



U.S. Foreign Policy

Global Gag Rule

Also known as the “Mexico City Policy,” the Global Gag Rule was developed in 1984 by President Reagan, rescinded in 1993 by President Clinton, and reinstated in 2001 by President Bush.¹ The policy prohibited foreign organizations receiving federal funds from using *any* funds, whether U.S. money, or the organization’s (non-U.S.) money,² to provide legal abortion services, lobby for abortion law reform, counsel and inform women on many reproductive health options, and many other services.³ As a result of the gag rule:

- There had been a loss of funding leading to a reduction in the availability of contraception, especially in Africa where the HIV/AIDS epidemic has been devastating.⁴
- Clinics closed and services were eliminated in several developing countries, despite the fact they were sometimes the only healthcare facilities in their communities.⁵
- The rule may have actually increased abortion rates by denying contraceptive supplies to organizations that refuse to abide by the gag rule.⁶

On January 23, 2009, in an effort to “protect and empower women and promote global economic development,” President Obama rescinded the policy.⁷

Human Trafficking

In March 1998, President Clinton issued the Executive Memorandum on the Trafficking of Women and Children, emphasizing the need for cooperation, prevention, protection, and enforcement to address “[t]he problem of trafficking in women and girls, an insidious form of violence[.]”⁸ Since then, the federal government has implemented a policy centered on the Palermo Protocol’s “3P” paradigm of “prosecution, protection, and prevention”⁹ and adding a “fourth P” for “partnership.”¹⁰ In 2010, the State Department released its first-ever ranking for the United States according to the same standards long applied to other nations,¹¹ including a review of its implementation of the “3P” paradigm and recommendations for improvement.¹² Recommendations include better law enforcement training, reporting, and data collection, as well as, community collaboration, training, and outreach, and victim identification and assistance.¹³

United Nations Population Fund (UNFPA)

The United Nations Population Fund (UNFPA) is a healthcare program with a focus on reproductive health and family planning activities.¹⁴

- The Bush Administration withheld a total of \$127 million in appropriations for the UNFPA,¹⁵ making the U.S. “the only country to ever deny funding to UNFPA for non-budgetary reasons.”¹⁶ The funds were initially withheld based on false information that UNFPA supported “forced abortion” in China, despite the fact that a State Department fact-finding team was unable to find evidence of these alleged practices.¹⁷
- UNFPA estimates that the \$34 million being withheld each year could have prevented two million unwanted pregnancies, 4,700 maternal deaths, 800,000 induced abortions, 60,000 cases of serious maternal illness, and over 77,000 infant and child deaths.¹⁸
- In February 2008, then-Senator Hillary Clinton introduced the United Nations Population Fund Restoration Act of 2008.¹⁹ The proposed legislation never made it out of committee.²⁰
- In January 2009, President Obama announced that he intended to restore U.S. financial support for the UNPFA.²¹ In March 2009, he signed legislation to enable a \$50 million contribution.²² Earlier that month, the Senate had rejected appropriation bill amendments which would have withheld contributions if the funds reached groups supporting abortion.²³

The President’s Emergency Plan for AIDS Relief (PEPFAR)

The President's Emergency Plan for AIDS Relief (PEPFAR) was introduced in 2003 and reauthorized by Congress in 2008.²⁴ It has been criticized for promoting abstinence at the expense of proven prevention methods, refusal to support clean needle exchange programs, and excluding traditionally marginalized populations, such as sex workers and LBGTQIQ persons.²⁵

- In his 2003 State of the Union Address, President Bush announced the creation of PEPFAR—his initiative to fight the global HIV/AIDS pandemic—by offering \$15 billion in worldwide aid over five years.²⁶ Congress approved in 2003 and full implementation began in 2004.²⁷
- President Bush reauthorized PEPFAR in 2008, recommitting \$48 billion in federal funding to the program until 2013, including \$39 billion for the bilateral HIV/AIDS program.²⁸
- PEPFAR considers faith-based organizations to be priority partners, including those with little or no relevant international development experience; however, new grants awarded to these organizations have decreased in recent years.²⁹
- President Obama supports PEPFAR and deems it “effective.”³⁰ Under the current administration, PEPFAR has expressed a commitment to a woman/girl-centered approach.³¹ Through its partnership with over 30 countries, PEPFAR directly supported 11 million people with care and support, including nearly 3.8 million orphans and vulnerable children in 2010.³²

PEPFAR: Ineffective Models

PEPFAR uses an Abstinence, Be Faithful, Condom Use (ABC) approach that has been highly criticized by reproductive healthcare organizations.³³

- Only 20% of PEPFAR's budget has been allocated towards HIV prevention, and one-third of that money is to be used for “abstinence until marriage” programs.³⁴
- Experts and country teams report the ABC directive hinders the development of integrated prevention programs that appropriately balanced ABC with other prevention methods.³⁵
- The efficacy of the ABC approach is questionable when the vast majority (80%) of new HIV cases internationally is among married women or women in monogamous relationships.³⁶
 - Abstention is not an option for women who are raped or are coerced into sex.
 - Women are frequently unable to control their partner's other sexual activities, placing them at risk for HIV, even if the women are faithful.
- PEPFAR's Prevention, Treatment, and Care Model, emphasizing the ABC approach,³⁷ is ineffective for men and, to a greater extent, for women. For example, in Nigeria, the most populous country in Africa, married men are more likely than married women to engage in extramarital sex, and it is more acceptable for them to do so.³⁸
 - Men may not want to negotiate condom use with their female partners.
 - Women in areas where PEPFAR funding is greatest have limited resources (i.e., do not own property or have inheritance rights) to seek appropriate care.
 - Women may not seek treatment out of fear their health could be disclosed, either to their husband/partner or the community at large.³⁹
- Only 20% of PEPFAR's budget has been allocated towards HIV prevention, and one-third of that money is to be used for “abstinence until marriage” programs.⁴⁰

PEPFAR: Effects on Traditionally Marginalized Populations

- PEPFAR does not fund clean needle exchange programs for intravenous drug users.⁴¹
- PEPFAR limits health care to sex workers by requiring that all organizations receiving PEPFAR funds officially oppose prostitution.⁴² This “anti-prostitution pledge” results in less aid to organizations that do peer-based outreach services, many of which rely on building trust and credibility within these marginalized groups.⁴³
 - Imposition of the pledge led to Brazil refusing \$40 million in aid in 2005.⁴⁴

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- Womyn's Agenda for Change, a public health NGO in Cambodia, lost \$93,000 in U.S. funding after refusing to discontinue an HIV prevention effort that created a network of over 5,000 sex workers.⁴⁵
 - In 2006 BBC World Serve Trust refused to comply with the pledge, losing \$4 million in US funding for an HIV/IDS program in Tanzania.⁴⁶
- DKT International, a U.S. based non-profit, also refused to sign the pledge and lost funding for a program in Vietnam that distributes condoms and prevented over 85,000 cases of HIV.⁴⁷
- On July 6, 2011 in *Alliance for Open Society International v. United States Agency for International Development*, the Second Circuit Court of Appeals affirmed the lower court orders halting enforcement of the anti-prostitution pledge requirement on the grounds that forcing funding recipients to adopt the government's viewpoint violated fundamental free speech rights.⁴⁸
 - The Bush Administration heightened the stigma surrounding homosexuality in Africa by predominantly allocating PEPFAR funding to religious groups, which often condemn same-sex relationships and can reserve the right to discriminate based on sexual orientation.⁴⁹
 - NGOs have campaigned to ensure HIV infected survivors of genocide are viewed as an at-risk population for priority anti-retroviral (ARV) treatment.⁵⁰

¹ Memorandum from Barack Obama, President of the U.S., to the Sec'y of State (Jan. 23, 2009), *available at* http://www.whitehouse.gov/the_press_office/MexicoCityPolicy-VoluntaryPopulationPlanning.

² *Putting Politics Before Public Health: The Global Gag Rule*, INT'L WOMEN'S HEALTH COAL., http://www.iwhc.org/index.php?option=com_content&task=view&id=3529&Itemid=1217 (last visited June 22, 2011).

³ LARRY NOWELS & CONNIE VEILLETTE, LIBR. OF CONG., CONG. RES. SERV., INTERNATIONAL POPULATION ASSISTANCE AND FAMILY PLANNING PROGRAMS: ISSUES FOR CONGRESS, at CRS-5 to CRS-7 (2006), *available at* <http://ncseonline.org/NLE/CRSreports/06May/RL33250.pdf>.

⁴ *E.g.*, MEHLIKA HOODBHOY ET AL., *Exporting Despair: The Human Rights Implications of U.S. Restrictions on Foreign Health Care Funding in Kenya*, 29 FORDHAM INT'L L.J. 1, 60-81 (2005); Basu Rekha, *Ethiopian Women Struggle, But Strings Bind U.S. Help*, DES MOINES REGISTER (IOWA), Oct. 29, 2006, at 1A.

⁵ *E.g.*, HOODBHOY ET AL., *supra* note 4, at 62-68; Rekha, *supra* note 4.

⁶ PATHFINDER INT'L, FACT SHEET, THE GLOBAL GAG RULE: UNDERMINING WOMEN'S HEALTH AND U.S. FOREIGN POLICY (2005), *available at* http://www.pathfind.org/site/DocServer/New_Gag_Rule_Fact_Sheet_10-6-05.pdf.

⁷ Statement by Barack Obama, President of the U.S. (Jan. 24, 2009), *available at* <http://www.whitehouse.gov/statement-released-after-the-president-rescinds>.

⁸ Memorandum from William J. Clinton, President of the U.S., to the Sec'y of State et al. (Mar. 11, 1998), *available at* <http://secretary.state.gov/www/picw/trafficking/steps.htm>.

⁹ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2010, at 12 (2010).

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² *Id.* at 338-45.

¹³ *Id.* at 338.

¹⁴ United Nations Population Fund [UNFPA], <http://www.unfpa.org/public/home/about> (last visited June 22, 2011).

¹⁵ *34 Million Friends of UNFPA: Mobilizing the Grassroots to Save Women's Lives*, UNFPA, <http://www.unfpa.org/support/friends/34million.htm> (last visited June 22, 2011).

¹⁶ *Id.*

¹⁷ *Id.* See also *Fiction: UNFPA Supports Coerced Abortion and Forced Sterilization in China*, RH REALITY CHECK, <http://www.rhrealitycheck.org/fact-v-fiction/unfpa-supports-coerced-abortion-and-forced-sterilization-in-china> (last visited June 22, 2011).

¹⁸ Thoraya Ahmed Obaid, Exec. Dir. Of UNFPA, UNFPA Statement on U.S. Funding Decision (July 22, 2002), *available at* <https://www.unfpa.org/public/News/pid/3674>. At the time, \$34 million represented around 9% of the UNFPA's income. NOWELS & VEILLETTE, *supra* note 3, at CRS-10.

¹⁹ See *United Nations Population Fund Restoration Act (S. 2682)*, INT'L WOMEN'S HEALTH COAL., http://www.iwhc.org/index.php?option=com_content&task=view&id=3452&Itemid=817 (last visited June 22, 2011).

²⁰ See *United Nations Population Fund Restoration Act of 2008, S.2682, 110th Cong.* (2008).

- ²¹ Statement by Barack Obama, *supra* note 6. See also Rob Stein & Michael Shear, *Funding Restored to Groups that Perform Abortions, Other Care*, WASH. POST, Jan. 24, 2009, at A3.
- ²² Press Release, UNFPA, U.S. Resumption of UNFPA Funding to Boost Women's Health Rights (Mar. 12, 2009), available at <http://www.unfpa.org/public/News/pid/2180>.
- ²³ See Libr. of Cong., Bill Summary & Status, S.AMDT.607, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SP607>: (last visited June 22, 2011); S.A. 607, 111th Cong., 155 Cong. Rec. 2643 (daily ed. Mar. 2, 2009).
- ²⁴ The U. S. President's Emergency Plan for AIDS Relief [PEPFAR], <http://www.pepfar.gov/about/index.htm> (last visited June 22, 2011).
- ²⁵ *What is PEPFAR?*, AVERT.ORG, <http://www.avert.org/pepfar.htm> (last visited June 22, 2011).
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ PEPFAR, FACT SHEET, PEPFAR: A COMMITMENT RENEWED (2009), available at <http://www.pepfar.gov/documents/organization/114676.pdf>.
- ²⁹ See PEPFAR, REP. TO CONG. MANDATED BY REP. 108-599, ACCOMPANYING H.R. 4818, COMMUNITY AND FAITH-BASED ORGANIZATIONS 2 (2005), available at <http://www.state.gov/documents/organization/54420.pdf>; *PEPFAR Funding: How is the Money Spent?*, AVERT.ORG, <http://www.avert.org/pepfar-funding.htm> (last visited June 22, 2011) ("The share of new grants awarded to faith-based organizations under the New Partners Initiative has declined, with just 7 out of the 19 announced in 2008 compared to 15 out of the 22 announced in 2006.")
- ³⁰ Statement by the President on Global Health Initiative (May 5, 2009), <http://www.whitehouse.gov/the-press-office/statement-president-global-health-initiative> (last visited June 22, 2011).
- ³¹ *Gender Strategy*, PEPFAR WATCH, http://www.pepfarwatch.org/the_issues/gender_strategy (last visited June 22, 2011).
- ³² *Latest Results*, PEPFAR available at <http://www.pepfar.gov/results/index.htm> (last visited June 22, 2011).
- ³³ Andrew Colvin & Colin Felsman, *Reevaluating PEPFAR: America's AIDS Policy*, 7 COLUM. POL. REV. 21, 21-22 (2007), available at http://archive.cpreview.org/issues/1207/december_issue.pdf; See also PEPFAR, ABC Guidance #1 (Abstinence, Be Faithful, and correct and consistent Condom use), <http://www.pepfar.gov/guidance/c19545.htm> (last visited June 14, 2010).
- ³⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, REP. TO CONG. REQUESTERS, GLOBAL HIV/AIDS: A MORE COUNTRY-BASED APPROACH COULD IMPROVE ALLOCATION OF PEPFAR FUNDING 2 (2008), available at <http://www.gao.gov/new.items/do8480.pdf>.
- ³⁵ *Id.* at 3.
- ³⁶ Colvin & Felsman, *supra* note 33, at 22.
- ³⁷ PEPFAR, ACCOUNTABILITY: REPORT ON PEPFAR PARTNERSHIPS FOR PREVENTION, TREATMENT AND CARE (2008), available at http://www.pepfar.gov/press/fourth_annual_report/99832.htm.
- ³⁸ See generally Daniel Jordan Smith, *Modern Marriage, Men's Extramarital Sex, and HIV Risk in Southeastern Nigeria*, 97 AM. J. PUB. HEALTH 997 (2007).
- ³⁹ *Id.*
- ⁴⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, REP. TO CONG. REQUESTERS, GLOBAL HIV/AIDS: A MORE COUNTRY-BASED APPROACH COULD IMPROVE ALLOCATION OF PEPFAR FUNDING 2 (2008), available at <http://www.gao.gov/new.items/do8480.pdf>.
- ⁴¹ *What is PEPFAR?*, *supra* note 25.
- ⁴² *Anti-Prostitution Pledge*, PEPFAR WATCH, http://www.pepfarwatch.org/the_issues/anti_prostitution_pledge (last visited June 22, 2011).
- ⁴³ See *id.*; CTR. FOR HEALTH & GENDER EQUITY, POL'Y BRIEF, IMPLICATIONS OF U.S. POLICY RESTRICTIONS FOR HIV PROGRAMS AIMED AT COMMERCIAL SEX WORKERS (2008), available at http://www.genderhealth.org/files/uploads/pepfar_watch/publications/aplobrief.pdf.
- ⁴⁴ CTR. FOR HEALTH & GENDER EQUITY, *supra* note 43, at 5.
- ⁴⁵ CTR. FOR HEALTH AND GENDER EQUITY & CENTER FOR HUMAN RIGHTS AND HUMANITARIAN LAW, HUMAN TRAFFICKING, HIV/AIDS, AND THE SEX SECTOR: HUMAN RIGHTS FOR ALL at 23 (Oct. 2010), available at <http://www.genderhealth.org/files/uploads/change/publications/hivaidssandthesexsector.pdf>.
- ⁴⁶ *Id.* at 22
- ⁴⁷ *Id.*
- ⁴⁸ *US; Court Overrules Anti-Prostitution Gag Rule for US Groups*, July 8, 2011, HUMAN RIS. WATCH, <http://www.hrw.org/en/news/2011/07/08/us-court-overrules-anti-prostitution-gag-rule-us-groups>.
- ⁴⁹ See CARY ALAN JOHNSON, INT'L GAY AND LESBIAN HUM. RTS. COMM'N, OFF THE MAP: HOW HIV/AIDS PROGRAMMING IS FAILING SAME-SEX PRACTICING PEOPLE IN AFRICA 80-81 (2007), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/6-1.pdf>.
- ⁵⁰ Rwanda News Agency, *U.S. AIDS Funding Methods Questioned*, ALLAFRICA.COM, May 19, 2008, <http://allafrica.com/stories/200805190215.html>.