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THE GLOBAL GAG RULE (GGR):



**A Legal Audit of its Implications
on Sexual and Reproductive Health
and Rights (SRHR) in Uganda**





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Table of Contents

Acknowledgments	3
<hr/>	
1. Introduction	4
<hr/>	
2. Objective of the Paper:	6
<hr/>	
3. Methods:	7
<hr/>	
4. The Legal Implications of the GGR:	8
4.1. Freedom of Association and Assembly	8
4.2. Impact of the GGR on the Legal Standard for the Provision of Sexual and Reproductive Health Rights in Uganda	11
4.3. Impact of the GGR on Medical Ethics and Patient Rights	16
4.4. Effect on the right to access to Information	18
4.5. Policy's Effect on Freedom from Non-Discrimination and Marginalization	20
4.6. GGR's Impact on the United States' Extra-Territorial Obligations in Uganda	21
<hr/>	
5. Conclusion and Recommendations	24
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Acknowledgments

Authors:

1. Mulumba Moses
2. Nakibuuka Noor Musisi
3. Nsereko Ibrahim
4. Dorothy Amuron
5. Jordan Tumwesigye
6. Wasswa Paul
7. Dhafa Esther

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1. Introduction

The Lancet Commission has stressed that laws,¹ can be powerful tools for advancing global health.² Favourable legal environments play a critical role in eliminating disease and providing health care.³ At the same time, the law could also be used as a formidable barrier through misguided, arbitrary, or discriminatory laws.⁴ When laws are poorly conceptualised, designed, implemented or enforced, they have the potential to harm marginalised populations, entrench stigma and discrimination, and could be used to perpetuate social conditions that leave terrible long-lasting conditions.⁵

On 23rd January 2017, President Donald Trump reactivated the Mexico City Policy also known as the Global Gag Rule (GGR).⁶ The policy bars foreign Non-Governmental Organizations (NGOs) that receive United States of America global health assistance from providing legal abortion services or referral and conducting advocacy for abortion law reform even if it is done with the NGO's own non-U.S. funds.⁷ The policy was first enacted by former U.S President Ronald Reagan in 1984 following the United Nations' International Conference on Population and Development (ICPD) that was convened in Mexico City⁸ and this has been adopted by other Republican administrations.

1 The term 'law' in this paper is used to refer to any legal instruments including policies, statutes, treaties, and regulations that express public policy.

2 Lawrence O. Gostin, *et al*, 'The legal determinants of health: harnessing the power of law for global health and sustainable development, Lancet Commissions', 2019. Available on <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2819%2930233-8> [Last accessed 11 September 2020 at 4:30 A.M].

3 O.B.K Dingake, The Rule of Law as a Social Determinant of Health, *Health and Human Rights Journal*. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5739377/> [Last accessed 11 September 2020 at 4:03A.M].

4 *Ibid*.

5 *Ibid*.

6 White House, "The Mexico City Policy," Memorandum for the Secretary of State, the Secretary of Health and Human Services, The Administrator of the Agency for International Development, January 23, 2017,

7 Casey Quackenbush, "The Impact of President Trump's 'Global Gag Rule' on Women's Health is Becoming Clear" February 4, 2018. Available at <http://time.com/5115887/donald-trump-global-gag-rule-women/> (Accessed on 19 June 2020).

8 United Nations, "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", United Nations Division of Economic and Social Affairs / Population Division.

Unlike the previous versions of the policy that were limited to family planning funds of approximately US\$ 575 million, President Trump's policy extends the restrictions to an estimated \$8.8 billion in U.S global health assistance.⁹ The affected areas of funding include; family planning and reproductive health, maternal and child health, nutrition, HIV/AIDS under the President's Plan for Emergency Relief for AIDS (PEPFAR), prevention and treatment of tuberculosis, malaria (including the President's Malaria Initiative), infectious diseases, neglected tropical diseases, water, sanitation and hygiene programs.¹⁰

By its very nature, the GGR has deep-seated effects on national legal systems and how these legal guarantees impact on the sexual reproductive health and rights of the most vulnerable populations. The cutting off of funding for much needed health services, especially amongst communities that are already underserved, has demonstrated that the population's health and wellbeing is not only a national responsibility but a global one too. States have a duty to ensure a safe and healthy world, with particular attention to the needs of the world's poorest people.

It is clear that repressive political decisions from other countries, especially the developed ones, can affect population health and wellbeing in low income countries like Uganda. In such a situation, while the existing legal systems have always played a critical role in mitigating and protecting the most vulnerable communities and their health, the GGR has demonstrated that repressive legal and policy decisions can be disastrous to the lives of those that are already vulnerable.

9 Trump's 'Mexico City Policy' or 'Global Gag Rule': Questions and Answers (February 14, 2018). Available at <https://www.hrw.org/news/2018/02/14/trumps-mexico-city-policy-or-global-gag-rule> [Last accessed 11 September 2020 at 3:54A.M].

10 *Ibid.*



2. Objective of the Paper:

The paper seeks to highlight the legal implications of the GGR for low income countries with a focus on Uganda. It examines the impact of the GGR on the constitutionally guaranteed rights such as freedom from non-discrimination, freedom of association, the right to privacy, the right to health, including sexual reproductive, health and rights, and access to information and privacy. This paper also looks at the other dimensions of the GGR on other legal aspects including territorial obligations, ethics and the legal standard of various aspects in the health sector. The paper argues that while these legal guarantees are key determinants of health, the GGR has distorted their potency and in the end impacted the lives of the most vulnerable communities that benefit from the guarantees.



3. Methods:

The paper is based largely on literature review, with a focus on measuring the implications of the GGR against the standards set under the international legal norms. The paper takes a case study approach by looking at the legal implications of the GGR on Uganda. Under this case study, the paper looks at how the GGR has impacted on Uganda's existing laws, and also provides examples that demonstrate how this policy decision has impacted work on sexual reproductive health and rights.



4. The Legal Implications of the GGR:

4.1. Freedom of Association and Assembly

Freedom of association and assembly is one of the legal guarantees that is critical for advancing sexual reproductive health and rights. In exercising this freedom, communities and other actors in the field of SRHRs are able to meet and engage on issues that advance the rights of communities to SRHRs. In Uganda alone, about 14,207 civil society organisations (CSOs) are registered to engage on civic activities.¹¹ Of this figure, 12,097 CSOs operate in the fields of social development, health, justice, law and order.¹²

These have undertaken advocacy campaigns and conducted litigation on sexual reproductive health and rights. Some of these interventions are pursued in loose movements known as coalitions. Some of these coalitions include; the Sexual Reproductive Health and Rights movement in Uganda, and the Coalition to Stop Maternal Mortality in Uganda due to Unsafe Abortion (CSMMUA).¹³ Some of these organisations have challenged the parliament's failure to enact a legislation regulating terminations of pregnancy.¹⁴

The GGR has contributed to the shrinking of the civic space through which these organisations work. The GGR has also limited the potential of CSOs to effectively carry out their work of advocacy and service delivery for comprehensive sexual reproductive health and rights. For instance, the Center for Health, Human Rights and Development (CEHURD) lost its advocacy funding for failure to sign onto the GGR requirements under

11 Ministry of Internal Affairs, Press release on the Outcome of the NGO Verification and Validation Exercise. Available at <https://mia.go.ug/sites/default/files/download/Press%20release%20on%20%20Verification%20and%20Validation%20of%20NGOs%20exercise%20September.pdf>.

12 *Ibid.*

13 See, <https://www.safeabortionwomensright.org/uganda-coalition-to-stop-maternal-mortality-due-to-un-safe-abortion-csmmua/>.

14 CEHURD & others v. Attorney General, Constitutional Petition No. 10 of 2017.

a United States Agency for International Development (USAID) funded project.¹⁵

Several other organisations involved in the delivery of SRHR services have equally been affected by the GGR.¹⁶ These have either stopped or continued offering such services but at a lower scale. For example, Reproductive Health Uganda's 2017 budget was cut by 30 percent as a direct result of the policy and IPPF's decision not to comply with the GGR requirements. The organization has had to scale back its programming and diverting resources from sexual and reproductive health services in Ugandan refugee camps to other areas. The GGR has reportedly resulted in an organizational loss of USD 300,000, and this has disrupted a number of ongoing funded programs.¹⁷ This has impacted on the availability of, and access to SRHR, which is a right recognized under several international treaties.

International and regional human rights instruments provide for the rights of civil society organizations and individuals to solicit, receive and utilize funding for the promotion and protection of human rights. For instance, Article 13 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,¹⁸ provides that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.

15 M. Mulumba, Testimony for House Committee on Foreign Affairs hearing entitled "Unique Challenges Women Face in Global Health." Presentation made on February 5, 2020. Available at: <https://docs.house.gov/meetings/FA/FA00/20200205/110408/HHRG-116-FA00-Wstate-MosesM-20200205.pdf>.

16 S. Jalan (2019), 'Activists in Uganda See Unexpected Impacts from the Global Gag Rule.' Available at: <https://universalaccessproject.medium.com/q-a-activists-in-uganda-see-unexpected-impacts-from-the-global-gag-rule-f514c539d046>.

17 Champions for Global Reproductive Rights, "Access Denied: Uganda Preliminary Impacts of Trump's Expanded Global Gag Rule", (March 2018), p. 5.

18 UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Resolution, adopted by the General Assembly, 8 March 1999, A/RES/53/144. Available at: <https://www.refworld.org/docid/3b00f54c14.html>.

According to the 2012 Report of the United Nations (UN) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association to the UN Human Rights Council,¹⁹ the right to freedom of association ranges from the creation to the termination of an association. This right encompasses the rights to form and to join an association, to operate freely and to be protected from undue interference, to access funding and resources, and to take part in the conduct of public affairs. The same report observes that any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations.²⁰

At the African level, Guideline 38 of the Guidelines on Freedom of Association and Assembly in Africa issued by the African Commission on Human and Peoples' Rights provides that associations shall be able to seek and receive funds from local private sources, the national state, foreign states, international organizations, transnational donors and other external entities. However, the GGR, on the other hand, restricts CSOs engaged in SRHR work from receiving funds from national and transnational donors and this affects access and quality of SRHR services provided to the beneficiaries.

The GGR has the potential to limit the formation of would-be SRHR associations. In the case of ***Civil Liberties Organization v. Nigeria***,²¹ the African Commission on Human and Peoples' Rights held that the foremost duty for the State is to abstain from interfering with the free formation of associations. The GGR's effect on freedom of association is that it allows States like the U.S to interfere in the free formation of associations.

The 1995 Constitution of the Republic of Uganda, under Objective V (ii) of the National Objectives and Directive Principles of State Policy (NODPSP), enjoins the State to respect the independence of nongovernmental

19 UN Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 21 May 2012, A/HRC/20/27, available at: <https://www.refworld.org/docid/525fad894.html> [accessed 5 October 2020].

20 *Ibid.*, para. 68.

21 Comm. No. 101/93 (1995).

organizations which protect and promote human rights. The Constitution, under Article 29, also guarantees the freedom to join civic associations, freedom of expression and participation in peaceful activities to influence the policies of Government.

When the GGR restricts the participation of CSOs to particular aspects of the work they do through curtailing funding, it infringes on the freedom of expression as envisaged under national, regional and international laws. The GGR also affects the participation of CSOs in advancing SRHR services, commodities and information, thereby shrinking the civic space.

4.2 Impact of the GGR on the Legal Standard for the Provision of Sexual and Reproductive Health Rights in Uganda

SRHR services are an integral component of Uganda's National Minimum Health Care Package.²² In this package, the Government committed to, among others, ensure safe pregnancy and delivery, improved management of complications of pregnancy and childbirth including spontaneous or induced abortion, and reduce the unacceptably high rates of maternal and perinatal deaths through timely and effective emergency obstetric care provided at strategic and accessible locations. This position has further been reaffirmed in subsequent health sector strategic plans where emphasis has been placed on operationalizing emergency obstetric care services at Health Centers III, IV and Hospital level; conducting community mobilization and capacity building for reproductive health care, sexual reproductive health and providing a range of family planning services.²³

The GGR has resulted in the exclusion of some of the contents of the minimum health care package for SRHRs, which are provided for in Uganda's policies and in the international human rights instruments. This greatly undermines national efforts aimed at implementing cost-effective interventions that have a high impact on reducing morbidity and mortality.

22 The Government of Uganda, *The National Health Policy 1999*, Ministry of Health: Kampala.

23 Ministry of Health, *Health Sector Strategic Plan II 2005/06 – 2009/2010*. MoH: Kampala.

Since CSOs are major players in complementing the government of Uganda to deliver on the SRHRs package, the cutting off of funds for their operations by the GGR inevitably cripples this contribution.

At the international level, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment No. 14 on the Right to the Highest Attainable Standard of Physical and Mental Health imposes a duty on States to take steps necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health.²⁴ This General Comment requires the adoption of a national strategy to ensure that the enjoyment of the right to health is based on human rights principles. Uganda's adoption of the minimum health care package demonstrates the State's positive move towards meeting its obligations and the implications of the GGR, as highlighted above, undermines these efforts.

General Comment No. 22 of 2016 on the right to Sexual and Reproductive Health emphasizes that the right to sexual and reproductive health is part of the right to health. It further emphasizes that unhindered access to a whole range of health facilities, goods, services and information is one of the entitlements of the right to sexual and reproductive health.²⁵ In fulfilling this right, States Parties, including Uganda, have an obligation to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure the full realization of the right to sexual and reproductive health.²⁶ Violation of the obligations to fulfil this right occur when a state fails to guarantee access to sexual and reproductive health facilities and services.²⁷

24 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights)*, 11 August 2000, E/C.12/2000/4, available at: <https://www.refworld.org/docid/4538838d0.html>

25 CESCR, *General Comment No. 22: The right to sexual and reproductive health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 15.

26 *Ibid.*, para. 45.

27 *Ibid.*, para. 62.

General Comment 22 highlights a number of steps which must be taken in the provision of SRHRs and many of these are undermined by the nature of the GGR. Under the General Comment, States Parties have an obligation to take immediate action to eliminate discrimination against individuals and groups and to guarantee their equal right to sexual and reproductive health. In its very nature, the GGR discriminates those that want to access comprehensive SRHRs services when it sets limits on the number and kind of SRHRs services that can be provided. The General Comment further calls upon States Parties to adopt the measures necessary to eliminate conditions and combat attitudes that perpetuate inequality and discrimination, and in some cases to implement temporary special measures to overcome long-standing discrimination and entrenched stereotypes. These stereotypes include those surrounding the provision of safe abortion services.

General Comment 22 also imposes a duty on states to obtain the maximum available resources, including through seeking for international assistance and cooperation, with a view to complying with its obligations under the ICESCR. Such assistance and cooperation includes resources that come through NGOs that complement the work of the state work on SRHRs. General Comment 22 further urges States Parties to avoid applying retrogressive measures. If such measures are applied, the concerned state party has the burden of proving their necessity. The measures under the GGR are retrogressive when considered in light of Uganda's policy steps on the minimum health care package. The GGR also undermines the core obligations of adopting and implementing a national strategy and action plan on SRHRs as envisaged under paragraph 49 (c) of the General Comment.

At the regional level, Uganda is party to the African Charter on Human and Peoples' Rights (ACHPR).²⁸ Article 16 of the Charter provides for the right to enjoy the best attainable state of physical and mental health and requires States Parties to take necessary measures to protect the health of their

28 Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <https://www.refworld.org/docid/3ae6b3630.html>.

people and to ensure that they receive medical attention when they are sick. Uganda has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).²⁹ Article 14 of the Protocol enjoins States Parties to ensure that the right to health of women, including sexual and reproductive health, is respected and promoted. The GGR undermines the legal standard set in these regional instruments and puts Uganda to a test on its own regional obligations.

At national level, there are various laws that provide for the state's legal obligation to provide SRHR services like abortion. Objective XIV(b) under the NODPSP provides that the State shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits. Furthermore, Objective XX provides that the State shall take all practical measures to ensure the provision of basic medical services to the population.

These commitments are derived from the Government's obligation to take all practical measures to ensure the provision of basic medical services to the population,³⁰ and assurance of Ugandans' access to health services. Although SRHR services are enjoyed by both men and women, there are services that are only unique to women. These include safe abortion services and emergency obstetric care. Cognizant of the unique needs of women, the Constitution, in Article 33(2), requires the Government to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.

The Government is further obligated to protect women and their rights taking into account their unique status and natural maternal functions in society.³¹

29 African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, available at: <https://www.refworld.org/docid/3f4b139d4.html>.

30 Objective XX of the National Objective and Directive Principles of State Policy of the 1995 Constitution of the Republic of Uganda.

31 Article 33(3) of the 1995 Constitution of the Republic of Uganda.

This right was reiterated by the High Court in the case of ***CEHURD and Others v. Nakaseke District Local Government***,³² where the Court held that women have a right to emergency obstetric care services as envisaged in Article 33(3). This decision does not limit the scope of emergency obstetric care and it is critical for cases that may be related to abortions. However, the scope of the GGR could have implications on the decisions of health services providers and service delivery NGOs when dealing with abortion related services. This would greatly undermine this progressive court decision on accessing emergency obstetric care.

In the recent landmark decision of ***CEHURD and Others v. Attorney General***,³³ the Constitutional Court has further held that acts and omissions by the state for failure to adequately provide basic maternal health care services and obstetric emergency care in public health facilities violates the right to health and provisions of the constitution on the rights of women. Court further relied on Article 14 (2) (b) of the Maputo Protocol to hold that the state has an obligation to take appropriate measures to establish and strengthen existing pre-natal health and nutritional services for women during pregnancy.

One of the ways through which the state has been able to fulfil this obligation has been to rely on foreign aid. The passing of the GGR means that the state will renege on its obligations to provide sexual and reproductive services as mandated under national, regional and international instruments. It is important to note that this Constitutional Court decision does not also set limits on categories of basic maternal health services and emergency obstetric care. Therefore, the limitations set by the GGR in the provision of comprehensive SRHRs services is a threat to the national efforts to create an enabling legal standard for accessing SRHRs services including safe abortion services.

³² HCCS No. 111 of 2012.

³³ Constitutional Petition 16 of 2011.

4.3. Impact of the GGR on Medical Ethics and Patient Rights

Like other professional practices, the provision of healthcare services creates a fiduciary relationship between a doctor and a patient. This relationship is reinforced by the Hippocratic oath which requires health workers to prioritize preservation of life of their patients.³⁴ This is also buttressed in the beneficence principle that requires health workers to do good for the patient. Apart from observation of ethical principles and patient rights, medical professionals have an obligation to respect human rights set out in the constitution, other national laws, and also under the international human rights law.³⁵

Article 20 of the Constitution of Uganda, 1995 emphasises that fundamental rights and freedoms of the individual are inherent and not granted by the State. This article further requires that rights and freedoms of the individual and groups enshrined in the constitution should be respected, upheld and promoted by all organs and agencies of Government and by all persons. Health workers are therefore under a duty to uphold and promote the human rights of the patient.³⁶

Uganda has enacted laws that emphasize the importance of observing rights and ethics in the setting of providing SRHRs which the GGR undermines in many ways. For instance, the Health Service Commission Act has provisions on the responsibility of health workers to the patients or clients. Under section 30 of the Act, health workers are required to hold the health, safety, and interest of the patient or client to be of first consideration. As such, they are required to render due respect to each patient at all times and in all circumstances. This provision also requires health workers to ensure that no action or omission on their part or within their sphere of responsibility is detrimental to the interest, condition or safety of a patient.

34 Racheal Hajar, *The Physician's Oath: Historical perspectives*. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5755201/>.

35 Section 4 of the Uganda Medical and Dental Practitioners Council, Code of Professional Ethics (2013).

36 Article 20(2) of the 1995 Constitution of the Republic of Uganda.

By creating a situation where the health workers fail to accord this duty to patients or clients needing abortion services, the GGR contravenes the Health Service Commission Act.

In its effort to guide the health workers and the public on the rights of patients, the Government developed a Patients Charter in 2008, which provides for a wide range of rights of patients in 2008. Some of the rights enshrined in the Charter include; the right to medical care, including emergency medical care; the right to informed consent, referral for a second opinion and continuity of care.

The Patients Charter seeks to empower health consumers to demand high quality health care, promote the rights of patients and improve on the quality of life for all Ugandans.³⁷ In regard to sexual and reproductive health and rights, the Charter recognizes a patient's right to medical care, including emergency medical care.³⁸ This imposes a duty upon a health worker to provide a service to a patient. In case of an emergency situation, it places an obligation on the health worker to provide the service.³⁹ In cases where the health worker is unable to meet the health needs of a patient, he or she must make a referral.

For health professionals to effectively observe medical ethics and respect the rights of patients while providing Sexual and Reproductive Health and Rights services, the Government of Uganda is required to establish functional healthcare facilities, goods and services that are of good quality, scientifically and medically appropriate, and within safe physical reach for all sections of the population.⁴⁰ With the continued enforcement of the Charter, health workers and the Government are therefore likely to face legal challenges for violation of patients' rights and breach of ethics arising from non-provision of services.

37 Ministry of Health – Uganda, *Mainstreaming Human Rights and Gender in the Health Sector: Trainee Manual* (2018), p. 10. Available at <https://health.go.ug/sites/default/files/mainstreaming%20human%20rights%20and%20gender%20in%20the%20health%20sector.pdf>.

38 Section 1, Patients Charter 2008.

39 Section 5 further recognizes a patient's right to appropriate medical care.

40 Paragraph 12, General Comment No. 14 of the Committee on Economic Social and Cultural Rights (2000).

The damages awarded by Courts may further dent an already fragile health system. Non-provision of health services and emergency medical services has been held to be a violation in the case of ***CEHURD and others v. Nakaseke District Local Government***.⁴¹

4.4. Effect on the right to access to Information

Since the reinstatement of the GGR, there has been uncertainty among CSOs on its scope and application. Just like in Kenya and Bangladesh, civil society groups providing SRHRs services have been unclear about the practical implementation of the policy, including the permissibility of post-abortion care and the repercussions of non-adherence. There has been a lack of clarity on how far partners can go in providing information about abortion care and yet this is integral to SRHRs services. There have been cases where partners have simply stopped sharing information because of the impacted outreach programs which have been key in providing comprehensive information on SRHRs. The inability of the U.S Government to provide adequate and accurate information on GGR has directly interfered with the right to seek and receive information.

The implication of this has been censoring the health care providers from informing patients of all the options related to abortion. The advocacy groups have also been equally silenced from urging States to fulfil their obligations to ensure that information on sexual and reproductive health provided to women and girls both in and out of health care settings in public and to individuals is complete and accurate and that information is not censored and withheld.

Internationally, Uganda is signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 19 of both instruments prohibits States from interfering with the enjoyment of the right to seek and receive information and ideas, and the right to

41 HCCS No. 111 of 2012.

express and disseminate any information or ideas. The reinstatement of the GGR by the U.S is in breach of this right since the Rule, among others, bars and limits foreign (non-US) NGOs from using U.S funds or any of their own funds to disseminate information, education and services on abortion as a method of family planning.

International law further requires State parties to take such steps as are necessary to make freedom of expression a reality for everyone. The freedom of expression includes the right of access to information as emphasized by Resolution 59 of the UN General Assembly adopted on 14th December 1946.⁴² The GGR contradicts the provisions of this Resolution as it not only gags the right to seek and receive information on SRHR/reproductive rights, but also restricts the right to impart information and ideas on the same.

Article 29 of the Constitution of Uganda, 1995 guarantees every person the right to freedom of speech and expression, which shall include freedom of the press and other media. The GGR violates this constitutional provision when it censors health workers and activists from talking about access to safe abortion services. Article 41 guarantees every citizen the right of access to information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person.

Information related to access to safe abortion services does not fall under the exceptions to information that should be provided. It is therefore unconstitutional to require providers not to provide information on referrals or services for legal abortion or silence advocates for the legalization of abortion in their own country with their own, non-U.S. funds.

42 Freedom of information is a fundamental human right and an integral part of the fundamental right of freedom of expression, which is the touchstone of all the freedoms to which the UN is consecrated.

4.5. Policy's Effect on Freedom from Non-Discrimination and Marginalization

Non-discrimination and equality require not only legal and formal equality but also substantive equality. Under international treaties, substantive equality requires States to provide sexual and reproductive health needs of particular groups and address barriers faced by those groups.⁴³ The GGR undermines substantive equality where it targets SRHR services that are mostly unique and utilized by women. Women health needs are distinct from those of men and this requires assurance that appropriate SRHR services are provided to women.⁴⁴

The Constitution of Uganda, under Article 33 (3), calls upon the Government to protect women and their rights taking into account their unique natural maternal functions. This creates a special obligation on the Government of Uganda to provide services to those who cannot afford and prevent discrimination in the provision of health care.⁴⁵ The Government is therefore obliged to adopt strategies and programmes geared towards the elimination of health-related discrimination. This requires adoption, modification or abrogation of legislation and the dissemination of information.⁴⁶

The sudden reinstatement of GGR is a retrogressive measure in the struggle to eliminate discrimination of vulnerable groups in SRHR service provision in developing countries such as Uganda. Efforts to redress imbalances created by history, tradition or custom, laws, cultures, customs or traditions that undermined the dignity, welfare or interest of women in Uganda are all retarded by GGR.

By abdicating its role of providing economic assistance to developing countries, the US Government has subjected groups such as women, LGBTIQ persons, persons living with HIV/AIDS, and young people to further human rights violations. For instance, denying women access to

43 CESCR, General Comment 22, para. 22.

44 *Ibid.*, para. 25.

45 CESCR, General Comment No. 14, para. 19

46 *Ibid.*, para. 18

services only needed by women such as abortion services, is also a form of discrimination against the women.⁴⁷

In the case of ***CEHURD and Others v. Attorney General & Others***,⁴⁸ court discussed the impact of a skewed public health system towards the realisation of women's SRHR. It noted that:

“Women suffer a lot due to shortages or shortcomings in the delivery of maternal health care services caused by stock-outs of maternal health care packages, drugs, professional negligence. Limited budgetary allocations to the health sector all of which deprive them of opportunity to safely deliver babies. Preventable deaths of pregnant women at Government hospitals deprive women of the right to enjoy and realise their sexual reproductive rights.”⁴⁹

GGR is therefore seen as perpetuating discrimination and exacerbates marginalization of women and also has a chilling effect on access to other SRHR services like abortion, especially in countries such as Uganda where abortion is restricted.⁵⁰ Although the US Government is at liberty to dictate its foreign policy, it is obliged to ensure that vulnerable groups in other countries are not affected by its policies and reasonable accommodation for such groups to fully access SRHR services is paramount.

4.6. GGR's Impact on the United States' Extra-Territorial Obligations in Uganda

The Maastricht Principles on Extra Territorial Obligations (ETOs) are a set of values that relate to universal human rights protection. Principle 8(a)

47 CEDAW Committee, General Recommendation No 24.

48 Op. Cit. Note 33.

49 *Ibid*, p. 43.

50 Article 22(2) of the Constitution of the Republic of Uganda 1995.

defines ETOs into two types. The first type includes obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory. The second type includes obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately and jointly through international cooperation, to realise human rights universally.

Principle 9 imposes upon a State obligations to respect, protect and fulfil economic, social and cultural rights in situations over which a State exercises authority, effective control, whether or not such control is exercised in accordance with international law, and also in situations over which a State's acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights whether within or outside its territory. There is contention on whether the GGR amounts to extraterritorial infringement of human rights in countries such as Uganda. Scholars have argued that the obligation to respect implies that a State has the obligation to respect human rights of individuals in another country when carrying out foreign policy.⁵¹

Article 2(1) of the ICESCR provides that state parties undertake to take steps individually and through international cooperation with a view to progressive realization of the rights under the Covenant. From the international cooperation, the principle of extraterritoriality in the context of human rights can be inferred.

General Comment 14 provides that State parties have to respect the enjoyment of the right to health in other countries.⁵² The enactment of the GGR is a classic example of the US' failure to respect Uganda's enjoyment of the right to health since it seeks to deny Ugandans of access to SRHR services, particularly post abortion care.

51 Sigrun I. Skogly, Extraterritoriality -Universal Human Rights without Universal Obligations?. Accessible at https://eprints.lancs.ac.uk/id/eprint/26177/1/Microsoft_Word_-_Monash_-_Extraterritoriality_-_Final_draft.pdf.

52 CESCR, General Comment No. 14, para. 39.

In ***Georgia v. Russian Federation***,⁵³ the International Court of Justice (ICJ) held that without an explicit territorial limitation, the Convention on the Elimination of All Forms of Racism would be read to apply to a State's extraterritorial actions.⁵⁴

The foregoing authorities elucidate on the contentious matter at hand. The GGR is an aggressive foreign policy of the U.S government and its implementation bears extraterritorial consequences for Uganda's failure to provide SRHR services, especially abortion services and access to ARVs.

53 ICGJ 429 (ICJ 2011).

54 Oona A. Hathaway, *et al*, "Human Rights Abroad: When Do Human Rights Treaty Obligations Apply Extraterritorially?", *Arizona State Law Journal* (2011), p. 28.



5. Conclusion and Recommendations

From the foregoing discussion, it can be deduced that the GGR is a retrogressive policy that undermines SRHR for the most vulnerable and marginalized persons whose lives currently hang in balance and whose only hope is in the good will of the State and CSOs. The GGR has been noted to be an obstacle to the realization of SRHR. While the US Government may exercise its power to reinstate the GGR, it is equally obliged to provide SRHR health assistance and respect SRHR of individuals in developing countries. The GGR also interferes with the relationship between domestic governments and the civil society organisations necessary to support democratic processes and good governance. The GGR clearly conflicts with Uganda's domestic laws that advance sexual reproductive health and rights.



Center for Health Human Rights & Development

 Plot 4008, Justice Road, Canaan Sites, Nakwero
Gayaza - Kalagi Road P.O. Box 16617, Kampala

 +256 414 532 283, 0800 313131 [Toll Free]

 info@cehurd.org  www.cehurd.org

