13 February 2021.

⁴⁶ EBP Avila and G Miller, 'United States aid Policy and Induced Abortion in sub-Saharan Africa' <[www.who.int](#)> accessed 13 February 2021.

⁴⁷ Guttmacher Institute, (2017) 'Abortion in Africa ,Legality of Abortion' <[www.guttmacher.org](#)> accessed 15 February 2021.

collapsed while the GGR was in place, as key family planning providers downsized and struggled to cope with budget cuts and rapidly declining stocks of contraceptive supplies.⁴⁸ The GGR has adversely affected the supply of contraceptives and condoms. Shortly after the reinstatement of the GGR in 2001, shipments of U.S.-donated condoms and contraceptives completely ceased to 16 developing countries, primarily in Africa. Moreover, family planning providers in another 16 countries, mostly in Africa, lost access to condoms and contraceptives as a result of their refusal to accept the GGR restrictions. Even though the GGR was rescinded in 2009, some of these same organizations that were affected by the imposition of the GGR have yet to fully resume family planning services with U.S. government assistance, due to fears that their funding will once again be cut off under a future administration hostile to family planning.⁴⁹

Besides, access to family planning helps reduce abortion and deaths caused by unsafe abortion. Regardless of whether abortions are legal, women in desperate situations still seek them out. As a result, abortions performed under unsafe conditions remain a major public health concern. Approximately 22,000 women die each year from unsafe abortion complications, many of them leaving young children behind. Many more women, about 8.4 million, suffer serious illness or injury.⁵⁰ Expanding access to family planning can help prevent unplanned pregnancies and reduce such tragedies.⁵¹

In addressing maternal and child health; annually, hundreds of thousands of women die in pregnancy or childbirth.⁵² 99 percent of these deaths occur in the developing world and the vast majority are preventable. Fully satisfying the unmet need for modern contraception of 225 million women would avert an additional 52 million unintended pregnancies and 70,000 maternal deaths. Increasing the availability of prenatal care, trained birth attendants and family planning services is essential to helping women time and space their births and making pregnancy and childbirth safer for women and their babies.⁵³ Regarding HIV/AIDS Prevention; family planning providers have developed the expertise, services, and information to counsel individuals about safer sex, help individuals avoid high-risk behaviors, and screen for and treat sexually transmitted infections (STIs), including HIV. Although it applied only to family planning funds, the Gag Rule prevented the United States from working with some of the most effective

⁴⁸ Pai.org, *Policy & Issue Brief: How the Global Gag Rule Undermines U.S. Foreign Policy and Harms Women's Health*.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Impassioned Advocates for Girls and Women (pai.org). *Policy & Issue Brief: How the Global Gag Rule Undermines U.S. Foreign Policy and Harms Women's Health*.

⁵² Guttmacher Institute, 'Adding It Up: The costs and Benefits of Investing in Sexual and Reproductive Health' [2014] <<https://www.guttmacher.org/pubs/AddingItUp2014.html>> accessed 02 March 2021.

⁵³ Ibid.

front-line partners serving two of the populations at greatest risk of STIs, including HIV/AIDS—women and youth.⁵⁴

On another hand, the GGR restricts open communication between women and their trusted health care providers. Prohibiting organizations from providing information, counseling, and referrals on abortion hurts their ability to provide comprehensive health care needed or requested by their community and undermines trust between providers and patients. The principles of informed consent demand that health care providers not withhold information on services that are available and/or legal in that country, or that could prevent injury or even save a woman's life.⁵⁵

The effects of the GGR policies have been far more wide-reaching than their apparent targets, threatening efforts around gender equality, education, and humanitarian assistance, alongside safe abortion and family planning. For example, the UNFPA's humanitarian efforts of addressing maternal health needs and gender-based violence among displaced people in the northern region of Nigeria had been gathering momentum, thanks in part to \$2.5 million that UNFPA Nigeria received from the USA in 2016. But, its plans hit a wall when no funds were released in 2017, 2018 or 2019, meaning it could not get the staffing, commodities, materials or supplies it needed to help Nigerian women trapped in the crisis.⁵⁶ Therefore, with a high degree of certainty, it can be said that the Gag Rule has not achieved an overall reduction in abortions. By disrupting family planning services through effective NGO providers that reject the Gag Rule and lose their US funding, the policy is more likely to have increased the number of abortions. At the same time, the Gag Rule's limitations on NGOs that accept US funds are less likely to reduce abortions than to keep them clandestine and unsafe.⁵⁷

5. Politicization of Abortion

Since the abortion rights movement of the 1970s following the victory in the case of *Roe v Wade*⁵⁸ that led to the legalization of abortion, the pro-choice movement has continued to face significant challenges, primarily from the increasing politicization and stigmatization of abortion since its legalization in the United States.⁵⁹

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ P Adepoju. In Nigeria, Trump administration policies bite hard. *Devex.com*.

⁵⁷ B B Crane and J Dusenberry, 'Power and Politics in International Funding for Reproductive Health', n. 6, p. 130.

⁵⁸ 410 U.S. 113 (1973).

⁵⁹ C Joffe, 'The politicization of abortion and the evolution of abortion counselling' [2012] *American Journal of Public Health* <<https://www.researchgate.net/publication/233422359>> accessed 13 February 2021.

Politicization of abortion is the politicization of women's rights and health. Discussing on the politicization of abortion, Udi Summer and Aliza Foreman Rabinovici state in their article as follows:

Women's health and reproductive rights specifically, are not just a health policy issue. Rather, they fall into two other theoretical categories of public policy: morality policy and feminist policy. The empirical overlap between these two theoretical categories has led to the fierce politicization of women's health issues and stands as a considerable barrier to achieving women's health goals.⁶⁰

Expounding further, the authors argued that the women's reproductive rights is not just an issue of health policy, it is also a public policy, morality policy and feminist policy. Udi Summer and co-author Aliza Rabinovici maintained that these overlaps and conflicting interests have not only led to a fierce politicization of women's health issue but also a major barrier to achieving women's health goals.

The origin of morality policy can be traced in many societies to religion, culture, morality laws and patriarchy.⁶¹ Reproductive health of women is viewed through a religious or traditional value based lens,⁶² while the gender equality policy which is the stance of feminists on women's reproductive health is based on female autonomy and women's rights. These opposing stands sets the divide between political camps on women issues leading to barriers in decisive and effective policy making on issues affecting women's reproductive health.⁶³

Politicization of women's reproductive health issues according to Udi Summer and Aliza Foreman Rabinovici,⁶⁴ has been one major obstacle that the United Nations have faced in the implementation and realization of the SDGs. Although the SDGs focusing on promoting "healthy lives and well being for all at all ages" good health and well being for women, particularly reproductive health are stated in 3.1, 3.7, and 3.8, the language of these provisions have been evasive on spelling out and addressing those specific reproductive health issues affecting and pertaining to Women. Reproductive and sexual health issues have been politicized so much so that the United Nations forum have been turned into battlegrounds over and during debates on women's reproductive rights and health.⁶⁵ The position of opposing factions and interests on reproductive health issues

⁶⁰Ibid.

⁶¹ G Makama, 'Patriarchy and gender inequality in Nigeria: the way forward' *European Scientific Journal* Vol. 9 (17), pp. 2.

⁶² U Sommer, A Forman-Rabinovici (2020) 'The politicization of women's health and Wellbeing' *Sustainability* <www.mdpi.com> accessed 13 February 2021.

⁶³Ibid.

⁶⁴Ibid.

⁶⁵Ibid.

often determines the couching and drafting of policies and protocols. The sensitive nature of these issues has led to the reproductive rights being addressed through ambiguous and inconsistent language in many policy documents and protocols. For example, some researchers have noted the effect of politicization on the language expressed in the ICPD Programme of Action, describing the statement recognizing unsafe abortion as a public health concern only as ‘weak’ and not affirmative on the issue of access to safe abortion⁶⁶ which was opposed by the Roman Catholic Church along with other countries on religious and moral grounds. This strategy of avoiding conclusive language or making decisive statements on reproductive rights in a desire to appease conflicting parties on the sensitive issues of reproductive health of women is also evident in the SDG 2030 Agenda for Sustainable Development and has constituted a barrier to achieving the SDG3 as it relates to Women’s reproductive health.⁶⁷

Going by the different descriptions of women reproductive health issues as public policy, morality and gender equality policy issues, politicization by countries and other interests groups is certainly inevitable. There is no country or interest group that is apolitical and every political agenda is informed either by the opinion of the public, the society’s religious or moral standards. The position of Islamic countries such as Saudi Arabia, and other countries with strong religious moral inclinations on women’s reproductive health rights and freedoms is well known.⁶⁸

From the foregoing, the effects of the Trump Global Gag Rule on a broad range of sexual and reproductive health services is particularly concerning in light of recent global data from WHO on the persistently high prevalence and incidence of sexually transmitted infections. That the Global Gag Rule might ultimately prove to increase the number of abortions by reducing access to modern contraception is not just an unfortunate irony, rather, it reveals the way in which the policy has little to do with fostering health and everything to do with politics. Abortion is the rallying cry that unites conservative attempts to control and coerce women. By targeting funding for abortion, the Global Gag Rule weaponizes US global health funding against sexual and reproductive health and rights more broadly, with the most severe consequences affecting the most vulnerable.⁶⁹

⁶⁶ Ibid.

⁶⁷ O Rosemary, et al. Engendering. (2016).

⁶⁸ P Offenhauer, ‘Women in Islamic Societies: Selected Review of Social Scientific Literature.’ A report prepared by the Federal Division, Library of Congress. (2005).

⁶⁹ Editorial, ‘The devastating impact of Trump’s global gag rule’ *The Lancet*. June 15, 2019. 393 (10189). <[The devastating impact of Trump's global gag rule - The Lancet](#)> accessed 16 February 2021.

6. Would a Repeal of the Global Gag Rule lead to the Liberalization of Abortion in Countries with Restrictive Abortion Laws?

Ending the divisive and egregious Mexico City Policy is a vital first step...It is now essential to have the ambition to put in place multiple strategies to advance sexual and reproductive rights in all countries.⁷⁰

In January 2021, shortly after the inauguration of the administration of President Joe Biden, he expressed his decision to rescind the egregious GGR. It was warmly welcomed by the Partnership for Maternal, Newborn & Child Health (PMNCH), an alliance of more than 1000 organizations from over 190 countries working to drive momentum towards global health targets for women, children and adolescents.⁷¹ This is because the GGR policy has been responsible for denying essential funding and contraceptive supplies to overseas family planning agencies. Thus, causing an increase in the numbers of unintended pregnancies and unsafe abortions and endangering the health and even the lives of thousands of girls and women.⁷²

Practically, the repeal of the GGR will have a positive impact on women's reproductive and sexual health. In effect, the right to abortion will be more recognized globally, while most governments with restrictive laws will liberalize or even legalize their abortion laws. Equally, the funding of abortion, counselling and referral services that are prohibited under the GGR will be made available by the USA government to relevant national governments and NGOs. Governments NGOs will also be permitted to freely engage in public policy debates on abortion, contraception and other sexual and reproductive health discourses. National governments that are proposing to legalize their abortion laws will be able to do so without fear of being denied some family planning and abortion funding opportunities.

Therefore, the current decision of repealing the GGR by Biden administration is a welcome development. Accordingly, passing a law recognizing the women's global health, rights and empowerment would be the foremost step to ensure that several national governments and NGOs would never again be compelled choose between USA funding and the provision of wide-ranging sexual and reproductive health services.

⁷⁰ H Clark, 'Board Chair of PMNCH and former prime minister of New Zealand' *PMNCH* <[PMNCH | Removing the "Global Gag" will benefit millions of vulnerable women and girls worldwide \(who.int\)](#)> accessed 04 March 2021.

⁷¹ WHO, 'Removing the "Global Gag" will benefit millions of vulnerable women and girls worldwide' (28 January 2021) *PMNCH* <[PMNCH | Removing the "Global Gag" will benefit millions of vulnerable women and girls worldwide \(who.int\)](#)> accessed 04 March 2021.

⁷² *Ibid.*

7. Other Measures beyond Repealing the GGR

According to Cook R. et al, ‘the control of human reproduction and sexuality by penalties of criminal law was supported by traditional political and religious institutions as a defence of marriage, the family, and moral values’.⁷³ This statement was drawn from the authors’ exposition on the transition and evolution of reproductive health law from morality to democracy, from crime and punishment to health and welfare and now, the current health and welfare to human rights. Although there are still areas of reproduction that are still controlled by criminal sanctions and penalties, for example, legislation prohibiting same sex relationships/unions, etc., the varied restrictive abortion laws in many countries constitute a major albatross to the human rights of women to health and welfare globally.

Government’s responsibility to give effect to concepts of health, welfare and respect for choice, privacy and the right to self-determination cannot be more apt in this era of democracy and human rights. Repealing the GGR rule which restricts funding should be the first but, not be the only strategy to ensuring that women have access to contraception and safe abortion. Thus, prioritizing the rights and health of women, including politicization of abortion geared towards liberalization remains a potential strategy in the hands of developed and liberal governments. The latter must ensure that governments with restrictive abortion laws (mostly developing countries) liberalize their draconian abortion laws on the premise that they must fulfil their international obligation to promote the health and welfare of women particularly in relation to reproductive and sexual health services, including access to contraception and safe abortion for all women, particularly, the most vulnerable.

Also, governments, multilateral institutions, foundations, and non-governmental organizations adversely affected by the GGR must device means of reducing the funding gap. Although, it may seem practically difficult to fill, however, amassing and expanding funding from other sources will go a long way. Some governments have taken up the challenge but a great funding gap persists.

Similarly, there is need for government officials to recognize that donor funds cannot be relied on for critical national health policies. The government has already increased its support for the local UNFPA by \$1 million, or 25 percent, since the rules came into effect. For instance, Nigeria has partly taken over her country’s family planning programs, particularly, in procuring some contraceptives and it is hoped that she will do more in the future.⁷⁴

⁷³ RJ Cook, et al., *Reproductive Health and Human Rights*, n. 1, p. 102-103.

⁷⁴ P Adepoju, ‘In Nigeria, Trump administration policies bite hard’ *Devex.com*.

Moreover, there is need for gender justice and equality. Women being at the center of the reproductive process, any policy that is made by government must be weighed on the scale of gender justice and equality to ensure that women are not disproportionately impacted. The GGR and its counterpart the 'Geneva Consensus Rule' are examples of rules and policies that have tilted the balance of gender justice and equality against women and this is evidenced by the negative impact that these rules and their negative politicization had contributed to gender injustice and inequity in the protection and promotion of women's health. The Committee on the Elimination of Discrimination against Women has affirmed this, 'that access to health care which includes reproductive health is a basic right of women under CEDAW'⁷⁵ State parties are therefore under obligation to

Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women.

Gender justice and equality will include having women in key positions in governance, for instance, the emergence of Kamala Haris as the first female Vice President is a remarkable step in governance and a potential for a positive global politicization of women's right reproductive health particularly right to safe abortion and other related services.

The need to prioritize contraception and the prevention of unwanted pregnancy through family planning and sex education is key to reducing maternal mortality.

Also, removing legislation and punitive measures against women who undergo abortion is also important talking about gender justice and equality.

8. Conclusion

This article examined a very controversial issue of the politicization of abortion as connected to the GGR which restricts the USAID funding to international NGOs engaged in abortion services. The policy was introduced during Reagan's presidency in 1984, but, was toughened by President Trump. Hence, the politicization of women's reproductive health rights was quite exceptional during the just concluded administration due to the huge negative impacts that it had on the SRH services covered by several NGOs national and governments, Nigeria inclusive. Unfortunately, the policy increased the prevalence of unsafe abortion, contrary to the essence of its establishment. As well, its effects extended beyond abortion and family planning services to other sectors, such as, health,

⁷⁵ Committee on the Elimination of Discrimination against Women, General Recommendation 24: Women and Health(Article12) CEDAW, General Recommendation 24, UNGOAR1999, UN Doc. A/54/38/Rev.1

education and gender inequality issues, particularly felt by developing countries that have strong reliance on USA funding.

Therefore, in ending the problem of a future politicization of abortion, there is need for its immediate repeal, which, hopefully would be concluded as its action was commenced by Biden administration in January, 2021. The repeal of the GGR is a foremost panacea to the enjoyment of women's SRH Rights worldwide; and coupled with more strategies, most governments with restrictive laws will liberalize or even legalize their abortion laws, and more countries will be able to access previously denied family planning services, thus, satisfying many unmet needs of family planning while simultaneously, reducing abortion prevalence.