

# NEW RESEARCH:

## How the Global Gag Rule Has Disrupted Health Care Access in Kenya

New peer-reviewed research by The African Population & Health Research Center and the Global Health Justice & Governance program at the Columbia University Mailman School of Public Health demonstrates the multi-layered, harmful effects of the expanded global gag rule on the Kenyan health system and civil society. The policy has disrupted national sexual and reproductive health and rights (SRHR) advocacy efforts and resulted in critical funding losses and disruptions to health service delivery and partnerships. To inform effective interventions, researchers should continue monitoring the effects of the policy for as long as it remains in place and work with national stakeholders to strengthen data collection and monitoring systems.



African Population and  
Health Research Center



COLUMBIA | MAILMAN SCHOOL  
OF PUBLIC HEALTH  
GLOBAL HEALTH JUSTICE  
& GOVERNANCE



The global gag rule (GGR), reinstated and expanded under U.S. President Trump, prohibits non-U.S.-based non-governmental organisations (NGOs) from receiving any U.S. global health assistance if they provide information, referrals, or services for legal abortion or advocate for the legalization of abortion as a method of family planning in their own country, even if these activities are supported solely with non-U.S. funds. The global gag rule has had a destructive impact in Kenya, which is a recipient of significant U.S. foreign assistance. In fiscal year (FY) 2020, the U.S. government (USG) provided over \$700 million to Kenya, 64% of which was health funding.

Whereas prior iterations of this harmful policy (in place from 1985-1993, 1999-2000, 2001-2009) applied to U.S. family planning assistance (US\$575 million for FY 2016), the new version extends the restrictions to all U.S. global health assistance—an estimated US\$9.5 billion—which includes funding for HIV/AIDS, malaria, and maternal and child health, among others.<sup>1</sup>

### KEY FINDINGS

#### The global gag rule has compounded the anti-abortion context

The expanded GGR exacerbated already existing hostility to sexual and reproductive health and rights (SRHR) in Kenya by silencing SRHR advocates and emboldening anti-SRHR actors. This hostility preceded the GGR, but respondents expressed broad consensus that the anti-SRHR climate had worsened since the policy's reinstatement. This included the intensification of anti-abortion activities in the private and public sectors, particularly from faith-based organisations and government actors at national and county levels. While participants could not say whether these organisations were the beneficiaries of funding from the USG, they believed that anti-choice USG policies provided validation to these organisations and amplified their voices.

Some interviewees believed that the GGR provides international cover and support for the national government's actions to restrict and retaliate against safe abortion providers and advocates. This was based on a government ruling in 2018 where an organisation was banned from providing safe abortion and post-abortion care, as well as the ongoing reluctance of the government to fully operationalise the standards and guidelines on abortion provision. The GGR has further aggravated the confusion caused by the contradiction between the abortion framework in the 2010 Constitution and the penal code. Interviewees believed that most Kenyans do not understand the constitutionality of abortion, and mistakenly think that it is "illegal."

## The global gag rule has fractured civil society

According to respondents, the expanded GGR has engendered mistrust between organisations that had previously collaborated on shared SRHR issues. Before the expanded GGR, organisations with different priorities and funding streams came together in coalitions “for the good of women and girls’ health.” However, non-certifying NGOs found themselves left out of meetings organized by certifying NGOs while certifying NGOs were reluctant to attend any meetings that touched on the issue of safe abortion. Additionally, organisations that chose to certify the expanded GGR also felt compelled to engage in unnecessary restriction of operations and self censorship out of confusion about the scope of the policy or fear of drawing unwanted scrutiny from USAID.

## But civil society organisations are fighting back

Though the reinstatement of the GGR disrupted critical coalitions, the policy has been met with invigorated advocacy from SRHR organisations, especially among those that had not been recipients of USG funding.

## The global gag rule has weakened Kenya’s healthcare care system

Organisations that were denied USG funding after declining to certify the expanded GGR were forced to reduce operations to accommodate a smaller budget. Other mitigating measures included laying off staff, closing facilities, and reducing the amount of funding sub-granted to CBOs or health facilities. While some donors have made efforts to provide replacement funding to fill the gap left by GGR<sup>3</sup>, respondents indicated that the amounts are insufficient to alleviate the financial blow sustained by many NGOs in Kenya, given that the U.S. is the country’s largest bilateral health donor<sup>4</sup>. Impacts on both certifying and non-certifying NGOs have significant adverse effects on the Kenyan health system, which relies on NGOs to provide services, training for health workers, and commodities.

NGOs that chose to certify the GGR and continued to receive (or remained eligible to receive) USG funding were also at risk of losing funding from other donors—for activities prohibited by the expanded GGR. This saw many NGOs choose to protect their USG funding because USG grants were typically larger than non-USG grants. However, the loss of smaller grants for work on safe abortion could still be damaging for organisations and harmful to the populations they serve.

## The global gag rule has fragmented sexual and reproductive health and HIV service delivery, disrupting referral networks and partnerships

The GGR exposes and exacerbates the weaknesses and vulnerabilities of the Kenyan health system, resulting in the closure of service delivery programmes. Several participants expressed frustration at the inefficiency and potential harm to clients caused by the fragmentation of HIV and other SRH services as a result of being compelled to choose between the two. This was as a result of many NGOs being forced to choose between USG and other funders which consequently meant that they had to narrow their programmatic priorities and deny clients access to comprehensive integrated care.

## RECOMMENDATIONS

The Government of Kenya should play a leading role in mitigating the harm of the expanded global gag rule by developing and disseminating the standards and guidelines for comprehensive sexual and reproductive health, including abortion. Such guidelines will offer clarity on legal abortion service provision in Kenya to providers, advocates, and service delivery organisations. National and county governments should review and increase their budgetary allocation for sexual and reproductive health services, including for family planning commodities and supplies at the county level to fill the gaps that are exacerbated by the expanded global gag rule. Other donors should increase their funding to help fill the gap.

### Endnotes

- 1 Population Action International (PAI). With a Stroke of the Pen—Trump’s Global Gag Rule Dramatically Expands Harmful Health Impacts [Internet]. PAI. 2017. Available from: <https://pai.org/newsletters/stroke-pen-trumps-global-gag-rule-dramatically-expands-harmfulhealth-impacts/>
- 2 Ushie A. Boniface et al (2020) “Foreign assistance or attack? Impact of the expanded Global Gag Rule on sexual and reproductive health and rights in Kenya” *Sexual and Reproductive Health Matters*, 28 (3). Available from: <https://www.tandfonline.com/doi/full/10.1080/26410397.2020.1794412>
- 3 Schaaf M, Maistrellis E, Thomas H, et al. ‘Protecting Life in Global Health Assistance?’ Towards a framework for assessing the health systems impact of the expanded Global Gag Rule. *BMJ Glob Health*. 2019;4:e001786
- 4 Organisation for Economic Cooperation and Development. OECD Statistics Database: Creditor Reporting System (CRS). Available from: <https://stats.oecd.org/Index.aspx?DataSetCode=CRS1>