

# SEX AT DUSK AND THE MOURNING AFTER: SEXUALITY POLICY IN THE UNITED STATES IN THE YEARS OF OBAMA

Susana T. Fried & Cynthia Rothschild



SexPolitics: Trends & Tensions in the 21st Century  
Working Paper 1



SEXUALITY  
POLICY  
WATCH

**SEX AT DUSK AND THE MOURNING AFTER:  
SEXUALITY POLICY IN THE UNITED STATES IN THE YEARS OF OBAMA**

*SexPolitics: Trends & Tensions in the 21st Century – Working Paper 1*

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**Copy editor:** Seona Smiles

**Published by** Sexuality Policy Watch, a project based at ABIA

Rio de Janeiro, May 2018

**Graphic design:** FW2, Rio de Janeiro

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# Prologue

With great pleasure, Sexuality Policy Watch (SPW) launches the first publication emerging from its most recent round of transnational analyses on trends and tensions in sexual politics that started in 2015. Authored by Cynthia Rothschild and Susana T. Fried, this Working Paper is titled *Sex at dusk and the mourning after: sexuality policy in the United States in the years of Obama*, but the new SPW exercise is not exclusively about US sexual policies. As reflected in the report of the July 2016 Durban seminar that consolidated its frames, this effort maps trends and tensions from a trans-regional perspective, as well as through the examination of dynamics at work within specific domains or areas such as abortion, sexual rights and sex work. However, we have deliberately chosen to begin the series of publications of its outcome with the US case study in order to mark our fifteen years of existence as a global initiative of researchers and activists devoted to action-oriented critical reflections on the politics of gender and sexuality.<sup>1</sup> This is so because US sexuality policies were the focus of our first research major publication, the report “**Global Implications of US Domestic and International Policies on Sexuality**” written by Françoise Girard and published in 2004.<sup>2</sup>

SPW was created in 2002 under the name Working Group on Sexuality and Social Policy, which would be changed to our current denomination in 2006. At that point in time, the dynamics prevailing in our field of work remained connected with undercurrents of previous decades – democratization in the global South, the unexpected effects of HIV and AIDS, and the intense global debates on social issues and human rights that ensued at the end of the Cold War Era – which had enhanced the propelling of public discourses and research on gender and sexuality matters as well as their rapid transnationalization. But we had already entered the times when gender and sexuality frays were no longer played at the extremities, but rather in battles fought at the core of power dynamics, or of what we called “global sex wars” (see Corrêa, Petchesky and Parker, *Sexuality, Health and*

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1 See Report of the Durban Seminar at <http://sxpolitics.org/report-of-the-durban-seminar/18394>

2 Retrievable at <http://sxpolitics.org/wp-content/uploads/2015/04/workingpaper1.compressed.pdf>

*Human Rights*, Routledge, 2008). The Christian moral tenets of US domestic and international policies under the Bush administration mapped out by Girard constituted a blatant example of this turn and this is exactly why SPW decided to begin its work critically assessing this worrying trend.

As we know, since then, this tendency has not exactly relented in its pace, but rather amplified its scale and effects. This continuing trend towards national and global politics that are increasingly averse to sexual freedom, gender plasticity and reproductive autonomy cannot, however, be read as something entirely new, or as a linear pathway that has taken us from a luminous time of progress towards an epoch of shadows. The Girard reports already underlined how regressive positions in relation to sexuality and reproductive autonomy long preceded the Bush administration. In some cases, policies – such as the 1996 Defense of Marriage Act that defined marriage as a union between woman and man – was adopted during the Clinton administration that otherwise projected the image of having been relatively progressive in gender and sexuality matters, particularly when retrospectively assessed in the mid-2000s.

The mapping of trends, tensions and pitfalls in sexual politics always requires us to take into account their longer cycle, to search underneath the surfaces of easy interpretations, and to be attentive to both structural dimensions and details as well as to explore subtle nuances. These requisites are certainly fulfilled by the case study carried out by Cynthia Rothschild and Susana Fried on sexual policies designed and implemented during the Obama years – a period that has been, to a large extent, couched domestically and internationally as an era of progressive sexual policies, particularly in respect to LGBT rights and same-sex marriage.

While recognizing and analyzing these gains, Rothschild and Fried carefully excavate beneath and around these more visible, at least on the surface, state-led politics in search of contradictions, traps and pitfalls. Using a broad sexual and reproductive rights frame as their lens of interpretation they critically examine the differences in prioritization and results between the domains in which the Obama administration appears as a worldwide champion, and other realms – such as HIV and AIDS, abortion, sex work, sexual violence and sexuality education – in which the performance and results have not always been so brilliant. The analysis also makes an admirable effort to locate the US state's sexual politics in relation to global structural trends, such as the War on Terror, the



2008 financial crisis, the surge of populisms that goes hand in hand with the so-called return of the religious and the shrinking of civil society. They do not refrain from naming US global hegemony and its implications. Their analyses of domestic policy dynamics constantly underline the ethno-racial unequal features of American society. They call attention to the complexity of and tensions across policy making structures, in particular in what concerns the partisan and governmental deadlock between the Executive Branch and Congress, but also distinctions and conflicts between federal and state legal frameworks and policy making. They also articulate the cartography of gender and sexuality policies in relation to other policy domains that are not usually addressed in these types of study – such as trade, gun control, or the reform of the health system.

However, the greatest merit of the study is, in our view, to have sustained its pace and direction even when caught by the 2016 US presidential elections. As we know, Trump's election immediately altered the country's gender and sexuality political arena. The problems this unexpected political outcome posed to the research were far from trivial because they implied a constant pressure on the authors to begin mapping and updating the nefarious effects of new sexuality-related policy measures which began proliferating as soon as the new administration was inaugurated. This is strikingly illustrated by the expanded version of the abortion Gag Rule and the use of LGBT rights to justify the Islamophobic content of the Executive Order that halted refugee resettlement and travel from seven Muslim-majority countries, both enacted in January 2017,<sup>3</sup> starting a trail of regressive policy guidelines and legislative provisions that continue proliferating. We thank and compliment Cynthia and Susana for their caution and sobriety in that regard.

Good reading!

Sonia Corrêa and Richard Parker  
Co-Chairs, Sexuality Policy Watch

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3 See <http://sxpolitics.org/the-trumping-of-global-sexual-politics-a-preliminary-assessment/16491>

## Section 1

# Introduction (or sex at dusk)

*When we first drafted this article (in mid-2016), our analysis about the sexuality-related struggle within - and gains under - the Obama administration revealed complex political scenarios, jagged progress and a contested field of engagement. It also exposed deep battle lines (and battle scars) within US society and the US policy arena. At the time, our research and experience led us to anticipate a somewhat similar future trajectory in the post-Obama period. However, we write now in retrospect, towards the end of the first tumultuous year of Donald Trump's presidency. Although there is much continuity between the Obama era and the Trump era when it comes to sexuality policy, the landscape overall has shifted dramatically. By the time this paper was finalized in late 2017, many of the sexuality and gender-related policy advances achieved during the Obama administration were already under threat. The "Global Gag Rule", for example, has been reinstated and expanded: this prohibits US funding to any organization that provides or advocates for abortion, including referrals to other organizations. Efforts also have intensified to support discrimination against people because of their real or perceived sexual orientation and gender identity in the name of religious freedom.*

*The article that follows explores sexuality-related policy issues and the discourse that surrounded them in the years of the Obama presidency, from 2009 through 2016. It does not address in detail the threats posed by the 2017 incoming Republican administration, although in certain instances we include references to the more recent information. While it is tempting to swerve to explore what is currently under attack, we concentrate the discussion on the actual period of Obama's tenure. We do this to grapple with what did and did not happen in sexuality policy during the Obama presidency, as well as to look carefully at what might offer guidance for this next period. We resist being nostalgic or looking at the past through rose-tinted glasses: we do not overlook some of the most significant critiques of the Obama era, including the rise in deportation of undocumented*

*immigrants and the increased use of drones and concomitant killings of civilians in US military engagements. Nonetheless, the current threat to human rights generally and rights related to sexuality cannot be overstated.*

*Two other factors – always true in US politics – complicate this new reality: first, the “policy arena” is fractured and divisive, and, second, it operates at multiple levels that are often at odds with one another. The US federal system grants significant power to the 50 states to create and implement policy. State leadership is generally guided by one of the two main political parties – Democrats and Republicans. Therefore, state governance may be at odds with central government, particularly if the party in leadership of the state does not hold the Presidency or majority in Congress. And, at the federal level itself, power is balanced between the Presidency, the Congress, and the Supreme Court. There can thus be policy dissonance, or even deadlock, as there was for much of the Obama years, when the White House is run by Democrats and Congress by Republicans. Also in the mix is a lobbying industry that wields significant power through its close ties to decision makers, and an administrative bureaucracy or “permanent government” comprised of career public servants not tied to any explicit political party or agenda. In this review, we focus on the federal level, and within that, on the President and the Congress. We also note, but do not focus on, the symbolic significance of issues raised in policy debates in which the articulation of political positions, often for electoral gain, is often as important as the policies themselves.*

*Particularly given the conservative stranglehold on the White House and the Congress – and the skewing of the Supreme Court to the right with President Trump's appointment of Neil Gorsuch – this complex environment renders prospects for progress in sexuality-related policy slim indeed, although not entirely absent. To prevent and/or undo damage, there will need to be focused efforts by policy-makers and activists, both inside government and in the streets. And, throughout 2017 there was indeed evidence of a new energy: social movements were thriving, with new rallying calls every day. The terrain is precarious but there are lessons to be learned from confrontations during previous presidential administrations as well as from social justice movements which have fought similar battles in other parts of the world.*



*Sexual rights advocates have shown ourselves to be a creative lot, determined and strategic, challenging conservative and moralistic discourses, misogyny and “toxic masculinity” cloaked in legislative efforts the world over. We have also confronted religious and other forms of fundamentalisms and the pervasive negative effects of global “free enterprise” ruled by unaccountable multinational corporations. These obstacles are not new, but the particular constellation of them in the Trump era is daunting. In this context, our analysis seeks to shed light on the meaningfulness of sexuality-related discussions between the dawn and dusk of the Obama Administration, especially as we consider strategies for the morning – and mourning - after.*

## Tragedy, terror and sexuality

In June 2016, 49 people were killed in a mass shooting at Pulse, a gay nightclub in Orlando, Florida. At the time, this was the largest mass killing in US history.<sup>4</sup> The killer, Omar Mateen, was the US-born son of Afghan refugees. In the aftermath of the shooting, the media and politicians debated his motivation: What led Mateen to massacre mostly gay men celebrating “Latin night” at a bar? What was the significance of Mateen’s ethnic and religious background in relation to the ethnicity of his victims, and how should his articulation of a commitment to ISIL/Daesh be understood? Why did he have access to an assault-style rifle? Was he a closeted gay man with deeply internalized self-hate? What was to be made of his previous history with violence, notably against his ex-wife? And was there significance in the fact that he was trained in “security” and at one time had been in a program that could have led to work in the US “corrections”/prison system?

The attack raised challenging concerns, including how quickly US officials and the media sought to portray these events (in the US imagination) as the almost inexplicable “domestic terrorism” or the more easily understood result of a foreign-influenced commitment to “radical Islam”. Or, indeed, was it best understood as a “simple”

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<sup>4</sup> In what might cynically be considered the ‘new normal’, the mass killing of concert-goers in Las Vegas, Nevada on 1 October 2017 resulted in 58 deaths and now stands as the largest mass killing. To date, no clear motive has emerged. See Fink (2017)

“hate crime” directed at the LGBTQI community? Of interest, too, are the meanings of the efforts by several key players in this story to manipulate a violent tragedy to fit a narrative that supported US foreign policy. Alongside these issues are questions about how the mainstream media handled, or fumbled, the parts of this story that are about sexuality, racism and anti-Latino sentiment. And, while there may be no resolution to these questions, embedded in all of them are aspects related to various key elements of US policy and the social contexts that shape them.<sup>5</sup> Indeed, several key players in the story framed it to fit a narrative that supported both US foreign policy and candidate Trump’s anti-immigrant rhetoric. News stories and analysts (and too many in the general public) could not link the complicating factors including the connections between the nationalism, xenophobia, anti-Islam and anti-gay sentiment, sexism, racism and the violent masculinity of the perpetrator. We recount this tragic story because we believe it exemplifies the complex and confused ways in which sexuality-related issues are both sensationalized and suppressed in the US media messages and in policy debates.

The shooting and its aftermath reflected the cultural, political and economic trends of that moment that reveal deep schisms in US society and politics. Two of the most divisive of these issues, with deep cultural resonance, are gun control (challenging the power of the gun lobby, headed by the National Rifle Association) and abortion. For instance, two weeks after the shooting, the US Congress failed, once again, to pass legislation that would restrict the sale of certain guns and impose a level of scrutiny on potential purchasers. At virtually the same time, the US Supreme Court issued one of its most far-reaching and celebrated decisions upholding women’s right to abortion. The Court decision to strike down prohibitive restrictions in access to abortion in the state of Texas stands in contrast to a series of increasingly hefty roadblocks set in place through state-by-state laws and policies. This divergence was repeated in federal and state policymaking processes and helps illustrate

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5 Trump tweeted “Appreciate the congrats for being right on radical Islamic terrorism, I don’t want congrats, I want toughness & vigilance. We must be smart!” Accessed at <https://twitter.com/realDonaldTrump/status/742034549232766976>. In his first “anti-Muslim travel ban”, issued in January of 2017, Trump and his team justified restrictions directed at “those who would oppress Americans of any race, gender or sexual orientation.” See text of January 27 Executive Order and analysis at <http://www.npr.org/2017/01/31/512439121/trumps-executive-order-on-immigration-annotated>.

the lack of coherence in policymaking – at the federal, state and local levels.<sup>6</sup> The shooting, then, needs to be understood in the context of these intense cultural divides that have the effect of creating policy in a social landscape marked by deep divisions.

### The ongoing gendered challenge of gun violence in the US<sup>7</sup>

In the years under survey, public life in the U.S was punctuated by an epidemic of gun violence. There have been passionate – but unsuccessful - efforts to pass restrictions on who can buy, use and carry guns. A study based on World Health Organization (WHO) data found that people in the US are “10 times more likely to be killed by guns than people in other developed countries.” Moreover, gun violence has a distinctly gendered pattern: the same report found that globally, 90% of all women killed by guns are in the US.

This violence takes three major forms: 1) men (usually young) with assault weapons killing large numbers of people in incidents expressing the most perverse form of masculinity – often explained as a reaction to social alienation; 2) police killings of African-American people – particularly, but not exclusively young black men, who are seen as dangerous or uncontrollable, depending on the circumstances, and, to a lesser extent, African-American women; 3) finally, there is the hidden but pervasive killing of women by their male partners. In all these cases, sexuality and gender, alongside heteronormativity and racism, are implicated in who is most often targeted.

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6 While the role of the “state” is widely debated by political and economic theorists, virtually all recognize that the state is never homogeneous, unilateral or exempt from competing visions and interests. On the one hand, the “state” in the US is a massive bureaucracy with some permanence in staffing, while at the same time, political ideologies among those who control the state – at the national, state and local levels – are vastly divergent and, often, in direct conflict with one another. Theorists from the ancient Greeks, to Marx and Engels to Max Weber to Gramsci, Althusser, Foucault and feminist / critical race / post-colonial theorists of the state have extensively addressed the subject. For our purposes, we rely on a rather pragmatic understanding, in particular Jessop who defines the state using classical European constitutional, legal and state theory (with a touch of Foucault and Gramsci) and demarcates four elements of the state: “1) a politically organized coercive, administrative and symbolic apparatus endowed with general and specific powers; 2) a clearly demarcated core territory under the more or less uncontested and continuous control of the state apparatus; 3) a stable population over which the state’s political authority and decisions are binding.” Jessop further adds to this an important fourth defining feature: “the idea of the state,” relating to the political imaginary containing a higher purpose than self-preservation and self-interest.” (Jessop, 2016)

7 For more information, see Grinshteyn & Hemenway (2016), Kaiser Family Foundation, Reeves & Holmes (2015).

Gun deaths vary dramatically by race. One recent analysis found that “In 2013, firearm deaths accounted for over 11 percent of all years of potential life lost among the black population, but less than 6 percent of all years of potential life lost among the white population.” But alongside an understanding of the racial consequences of gun violence, the gender component needs to be underscored. Gun violence is a problem of masculinity in crisis. This analysis is neglected by the media and policymakers.

## The scope of this essay

This essay focuses on US sexuality policy and discourse<sup>8</sup> in the years of the Obama presidency from 2009 - 2016. We highlight the political economy of US sexuality policy; we bring a feminist and racial justice lens to our analysis; and we emphasize the gendered intersections of social, political, economic and cultural forces. Following this short introduction (Section 1), Section 2, *Global Trends*, sets out the domestic and global contexts of sexuality discourse and policy. Section 2.1 provides an overview of global trends and an analysis of how debates around sexuality policy intersected with other global political phenomena: the legacies of the US/global financial crisis, the persistent attacks - many race-based - on Barack Obama, the obstructionism of Congress, and the impact of a powerful increasingly footloose global right wing (and often Christian evangelical) movement fueled by anti-reproductive rights and anti-sexual rights sentiment. We explore how the global forces that help shape and are shaped by US sexuality policy and sexual and reproductive rights arguments, in turn, influence global trends around funding. We examine the way US hegemonic power is often a coercive factor in the politics and economies of other countries. And we also look to how global geopolitics affects US sexuality policy.<sup>9</sup>

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8 The authors understand gender and sexuality as generally inextricably linked. However, this essay will focus on issues with clear and overt sexuality policy references or implications as opposed to a broader survey of gender-related policy.

9 This is the case, for instance, when US immigration and refugee policies are developed in response to other States' homophobic and heteronormative conditions that increase the number of asylum seekers crossing borders and coming to the US. But even these conditions are not necessarily without US influence, as in the increasingly well-documented case of US evangelicals stoking homophobia in Uganda. See Kaoma (2009), Smith (2013), Mugisha (2016), Baptiste (2014). Also, see the 2012 interview with Ugandan activist Frank Mugisha in (Okeowo, 2014). See additional sources in footnote 21.

In section 2.2, we introduce the idea that US sexuality policy is marked by a push and pull process. Where appropriate, we signal the importance of policy debates in staking symbolic positions in the “culture wars”<sup>10</sup> as manifested during the Obama presidency and in which the “Tea Party” - the extremist wing of the Republican party - played a key role.<sup>11</sup> In this section, we also explore the broader political context in which US sexuality policy is made and debated.

In Section 3, *Critical Issues*, we look in greater depth at a number of specific policy fields, and explore these in relation to national and international arenas of sexuality policy and politics. We focus on illustrative issues, including HIV, abortion and contraception, sexual orientation and gender identity, marriage and the (heteronormative) family, sexuality education, sex work and policies to address violence and sexual assault. In many ways, these issues were not (and are not) distinct from one another, but were intertwined, as global and local informed each other in both overt and sometimes hidden ways.

In Section 4, *The Mourning After - the Trump scenario and somber prospects*, we look at more current conditions and highlight issues that will require heightened attention as the devastating impact of the Trump era unfolds. In this short synopsis and conclusion, we reflect on the social dynamics and policy debates that have already dramatically shifted. We do this both to better understand the Obama era and to inform our ideas and actions as we face almost daily efforts to undo gains from that period. While the sexuality policy agenda of the Trump administration is still in formation, we can already discern worrisome trends from what has transpired in this last year. There are clearly difficult challenges ahead. While we have remained committed to keeping the focus in this essay on the Obama era, we do add occasional updates, generally in footnotes, and elaborate briefly on a few critical and daunting developments.

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10 The idea of a US “culture war” suggests that there is a deep and persistent conflict between values (and their political expression) that are considered to be “traditional” or conservative and those considered to be progressive or liberal. It was coined by James Hunter Davison in 1991. See Davison (1991).

11 The Tea Party is a political movement within the Republican party. It is marked by its very conservative and anti-establishment view, and its willingness to disrupt conventional political processes and its focus on reducing the size of government and the amount of government spending. For more see Connolly (2010).



## *Section 2*

# The Sexuality policy landscape during the Obama years

## Global Trends

The shift in the second decade of the 21st century from Bush-era conservatism to a more “gender- and sexuality-friendly” Obama administration can easily be seen in how various sexual rights issues evolved. The trajectory in this transition was never smooth or linear. In fact, the discourse was often bitterly divisive, in part because of other factors at play: racism, the interests of the health insurance and other industries, deep divisions between political parties and “anti-sex” moralism.

The politics of sexual rights in the US is always intertwined with worldwide trends. Some of the most visible in this period included: persistent and new patterns of economic inequality and inequity; financial instability and disparity connected to expanding neo-liberal policies; the continuous growth of militarism and of arms trade; the propagation of various expressions of fundamentalisms, including religious fundamentalism; crises of governance and democracy; an upsurge of particularly conservative “populism”; and unyielding and variable patriarchal and heteronormative attitudes. That these co-exist with counter-trends, such as a significant transformation in gender systems – including a widening of our understanding of gender as a spectrum rather than a binary, and of sexual orientation, gender identity and gender expression as diverse and multifaceted – is not unique to this historical period nor contained within the geographic boundaries of the US.

## The global economic downturn, restructuring and state relationships

The global economic crash that began in 2008 under the Bush Administration set the tone for and shaped Obama’s presidency. As stock markets collapsed in the US and elsewhere, people lost homes, jobs and financial security. While the US is often perceived to be at the core of this global meltdown, the economies of many

other states also withered because of their own profit-driven and neo-liberal policies and practices, as well as because of globally integrated and linked economies. “Emerging markets” went into hiding as larger economies struggled. Austerity programs were enacted – and imposed – in many countries, and the arena of development and foreign aid and humanitarian assistance became even more complicated and constrained. The US remained an economic superpower and major donor. Other states – particularly in the global South – struggled with loss of cash and increasing debt. They also built new alliances designed to address these economic conditions. Funding dried up for sexuality-related resources, sexuality education campaigns, HIV treatment and prevention and other health services – and for advocacy. These struggles affected foreign policy.<sup>12</sup>

This happened alongside a period of massive global economic and political restructuring. This included new or strengthened economic arrangements, geo-political flux and realignment (such as the establishment of BRICS, the new alliance created by Brazil, Russia, India, China and South Africa), the increased role of China in developing infrastructure and industries in the global South and the emergence or resurgence of still oil-rich Gulf States, especially in the context of counter-terrorism.<sup>13</sup> These new and shifting alliances and entities shaped global, regional and national policies, trade debates and negotiations at the UN and other multilateral venues. Regional alliances remained deeply significant, but increasingly states engaged in collaboration well beyond their regions, in support of a global economic marketplace.<sup>14</sup> The impact of these collaborations on sexuality policy was often unpredictable and pressure to take both conservative and progressive positions within alliances operated simultaneously.

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12 In closed door discussions, the EU claimed, for instance, that it struggled to support the work of the International Conference on Population and Development (ICPD) Task Force, which promoted government implementation of the Cairo Program of Action, because the European refugee crisis was draining its funds. In other words, the resource drain to address the refugee crisis was used as justification to not support programming on sexual and reproductive health. Notes on file with authors.

13 See, for instance, Amar (2013).

14 In 2017, the BRICS alliance has faced some challenges, particularly in the cases of Brazil and South Africa that are experiencing major fiscal crises and recession. But an economic slowdown, albeit not very pronounced, is also underway in China, while India is threatened by a currency crisis. See Huidrom (2016).

## “The War on Terror,” foreign policy and the global trade in arms

The continuing “war on terror” played a role, in the US and elsewhere, in shaping ideas about the nation state, governance, race, and immigration - and to some extent gender, the family and the “good citizen.” This discourse privileged militarism as a first-line response to conflict, and anti-terrorism as a global and national strategy for securing borders. It thus promoted nationalist sentiment through the manipulation of gendered and sexualized “traditional values” and anti-refugee and migration policies.

While it is beyond the scope of this essay to explore this in depth, it is worth considering how sexuality and gender are used as foreign policy tools and deployed in the service of military and economic goals. In Afghanistan, for example, the US justified its military intervention by claiming, in part, that it sought to protect women from the Taliban,<sup>15</sup> using the frame of saving “innocent” women from Muslim men’s supposed “deviant” sexuality - all highly reminiscent of what Gayatri Chakravorty Spivak termed “white men saving brown women from brown men” (Spivak, 1988). But where repressive states were US allies of geopolitical or economic value, regimes of violence against women or sexual minorities were overlooked – as in Saudi Arabia, for example. This was also true in Nigeria, where the US was muted in its criticism of President Goodluck Jonathan’s inability to search for the Chibok girls kidnapped by the Islamist Boko Haram, or his signing into law the anti-gay Same Sex Marriage (Prohibition) Act in 2014. In short, we’re left with two significant questions: first, when are arguments about gender and sexuality used to justify otherwise unjustifiable military action? And second, when do military and economic alliances override potentially constructive commitments to gender and sexuality?

In fact, the continued expansion of the global defense industry was bolstered by the “war on terror”, with the US owning a leading market share of between 33 and 50 percent of international arms exports between 2011 and 2015 (Perlo-Freeman, 2015). Russia remained the next-largest exporter, followed by France and China. Other states, including Germany, Brazil, Turkey and Israel were significant small arms and light weapons exporters.

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15 See, for instance, Jabbra (2006).

Domestic and foreign policies, including those related to gender and sexuality, were certainly affected, albeit in often hidden ways, as a result of these trade relationships and countries' commitments to their own military, ideological and economic interests. The US developed, deepened or shifted military presence in various countries, with over a million military personnel and active duty military troops in 150 countries (Perlo-Freeman, 2015). Some of these economic and military engagements predated the "war on terror", and some were informed by the state of heightened violence by fundamentalist and extremist political groups.

## The global rise of populism

Another significant trend during the Obama Administration was the escalating rise of "populist" political movements. In the aftermath of the 2008-9 economic downturn, these movements gained dramatic strength by positioning themselves against neo-liberalism and resisting the global economic order in favor of nationalist and nationalistic solutions.<sup>16</sup> Both in Europe and in the U.S, they expressed racist, white supremacist or neo-Nazi tendencies and defined themselves as anti-immigrant, with a commitment to economic nationalism that privileged whiteness and traditionalist views of masculinity.<sup>17</sup> This has also been described as the "rise of right-wing nativism" (Barber, 2016). These populist movements were often founded on restrictive views of gender and sexuality, and included support for ideas that privileged parenthood among certain groups (i.e. white, heterosexual Christians in the US and European contexts) and punished it in others (i.e. immigrant and non-majority communities and non-heteronormative families).<sup>18</sup>

Populist groups used nativist and racist arguments to hound Obama through his presidency. Their attempts to delegitimize him took several forms, including questioning his citizenship and demanding to see his birth

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16 Populism itself is contextual and may not be by definition defined as conservative, but for the purposes of this analysis, we see populist movements as more regressive than progressive, and more defined by a commitment to isolationism than globalism.

17 In describing this new world vision, The Economist comments, "[f]or the first time since the second world war, the great and rising powers are simultaneously in thrall to various sorts of chauvinism. Like Mr. Trump, leaders of countries such as Russia, China and Turkey embrace a pessimistic view that foreign affairs are often a zero-sum game in which global interests compete with national ones. It is a big change that makes for a more dangerous world." See Economist (2016)

18 For more detailed discussion, see Independent (2017) or Rosswood (2017).

certificate. These allegations (including ones made by Donald Trump) claimed that Obama was born in Kenya and was Muslim, neither of which was true.

## The surge in religious right-wing ideology

During the years of the Obama presidency there was a global surge of religious ideology – what some have called “return of the religious” (Correa, Parker, & Petchesky, 2008) - and a related spike in religious and violent extremism that resulted in death, injury and the regulation of bodies, gender and sexuality in all regions. While much of US foreign, domestic (and military) policy speaks to the threats posed by Islamic extremism, of course most religions have followers who seek to regulate gender and sexuality in conservative, restrictive and sometimes violent ways. This violence can be overtly physical or psychological and can take many forms. US policy and official discourse between 2009 and 2016 varied in the extent to which this became an explicit consideration depending on whether silence or direct action was most politically expedient.

Evangelical movements grew and were often exported from the global North to the global South, which – intentionally or not – incited violence and discrimination against those who challenged gender norms and supported non-heteronormative beliefs and practices. These actions have been well-documented in the homophobia spurred on by US Christian evangelicals in Uganda (especially in relation to the 2009 “Anti-Homosexuality Bill”). This strategy was in use elsewhere as well, including in Eastern Europe<sup>19</sup> and in Russia, where the Russian Orthodox Church promoted the idea of a “demographic crisis” (i.e. severe drops in fertility rates) to make common cause with the global anti-abortion and anti-LGBT movements (Ferris-Rottman, 2017).

But although evangelical Christianity became identified in public discourse as the prime proponent of a new conservative religious ideology, the Catholic Church remained an omnipresent and powerful political actor in the regulation of sexual rights. This was the case despite the sex abuse scandals that still implicated church

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<sup>19</sup> See footnote 9. See also, Levintova (2014).



leaders. Globally – and particularly in Latin America and Eastern Europe – the Church shifted its campaign against “sexual immorality” by vilifying what it termed “gender ideology,” a term used pejoratively to condemn the analysis that gender is socially constructed rather than biologically determined, and that “men” and “women” are fluid and contextual categories shaped by experience rather than only genes. This wily strategy continues to be used to undermine feminist and other movements: one Papal Encyclical accuses “gender ideology” of having the potential of “destroying Christian faith and morality, as well as universal human values.”<sup>20</sup> These trends existed alongside the supposed liberalization of Holy See policy under Pope Francis.

The Vatican and global evangelical movements (of which the US Christian right-wing is a strong part) remained significant political players in national, regional and global policy arenas. In some circumstances, they were also major funders, especially in a number of African, Latin American and Eastern European countries.<sup>21</sup> At the extreme end of the spectrum of regulation of gender and sexuality, political extremist groups deploy a highly restrictive gender code that allows detention and torture of women, including through rape and the killing of so-called “infidels”, including men and trans people accused of sodomy. ISIS and other extremist groups promote “traditional” gender roles, promise men’s access to “virgin” women, and otherwise manipulate ideas about sexuality, masculinity and femininity to mobilize support and to access other forms of political gain.<sup>22</sup>

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20 For a more comprehensive analysis of Catholic anti gender campaigns, see Bracke & Paternotte (2016). In addition, we note that allegations about “gender ideology” took root in many churches; proponents of these attacks on gender asserted that this was a concept designed to undermine God-given sexuality and its natural links to biological differences between men and women. An Encyclical prepared by the Synod of Bishops of the Major Archbishopric of Kyiv-Halych of the Ukrainian Greek Catholic Church addressed the “danger of gender ideology,” providing a call to action on “hidden ideological means of destroying Christian faith and morality, as well as universal human values.” These hidden means were described as: gender theories [that] are a significant threat today, attempting to destroy the perception of human sexuality as a gift from God that is naturally linked to the biological differences between man and woman, as well as introducing a dangerous disorder to human relationships and attacking the foundations of interpersonal communication. The concepts of human dignity and freedom are undergoing extensive manipulation and the true meaning of these essential moral categories is being displaced and distorted. All these efforts are being implemented very actively, systematically, and thoughtfully, using political expediency and populist slogans. However, their true nature and purpose remain hidden from the public. “Encyclical of the Synod of Bishops of the Major Archbishopric of Kyiv-Halych of the Ukrainian Greek Catholic Church concerning the Danger of Gender Ideology.” Accessed at <http://stjosaphateparchy.com/encyclical-concerning-the-danger-of-gender-ideology/>

21 See, for instance, Kaoma (2012), Gettleman (2010), Kaoma (2012), PvanKlinken (2010), Thoreson (2014), Bop (2008), Santislas (2016) among others. See additional sources in footnote 9.

22 Having said this, we also add a strong plea for a thoughtful and nuanced understanding of religious fundamentalisms, as articulated by Imam and by Yuval-Davis, below.

It is of utmost importance to recognize that religious fundamentalists and their commitment to revitalizing heteronormativity and traditional/binary views of masculinity and femininity are not limited to either Christian or Islamic views. For instance, “modesty squads” made up of ultra-orthodox Jewish men operate in many parts of Israel where “young girls and grown women who are ‘improperly’ dressed [have been] spat upon and screamed at as ‘whores’, ‘sluts’, and ‘shiksese’” (Epstein, 2016). And, in India, Hindu fundamentalists have been accused of using rape of Muslim women as a tactic to support their political goals (Wilson, 2015). These are only a few examples of fundamentalist control over women’s bodies and decision-making.

## Backlash against the human rights system and civil society engagement

There was, in this period, notable progress in certain areas of the UN system, particularly in relation to violence and discrimination targeting people because of their real or perceived sexual orientation and gender identity. At the same time, there was an acceleration of attacks on the human rights system and human rights ideals. We mention here two examples which have direct effects on sexuality debates in the political sphere, though there are many more. One attack targeted the Inter-American Commission on Human Rights (of which the US is a member) in an attempt to weaken it by underfunding. While these attempts were precipitated by more than the effort to turn back sexuality policy, it is important to consider that IACHR had been a site where sexual rights had been firmly placed on the agenda as a significant human rights issue. As a second example, we note that in many global political spaces such as the Human Rights Council and the UN Commission on the Status of Women, there have been overt attempts to avoid or delete references to the actual term “rights” and other rights protections, as well as to limit civil society access to the proceedings.<sup>23</sup> In all of these circumstances, advances related to sexual rights, including in anti-discrimination measures and in protections to access to care and services, were hard to sustain and even harder to advance.

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23 For instance, the UN High Commissioner for Human Rights Zeid Ra’ad al Hussein, in his opening speech to the June 2016 session of the Human Rights Council, expressed his concern that “the workable space in which we function as one community – resolving disputes, coming to consensus – is under attack. The common sets of laws, the institutions – and deeper still, the values – which bind us together are buckling.” Accessed at (Reliefweb, 2016)

These years also saw clampdowns on activism and civil society engagement and attacks on individual defenders that were both global and grim. Since 2013, over 70 countries have introduced legislation or policy initiatives that seek to limit the functioning of non-governmental organizations (NGOs) through initiatives such as those that limit “foreign funding” or that position activist groups as threats to national security.<sup>24</sup> In the US, for instance, there is heightened scrutiny of groups that focus on cultural expression of Muslims or the rights of Palestinians. On a global level, the clampdowns on “Arab Spring” activists and their radical demands for regime change serve as another example of harsh state responses to social movement claims and the willingness of many governments to obliterate all but the mildest of political contestations.<sup>25</sup>

However, despite persistent state suppression, social movements in all countries during the period in question were vibrant and creative, with younger activists helping to shape political responses the world over. Among those which rose to prominence between 2009 and 2016 were the Movement for Black Lives (formerly “Black Lives Matter”), which in part centered on anti-racism and police brutality in the US, notably with queer women in the lead. The Arab Spring efforts – now mostly underground – demanded leadership change as well as changes in government policies in the Middle East and North Africa, and saw tens and sometimes hundreds of thousands of people taking to the streets to articulate concerns. Latin American feminist challenges to the Vatican’s regressive reproductive rights policies, with a legacy of decades of resistance, saw renewed energy in the face of the Zika virus outbreak, especially as some governments suggested that a viable public health response should rest on women avoiding pregnancy. African activists’ resistance to corporate policies of resource extraction and the government responses to them remained vibrant, as did feminist responses to state corruption in protest “sex strikes.” And, Eastern European activists challenged policies likely directed by the Russian Orthodox Church that overtly criminalized groups focusing on gender and sexuality, as evidenced, for instance, in organizing around the 2013 Russian anti-propaganda law which was used to clamp down on LGBT organizing in the name of protecting young people and the anti-gay policies of the Sochi Olympics in 2014.<sup>26</sup>

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24 (Civicus, 2016).

25 Consider, for instance, the way that the Sisi regime in Egypt is using suppression of gender and sexuality non-conforming people and sex workers as a way of demonstrating to an electorate that it is as staunch as the Muslim brotherhood it deposed. For more on this see Michaelson (2017), SPW (2017).

26 Indeed, in a rare win, women in Poland went on strike to oppose passage of a restrictive abortion law. The law was subsequently rejected by Parliament. See Bartyzel (2016).

## Push and pull in US domestic sexuality policy

### The shift from the Bush era to the Obama era

To a large extent, the advances under Obama were in response to – and designed to undo – Bush-era policy.<sup>27</sup> Some of the key advances that mark the shift from Bush-era conservatism to a more progressive Obama administration were in the areas of sexual rights, especially in terms of abortion, contraception, sexuality education, HIV, and LGBT<sup>28</sup> non-discrimination issues. The debate over sexual and reproductive rights was also a component of the broader battle over access to health care. Access to contraception was a favorite target of Republican politicians as they attacked the signature legislative highlight of the Obama Administration, the health care-related Patient Protection and Affordable Care Act (ACA, and often referred to as “Obamacare”).<sup>29</sup> From the beginning, sexual rights issues (as well as racism) were significant bases for challenging Obama’s presidential legacy.<sup>30</sup>

These trends helped to shape the political climate of sexual politics in the Obama years. And while this era was molded in part by the progressive conviction of Obama himself, it was also fashioned by the internal forces of deep conservatism and legacies of the previous decade of the administration of George Bush.<sup>31</sup> Even alongside

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27 Of course, conservative policy predated the Bush era.

28 Throughout this essay, we use different acronyms depending on whether we are talking about movement politics or the specificity of policy. When we discuss US sexuality policy, we use the acronym “LGBT” rather than “LGBTI” or “LGBTQI” because national or state-level policy is generally focused either solely on sexual orientation or, more recently in some cases, sexual orientation and gender identity. We also use the acronym “SOGI” when that term has more specific resonance. Although in movement politics, the term “queer” is common in certain communities, it is not generally used in the policy arena. At the same time, we recognize that in some communities, the terms “lesbian”, “gay”, “bisexual” and “transgender” are not used, and other terms have more cultural resonance. We use both the terms “transgender” and “trans” also to reflect either policy or movement language. We note that too little, if any, policy affirms rights of intersex people or uses language of “gender non-conformity.” We have tried to be as specific and nuanced as possible in our choices.

29 The ACA, importantly, included the provision that most private health plans must provide the full range of contraception coverage without out-of-pocket payments as part of their insurance package. See Sonfield (2017). The ACA and contraception are addressed in more detail later in this essay.

30 As of the end of July 2017, Republican Party and Trump Administration efforts to repeal the ACA have all failed, albeit by the narrowest margins, to gain sufficient votes to rescind the policy.

31 For a discussion about sexuality policy during the Bush era, see Girard (2004).

this ideological shift, a paradox shaped US policy on sexuality and gender: while the eight years of the Obama administration saw undeniable bold advances and openness in sexuality policy and discourse, they also saw extreme resistance and pushback in both domestic and global spheres.

## Partisan deadlock

Policy shifted quickly as the Obama administration's ideology took hold. As noted previously, one of Obama's first acts in office was to repeal the anti-abortion Global Gag Rule<sup>32</sup> that rescinded the ban on US funding for international health groups that perform abortions, promote legalizing the procedure or provide information and counseling about terminating pregnancies. It also removed the prohibition on groups using their own funds for these purposes. In his statement accompanying the rescinding of the order, Obama also pledged to reinstate funding for the United Nations Population Fund (UNFPA) that had been cut by Congress under Bush because of anti-abortion sentiment (Cohen, 2015).

However, by the second half of Obama's first term, the House and Senate were split with the Democrats controlling the Senate and Republicans controlling the House. By the final two years, both houses were controlled by the Republican party. This meant that processes of changing sexuality-related laws and regulations were thwarted by a divided government, as was most policy-making in the US during these years. Many Congressional discussions and decisions were marked by partisan deadlocks between the two parties. Sexuality and sexual rights issues, such as abortion and contraception, were prominent among those conflicts. It also became increasingly visible at the state level, particularly as the conservative movement won greater control in legislatures and governorships across the country.

Initiatives from and legislation put forward by the President that required Congressional discussion and approval languished in vitriolic party politics with slim chances of success. The advent of the Tea Party, the ultra-

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32 The act was first put in place by President Ronald Reagan, reversed in 1993 by President Bill Clinton, and reinstated by President George W. Bush in 2001. And, in the ongoing back and forth of promoting and rescinding policy, Donald Trump, reinstated and expanded it in his first day in office (Talbot, 2017).



conservative wing of the Republican party, presented particular challenges. While formerly a fringe element of the party, this group became a loud proud obstructionist force, fueled by nationalist rhetoric and policy goals to “take America back” or “make America great again”.<sup>33</sup> Party conflict and the growth of this wing of the conservative party ensured toxic conflicts about sexuality took place in state legislatures and courts at all levels. The frequent attacks against Obama were often motivated by explicit or implicit racism and anti-liberalism, and paralleled efforts to undo anti-discrimination and reproductive rights efforts. The Tea Party and its followers promoted a “states’ rights” discourse, which implied a direct challenge to Presidential authority; their flagship issue was a commitment to reinstating state control over women’s sexual autonomy. They did this by gutting abortion policies, in part by promoting restrictions requiring 24-hour waiting periods before procedures and consequently imposing additional travel for those seeking services. These restrictions had particularly onerous impacts on young, rural and low-income women. Access to contraception was also reduced in similarly sinister ways (NWLC, 2015).

The Tea Party’s agenda took aim at eliminating young people’s access to health information and services by attacking comprehensive sexuality education programs and calling for more of a focus on abstinence. It also sought to roll back protections from discrimination by seeking to ensure that states could skirt their responsibilities to enact same sex marriage through promoting “religious exemptions” (Schalet & et.al, 2014). The Tea Party, masters of symbolic politics,<sup>34</sup> used the frames of “freedom” and “liberty” to advance their agenda, arguing, for instance, that anti-LGBT discrimination efforts infringe on religious freedom.

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33 Both of these slogans featured prominently in Trump’s electoral campaign.

34 “Symbolic politics” uses narratives of belonging and instability, fragile identity, and primal fear to advance a political ideology, often with populist appeal. See, for instance, Cassidy (2015), Sears (1993), Kaufman (2001), Weldon (2012).

## Forced Genital Surgery of Intersex Children

During the years under survey, the practice of unilaterally assigning gender to intersex children – and consequent forced or coerced genital surgery – was put on the sexual and gender rights agenda for the first time by the burgeoning intersex rights movement. Given the newness of this advocacy, there was still confusion, however, over who had authority – and in what proportion – over the making of these decisions: parents, doctors, or the children themselves. While policies related to sexual orientation and gender identity advanced at the national level, this issue received virtually no significant national (or even state level) policy attention, despite growing attention to the issue by intersex rights advocates and increased inclusion as part of an “LGBTI” agenda.

## Section 3

# Critical issues

During the Obama Administration, a few sexuality-related issues were politically and culturally prominent. In the following section, we elaborate on some of these, namely HIV, abortion, contraception, and sexual orientation and gender identity. In addition, we expand our lens to capture issues that received less public attention but were also relevant, such as family and welfare policy, sexuality education, sex work, and debates around violence and sexual assault policies. We close the section with a brief discussion about US sexuality policy in global diplomacy. We do not attempt to cover all sexuality-related subjects, but focus on those that were the most publicly controversial.

## HIV

HIV remained one of the most salient sexuality and public health issues, both domestically and internationally. Internationally, the US was best known for its global HIV fund, PEPFAR (the President's Emergency Plan for AIDS Relief), which has been controversial since its inception in the Bush presidency (see box). US global HIV policies beyond PEPFAR remained under scrutiny for these reasons. Under Obama, however, there were some significant improvements – for instance, in commitments to harm reduction approaches, increasing condom availability and supporting comprehensive sexuality education programming.

On the domestic front, the epidemic still presented a significant public health challenge. Social and political marginalization continued to play a major role in generating vulnerability to HIV. Support for treatment and care remained uneven for people in the US, although the ACA provided greater access than had previously been available. Medicaid, which is publicly funded,<sup>35</sup> was the largest payer for HIV care in the United States, and,

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<sup>35</sup> Medicaid is the main source of US public funding for health care for low-income people.

because the ACA expanded it to low-income childless adults, it became a life-raft for many gay, bisexual, and other men who have sex with men (MSM) who were previously ineligible. The Ryan White Care Act<sup>36</sup> continued to play a significant role in helping address coverage and affordability gaps. However, since the Act depends on Congressional appropriations, the amount of support provided through it depends on negotiations between parties, leaving it susceptible to political maneuvering. It was last authorized for fiscal year 2015, at the level of \$2.32 billion (HRSA, 2015).

The vast majority of people contracting HIV in the US still did so through sex. Race and racism remained critical factors in the HIV landscape, as always. Access to health services remained a serious issue for women living with HIV in the US. Incidence rates among African-American and Latino gay and other men who have sex with men and among trans women had reached crisis levels many years before; they continued to climb in these communities in the years under survey. According to the Centers for Disease Control (CDC), “If current diagnosis rates continue, about 1 in 2 African American gay and bisexual men will be diagnosed with HIV in their lifetime—in comparison to 1 in 4 Hispanic/Latino gay and bisexual men, 1 in 11 white gay and bisexual men, and 1 in 6 gay and bisexual men overall” (CDC, 2015). While this increased incidence was not inevitable, there was not sufficient political will to intervene effectively, and large sections of the population were denied access to increasingly improved treatment regimens.<sup>37</sup> The increase was also hard to stem because of lack of resources and information as well as costs of condoms and medicine. For all these reasons, the HIV epidemic still constituted a health and social crisis even as it entered its fourth decade.

Despite being one of the largest donors for HIV programming globally through PEPFAR, the US did not have a unified and comprehensive national approach to HIV until 2010. In 2015, the US updated its domestic strategy to cover the period 2015-2020. For many advocates, the National HIV/AIDS Strategy 2020 (or NHAS 2020) (USG, 2015) was a significant improvement over previous approaches since it finally included attention to the unique needs of women (including transgender women), sex workers and young people (Center for HIV Law and

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36 The Ryan White CARE Act provided significant funds for US based HIV treatment and care, first enacted in 1990. See HRSA (n.d.)

37 See Pellowski & et.al. (2013) and Fried & Kelly-Green (2011).

Policy & et.al., 2015). The updated strategy also addressed the critical issue of the need to limit criminalization of sexual activity of people living with HIV, and called on legislators to revise overly broad HIV criminalization laws so that they aligned with the latest scientific information showing that when viral load is suppressed, there is a negligible likelihood that the virus will be transmitted.

The NHAS 2020, which ultimately received Congressional approval, stands out for its inclusion of and attention to key groups and gender, race and sexuality-related issues, including African-American women, transgender women, sex workers and young people. All of these groups were either absent or minimally present in previous policies, despite the epidemiology of HIV in the US. Nonetheless, serious gaps remained. The US Positive Women's Network criticized the NHAS' lack of action on routine violations of the sexual and reproductive rights of people living with HIV, continued inattention to reproductive health or rights, and the plan's neglect of the sexual health of people living with HIV (PWN, 2015). It is worth noting that the 2013 reauthorization, the Violence Against Women Act (VAWA) included a new "purpose area" to provide HIV testing, counseling, and post-exposure prophylaxis (PEP) for survivors of sexual assault (IFWG, 2013). This was an important acknowledgement of the linkage between HIV and violence against women that had been absent in previous iterations of VAWA.

### PEPFAR: the basic facts<sup>38</sup>

The President's Emergency Plan for AIDS Relief, or PEPFAR, was created in 2003 by President G.W. Bush, initially as a five-year plan. At the time, it marked a significant increase in funding for HIV (and for health more generally). It was – and still is - the largest commitment to HIV by any country and represents the vast majority of US international health funding (67% in early 2017, prior to the reinstatement and expansion of the Global Gag Rule under the Trump administration).

In its early years, PEPFAR appeared caught between two competing imperatives. On the one hand, there were the demands of conservative political forces within the United States, including by President Bush, calling for HIV responses that were often punitive and expressed ideology over epidemiology. On the other, there was a global health emergency

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38 For more information, see KFF (2017), Fried & et.al. (2007).



that called for an urgent and significant response to people who were seen to be at risk or vulnerable.<sup>39</sup>

In PEPFAR's original authorization, 55% of funds was recommended to be spent on treatment, 15% on palliative care and 20% on prevention. Of the prevention allocation, at least 33% had to be used to promote the "ABC" method to young, unmarried people: Abstain; failing that, Be faithful; and only failing that, use Condoms. Support was primarily directed at 13 countries, and was explicitly promoted as a partnership, albeit a highly prescriptive – and some felt coercive – one.<sup>40</sup> Despite this "partnership," many critics of PEPFAR challenged its lack of oversight of country-level programming.

The program changed significantly with its reauthorization in 2008. The reauthorization relaxed prior spending directives, emphasized country partnerships and health systems strengthening (HSS), mandated 5-year strategic plans for HIV, TB, and malaria, and ended the statutory ban on HIV-positive visitors and immigrants wishing to come to the United States. Although it did not eliminate a commitment to ABC, it relaxed the extent to which it was mandated.

Writing at the time of the reauthorization, writer and activist Jodi Jacobson comments: "Upon final passage of the bill, both the language on family planning and the gag rule had been stripped and the legislation was 'silent' on the issue of family planning. To ensure that void could not be filled with rogue public health officials seeking to provide women access to services 'on the sly', [then-Global AIDS Coordinator] Mark Dybul then wrote and disseminated guidance forbidding the purchase with PEPFAR funds of any contraceptive commodities for HIV-positive women in PEPFAR-funded programs." (Jacobson, 2009)

The Obama administration brought with it a new approach, particularly through Secretary of State Hillary Clinton. In 2012, Clinton declared the goal of creating an "AIDS-free generation" and, in 2012, released the PEPFAR "blueprint"

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39 J. Dietrich, "The politics of PEPFAR: The President's Emergency Plan for AIDS Relief." *Ethics and International Affairs*, V. 21/3 (Fall 2007).

40 Some argue that this focus on partnership meant an on-going active engagement by the US Office of the Global AIDS Coordinator, rather than country priorities and country leadership. See, for instance, Jacobson J., "Demystifying PEPFAR: Myths and Facts of PEPFAR's Prevention Policies." *ReWire*, 4 February 2009. Accessed at <https://rewire.news/article/2009/02/04/demystifying-pepfar-myths-and-facts-pepfars-prevention-policies/>; Fried, et.al., "Show us the money: Is violence against women on the HIV agenda?" *Women Won't Wait* and *ActionAid International*, 2007. Accessed at [http://archive.kubatana.net/docs/women/women\\_won%27t\\_wait\\_show\\_us\\_the\\_money\\_0703.pdf](http://archive.kubatana.net/docs/women/women_won%27t_wait_show_us_the_money_0703.pdf).; and See Center for Health and Gender Equity (CHANGE), 2016, "The DREAMS Partnership". Accessed at [http://www.genderhealth.org/files/uploads/change/publications/The\\_DREAMS\\_Partnership\\_1.pdf](http://www.genderhealth.org/files/uploads/change/publications/The_DREAMS_Partnership_1.pdf).

for achieving this. PEPFAR's 2015 strategy aligned with UN global goals of Agenda 2030 related to the epidemic and reflected a "shift in approach, including the further targeting of resources to key populations, especially adolescent girls and young women, and geographic areas that are most affected by HIV" (KFF, 2017).

In 2014, the US's international efforts against the AIDS epidemic were augmented by the DREAMS program, a public-private partnership between PEPFAR, the Bill & Melinda Gates Foundation, Girl Effect (formerly the Nike Foundation), Johnson & Johnson, Gilead Sciences, and ViiV Healthcare. DREAMS focuses on reducing the disproportionate level of new HIV infections among adolescent girls and young women in sub-Saharan Africa. While the significant increase in funds for adolescent girls and young women was well-received, some critics cautioned against its emphasis on biomedical interventions and on incidence reduction as the primary measures of success, rather than changes in the structural drivers of HIV (Green, 2016).

US legislation concerning HIV made advances as indicated by the NHAS, albeit with retrogressive moralistic elements such as the *Hyde Amendment* that barred use of US funds for abortion, including in the context of HIV. The US Global AIDS Act also circumscribed the use of HIV funds by barring the use of US funds by non-US organizations to "promote, support, or advocate the legalization or practice of prostitution" (CHANGE, 2016), and by requiring non-US organizations receiving HIV/AIDS funding to adopt a specific organization-wide policy opposing prostitution (see below). On top of this, stigma and discrimination against "key populations" (CHANGE, 2016) continued to present major barriers in access to services as well as to justice.

In the period under survey, women constituted one out of every five people living with HIV and women of color (especially African-American women) made up a disproportionately large majority of women living with HIV in the US. While African-American and Latina women accounted for 28% of all women in the US, they constituted 80% of women living with HIV (amFAR, 2015). African-American women also accounted for the greatest share of deaths among women with HIV in 2010 (64%), followed by white women (18%) and Latinas (12%) (KFF, 2014). As of 2012, it was estimated that only 15% of women living with HIV in the US were actually diagnosed and only 26% had their viral load suppressed through treatment: this offers a sharp picture of the serious gaps in the US's comprehensive HIV treatment, care and support program (KFF, 2014).

Among gay men, bisexual men and other men who have sex with men, there were indications of increased risk-taking in sexual activity – such as having unprotected anal sex (known as “bare-backing”). HIV researchers and activists in the US posited that this was likely a consequence of younger men not having lived through the years of intensive AIDS-related loss in the 1980s and ‘90s, and the perception that HIV is no longer a death sentence due to effective antiretroviral (ARV) therapy (CDC, 2015). During the Obama presidency, prevention medication became more readily available, and this – together with the increased availability of ARVs – inevitably precipitated a re-examination of what constituted “safe sex”. The advent of pre-exposure prophylaxis (or PrEP) generated complicated and painful decision-making in some communities, including a gay male community built on decades of social movement demands around safer sex (CDC, 2017). Others in that community, in the public health establishment and in society at large were very enthusiastic about the possibility of actual preventive medical intervention. Of course, so was the pharmaceutical industry. The Obama administration also promoted the use of PrEP in its global HIV support.

The limited information available about HIV rates among trans women in the period under survey belies the seriousness of the epidemic amongst this group, both in the US (CDC, 2017) and globally (JAIS, 2016). There was even less information about HIV among trans men and lesbians. While HIV prevalence among these groups<sup>41</sup> is relatively low, a 2011 study suggested that transgender men who had sex with men were at substantial risk for acquiring HIV (Rowniak & et.al., 2011). A few studies about lesbians and other women who have sex with women and HIV were completed in the past few years.<sup>42</sup> These studies made two important claims: first, that there is a small but significant number of women who have sex with women who are living with HIV and not receiving adequate services, and second, that among some of these cases, the only feasible route of transmission would have been sex with another woman (Sandfort & et.al., 2013).

During the Obama years there were both progressive advances in HIV policy and greater attention paid to

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41 According to a report from the GMHC, while lesbian sex carries a low risk of transmitting HIV, low risk doesn't mean no risk: “Lesbians and bisexual women, like their heterosexual counterparts, engage in at-risk sexual and social behaviors that place them at high risk, including but not limited to: unprotected sex with men, an increased number of sexual partners, the use of injection drugs, and exposure to fluids known to transmit HIV i.e. menstrual blood, vaginal secretions.” (GMHC, 2009)

42 See, for instance, Poteat & et.al. (2014), Sandfort & et.al. (2013)

epidemiological evidence. Still, religious conservatives waged consistent battles in this arena as part of their broader preoccupation with ensuring that public health policy and spending reflected their moralistic and “anti-sex” views. Discrimination potentially increased infection rates and restricted treatment access, as did the profit-driven interests of pharmaceutical and insurance industries. So, too, did an overstretched health infrastructure, which still suffered from the effects of the 2008 financial crisis.

### TRIPS and access to medicines<sup>43</sup>

The impact of trade and trade policy (including intellectual property rights) on access to medicine was intensely contested during the Obama presidency. The US continued to promote highly restrictive trade agreements, with a focus on industry-friendly patent and intellectual property regulations. The effects of this were most visible in the way these agreements limited access to HIV-related medicine, but there were other consequences in the field of sexuality, too. In 2014, the WHO cautioned that intellectual property laws might restrict or prohibit widespread availability of products required to promote sexual health, such as anti-retrovirals for HIV, emergency contraception, or mifepristone and misoprostol for medical abortion (WHO/RHR, 2015). All of these are included on the WHO Model List of Essential Medicines.

Trade agreements inevitably limit access to medicines in the way they protect patents and intellectual property law. Medicine prices can consequently remain high for many years, and thus unaffordable to those who need the products most, especially when there are no “flexibility” agreements to which to appeal. Such “flexibility” agreements allow for relaxation of trade restrictions, including on prices, under some emergency circumstances, such as an epidemic like HIV.

For this reason, many HIV organizations and health activists raised significant concerns about the impact of the Trans Pacific Partnership (TPP) agreement, which Obama signed in 2016, claiming that it risked creating barriers to the manufacturing and sale of generic medicine, as well as adding patent protection to diagnostic and medical procedures.<sup>44</sup> Critics pointed to the policy incoherence between funds provided by PEPFAR to support HIV treatment access (for

43 See, for instance, Austin & Helfer (2011), Massard da Fonseca & Bastos (2016), Avafia, Berger, & Hartzenberg (2006), Kapczynski (2015), Morges (2016), Mishra (2014), WHO/RHR (2015), Baker (2017), Carter (2015), O'Donnell (2016), MSF (2016), amFAR (2015), Salmon (2015), Helfer (2012).

44 Pulling out of the TPP was one of Donald Trump's campaign promises, and he did so early in his tenure.

example, in Viet Nam) and the likely impact of the TPP – where the US had supported greater access to HIV treatment, while the TPP was likely to limit access. In addition to raising concerns about how the TPP might decrease the ability of developing countries to purchase lower cost medicine and other health commodities, a number of US Members of Congress, in particular the Congressional LGBT Equality Caucus, also noted harsh heteronormative, anti-LGBT and/or gender normative policies in several TPP signatory countries.

The TPP was not the only such arrangement. In 2015, The American Public Health Association noted that the US was involved in six trade deals, covering a total of 60 countries. All these included stricter intellectual property protections, as well as the patenting of diagnostic, therapeutic, and surgical techniques, which could threaten the availability of such techniques and their use by health professionals. This included, strangely, the promotion of infant formula over breastfeeding.

## Abortion and contraception

During Obama's first two years in office, Democrat politicians used their voting majority in Congress to put key policy initiatives in place, including contraception coverage in the ACA. Obama relied on this Democratic majority to support him when he repealed the Global Gag Rule. Despite this defining act, the Obama years saw an increase in national and statewide abortion policy debates that often resulted in more restrictive policies. The Guttmacher Institute referred to the period of 2010-2015 as having the “dubious distinction of accounting for more abortion restrictions than any other single five-year period since *Roe*” (Guttmacher Institute, 2016). They report that 288 (27%) of the 1,074 state level abortion restrictions of the past 43 years were enacted just since 2010. For instance, a number of states have recently prohibited abortion after 20 weeks post-fertilization (well before viability), “based on the spurious assertion that a fetus can feel pain at that point” (Guttmacher Institute, 2016).

This trend decelerated in June 2016, when the Supreme Court struck down a restrictive Texas law requiring that doctors performing abortions in clinics needed to have admitting privileges at nearby hospitals and that clinics needed to meet the standards of ambulatory surgical centers. The Supreme Court found that part of the law was in violation of the 1992 *Planned Parenthood v. Casey*'s prohibition on placing an "undue burden" on the ability to obtain an abortion (Liptak, 2016). The case is likely to have significant implications for other restrictive state laws; and, equally important, it inevitably helped to reignite the anti-choice movement.

This entrenched ideological divide in the US over abortion and family planning policy has deep roots. Immediately following the Supreme Court's 1972 *Roe vs. Wade* decision decriminalizing abortion, the Title X Family Planning Program was created. This set in place public funding for family planning, but excluded from coverage the provision of abortion and even health care providers' referrals for abortion services. Medicaid, the public funding program for health care, has also funded family planning – including contraception – since 1972. The 1973 Church Amendment limited this program by stipulating that no one could be forced to perform an abortion against their religious beliefs (referred to as "conscientious objection") (Deutsch, 2015). In 2005, the Bush Administration expanded the conditions for this set of "opt outs", including by prohibiting discrimination against "conscientious objectors" (Butler & Clayton, 2009). This religious objection clause was rescinded by the Obama Administration in 2009. As we note elsewhere, the ACA included coverage for contraception – though this was contested - but not for abortion. In 2014, the Supreme Court found in favor of religious objections in *Burwell vs. Hobby Lobby*. In this case, private corporations were allowed to limit coverage of contraception in the insurance they offered, based on religious objections (Deutsch, 2015).

This back and forth continued through Obama's tenure. The Global Gag Rule, as discussed above, required all non-governmental organizations (NGOs) that received federal funding for family planning to refrain from performing or promoting abortion services as a method of family planning, even with non-US government funds

in other countries. Beneficiaries were also not allowed to provide information or referrals.<sup>45</sup> The policy has its roots in the “Helms Amendment to the Foreign Assistance Act”, passed in 1973, which referred only to the use of US foreign assistance funds. In 1984 this was extended into the Global Gag Rule by President Ronald Reagan to any organization receiving US family planning funds, even when the funds being used for abortion were drawn from non-USAID sources (Crane, 2004). The policy was rescinded by President Bill Clinton, and reinstated by President George W. Bush in 2001. At that time, it was also expanded to cover all voluntary family planning activities. As noted earlier, Obama rescinded the policy in 2009 and then Trump reinstated it in his first days in office in 2017.

These policies have been interpreted in the most restrictive way, primarily because of continued pressure by the Christian right. US law permits the use of foreign-assistance funds for abortion services except when conducted as “a method of family planning.” Even though existing law permitted the use of US foreign-assistance funds to cover abortion services in the cases of rape, incest and life endangerment, the US government did not fund any abortion services in countries where US foreign assistance operated – even in these narrow instances (Center for Reproductive Rights, n.d.). During the United Nations Human Rights Council’s Universal Periodic Review of the US in 2011, Norway called for “[t]he removal of blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.” In its response to the UPR recommendations, US officials noted that Norway’s recommendation did not enjoy its support, “due to currently applicable restrictions” (HRC, 2011).

While some very limited advances were made in access to abortion during the Obama years, family planning policies and programs shifted more demonstrably from Bush-era policy. Still, family planning programs remained

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45 The Global Gag Rule contained some exceptions to its prohibitions: first, it only applied to funds for family planning and not to other forms of foreign assistance; second, in principle it included an exception in the case of pregnancy that threatens the life of the woman or was the result of rape or incest, but in fact, USAID’s broad interpretation of the Helms amendment meant that it did not allow funding for abortion in these circumstances; and third, it did allow the use of US family planning funds for post-abortion care, regardless of the circumstances. See KFF, “The Mexico City Policy: An Explainer (n.d.)



underfunded both abroad and at home, leaving women vulnerable to a series of ills: increased morbidity and mortality, high levels of unwanted pregnancy, and lack of information, services and commodities such as male and female condoms and other forms of contraception. And, the shift in ideology did not lead to comprehensive change: some of the legal restrictions and loopholes that existed under previous administrations were not repealed. Depending on the ideology of the moment (or the President or the Congress), these loopholes were selectively enforced. For instance, US support to the United Nations Population Fund (UNFPA) for various forms of international family planning had been cut and restored at least six times since the Ronald Reagan years in 1980s until the Obama administration (CHANGE, 2012).<sup>46</sup>

The back and forth was not limited to the global sphere. Domestically, as soon as policy and political advances were made, particularly in the area of contraception, there were attacks from religious conservatives, Republicans and many Catholic organizations where in dogged pursuit of religious exemption clauses that would allow selective enforcement of federal and state policy. Many in the sexual and reproductive health and rights community and their allies saw an Obama administration too quick to compromise on contraception in negotiations on the Affordable Care Act.<sup>47</sup> The clearest example of this was the aftermath of *Burwell vs Hobby Lobby* in 2014, when the Supreme Court found 5-4 that some family-owned corporations did not have to pay for insurance coverage for contraception if it violated their religious beliefs. This judgment overruled an ACA regulation mandating employers to provide insurance coverage for contraception to female employees,<sup>48</sup> and supported opponents to the ACA who argued that paying for any kind of contraception, including intrauterine devices and “morning after” pills, was a violation of their religious beliefs.<sup>49</sup>

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47 This discussion is introduced earlier in this essay.

48 Some equate most contraception methods with abortion – a far-reaching and inaccurate conclusion by any reasonable standard of evidence or logic.

49 The first Supreme Court appointee of the new Trump Administration, Neil Gorsuch, was a proponent of this religious exemption strategy.

To stave off other legal challenges, the Obama administration attempted a compromise that allowed groups to “opt out” of their ACA obligations regarding contraception by informing insurers, plan administrators and the government that they wanted exemptions. In these cases, the insurers or the government themselves would pay for the contraception coverage. This compromise infuriated many who had supported the provision in the ACA. It also still did not satisfy conservatives who continued to complain that they suffered the burden of objecting to the policy and of providing information to make their own cases, and that this, too, forced them to violate their religious beliefs.<sup>50</sup> Conflicting court decisions kept this issue alive, not only in the political arena but also at the Supreme Court. In May of 2016, the then deadlocked 4-4 (liberal and conservative) Court said it would not rule in this case but would send it back to lower courts to decide (Liptak, 2016).

In one of his last acts in office, Obama sought to sustain greater access to sexual and reproductive health services, including abortion. He did this by barring states that received Title X funds from denying federal family planning funds to organizations that also performed abortions, such as Planned Parenthood. In addition, in the final stretch of the Obama Administration, the US Food and Drug Administration relaxed guidelines for taking Mifepristone (the “abortion pill” or “medication abortion”), enabling women to use the drug further along in their pregnancy and with fewer visits to the doctor.

Despite the fact that Obama was avowedly pro-choice, policies related to abortion access remained highly contested at the state and federal level. Access to safe, legal and simple contraception remained a political football, as courts went back and forth on the issue. While this was transpiring, women’s autonomous decision-making about contraception remained impeded by conservative religious movements, by competing legal decisions and by a deadlocked Congress and Supreme Court.

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50 One US Court of Appeals noted that opting out simply required a letter and a two-page form. Another Court agreed that there was undue reporting burden. See Liptak (2016).

## Sexual orientation, gender identity and LGBT people

Perhaps the most evenly positive and identifiable sexual rights policy and cultural change in the period under review took place in relation to sexual orientation and gender identity and in the rights of LGBT people. In the space of eight years, the executive, legislative and judicial arms of the US government rescinded the main discriminatory anti-homosexuality measures left in federal legislation and policy, and consequently state and foreign policies also shifted dramatically. Transformational change came through the courts, the Congress and the President, as well through administrative developments.

These changes rested on decades of advocacy, primarily by LGBT activists and organizations and took place in realms of both domestic and foreign policy. They also reflected the political and electoral climates at national and global levels. It's likely fair to say that this was also a legacy issue for Obama: the global LGBT anti-discrimination trend was one administration officials wanted to be a part of, and, in some ways, to show leadership in.

There were, of course, weaknesses, failures and challenges, as well. Each successful effort was met with strong opposition from the Christian right and conservative politicians, and overall, gains in SOGI policy provided the Republican Tea Party with a set of organizing issues to assert "states' rights".

## The domestic arena

In addition to the sweeping legal change allowing marriage equality (also discussed in more depth below) two other major sexual orientation-related policy changes took place during the Obama Administration: the repeal of the “Don’t Ask, Don’t Tell” (DADT) policy for the armed services and the passage of the Employment Non-Discrimination Act (ENDA). After having been on activists’ agendas for decades, the speed with which these changes unfolded was remarkable. This is particularly notable when seen in comparison with the pace of advances in other civil rights and sexual rights issues, many of which remained in quicksand or consistently under attack.

Consider this stark juxtaposition: On the day before the Supreme Court announced its 2015 decision that legalized same-sex marriage, the same Court voted to overturn parts of the 1965 Voting Rights Act, which had protected rights of people of color, and in particular African Americans, for decades. The issuing of these decisions – arrived at by the same justices - sharply reflects the legal and political climate in the US, with the Court split between those who are more progressive and those who are more conservative. It also reflects two other related realities: first, the centuries-old entrenchment of racism and the strength of current Republican efforts to control voting of people of color; and second, the assumption of electoral power, or lack thereof, by different voting constituencies.

The end to discrimination in the military was positioned as a significant victory by some in LGBT movements. First instituted under President Bill Clinton in 1993, the US Department of Defense maintained a “Don’t Ask Don’t Tell” policy that effectively banned gay or lesbian service-members from disclosing or discussing their identities. This was intended to be an advance over previous policy which effectively banned lesbian and gay people from actual service, allowed for explicit investigation into members’ personal lives and mandated summary discharge for “offenders” (UC Davis, n.d.).

Historically, homosexual sexual activity had been grounds for discharge in part because it was seen as a form of psychopathology as well as a threat to the morale of the troops. The DADT discriminatory policy was retracted in 2011, only after the President, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff certified that DADT's repeal would not harm military readiness. Five years later, in June 2016, the Pentagon ended the ban on trans peoples' service in the US military. In roughly a year from that date, trans people would be allowed to join the armed forces provided they had been "stable" in their preferred gender for 18 months.<sup>51</sup>

The third major LGBT victory during the Obama era was the passage of the Employment Non-Discrimination Act (ENDA), which, after gaining Senate approval in 2013, was signed into law by the President.<sup>52</sup> ENDA addressed employment discrimination based on sexual orientation and gender identity, although most advances were specifically for lesbian and gay federal employees. In a nod to the conservative religious right, ENDA included a religious exemption, thereby watering down its overall impact.<sup>53</sup> ENDA followed the April 2012 Equal Employment Opportunity Commission's report on *Macy v. Holder*, which found that gender identity discrimination in employment was a form of sex discrimination prohibited under Title VII of the 1964 Civil Rights Act (Jarrett, 2017).

A number of other important anti-discrimination policies were put into place in the years in question, most

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51 Defense Secretary Ash Carter, in announcing the policy change, referred to a study by Rand that found "the lifting of the ban would cost between \$2.4 million and \$8.4 million annually in medical care, but could reduce costs associated with mental health." See Corporation (2016). In June 2017, branches of the military sought a 2-year extension of this timeline. By July of 2017, Trump tweeted an announcement that transgender people would no longer be allowed to serve in the US military in part because of "tremendous medical costs" and because the military must remain "focused on... victory" and not be "disrupted" (Hirschfeld Davis & Cooper, 2017). His tweets ended with a "thank you." Trump's directive had not been discussed with the Pentagon, the usual defense and military policy-making arm of the government, or the Secretary of Defense. At the time of writing, it is not clear whether or how this revised policy will be implemented, but one statistic has already surfaced that bears mention: the US military has spent five times as much on Viagra as on transgender medical care. See the Washington Post article on the subject (July 26th, 2017).

52 S. 815 Employment Non-Discrimination Act of 2013. Also in July of 2017, just after Trump noted his intention to block transgender people from serving in the US military, and in stark contrast to Obama's policies, the US Department of Justice announced that it did not interpret a major federal civil rights law (the Civil Rights Act noted above) as protecting employees from discrimination based on sexual orientation. See the New York Times article on the subject (July 27th, 2017).

53 See also Thoreson R. (2017)

notably the Matthew Shepard and James Byrd Jr Hate Crimes Prevention Act, which was signed into law in 2009 after - remarkably - 12 years and 14 floor votes in the House of Representatives and the Senate. The Act engages the federal government when local government fails to address crimes related to sexual orientation and gender identity (HRC, n.d.).

Additional new policies affecting the lives of LGBT people received less public fanfare but had significant impact:

- In 2009, the Department of Health and Human Services ended the ban on HIV+ visitors and immigrants to the US.
- In 2010, Obama issued a Presidential Memorandum that led to regulations banning discrimination in visitation rights for LGBT partners (and other visitors) in hospitals that receive federal Medicaid and Medicare funding.
- In 2011, the Department of Health and Human Services rescinded portions of a Bush-era provision that allowed health care providers to refuse to provide services or information for religious or other “moral” reasons.
- In 2012, the Department of Housing and Urban Development recognized rights of lesbians, gay men and trans people by issuing a rule providing for equal access to housing in HUD programs.
- In 2013, the federal Violence Against Women Act was reauthorized by Congress for the first time with LGBT provisions (and primarily protections against domestic violence).

Almost all these measures faced conservative legal challenges, and in particular, state level restrictions based on “religious exemptions”. These sought to give local businesses the right to deny services or goods based on “religious beliefs and moral convictions” (Berman, 2016). In Indiana, for instance, the owners of one pizzeria earnestly said that they would not provide pizza for the wedding of a gay couple.<sup>54</sup> After closing its business

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<sup>54</sup> The US Supreme Court heard a similar case about denial of provision of a wedding cake to a gay couple in its 2017-2018 docket. A decision is expected in June, 2018.

rather than providing food, the owners received threats – but also an infusion of thousands of dollars in cash support (Galarza, 2015)

### **Pee here, not there:**

Despite and possibly because of these SOGI advances, some states' leadership promoted regressive policies in a direct attack on rights, perhaps most notably against the transgender community.

North Carolina passed a law in March 2016 that restricted people to the use of gender-marked public restrooms matching the gender on their birth certificates. While transgender people in the state could request new certificates, they first had to have gender reassignment surgery (Transequality, 2017). The apparent justification for this policy was to protect women from sexual assault, under the presumption that transgender women were dangerous and posed a threat to other women and girls in public toilets. Two months later, Obama issued a directive to public schools, requiring that they allow transgender students to use bathrooms that corresponded with their chosen gender identity (Reuters staff, 2016). As with much of Obama's sexual and gender rights efforts, the directive was met with stiff resistance from conservatives. A federal judge later blocked the Obama administration (Eckholm & Binder, 2016) from enforcing the directive and its guidelines.

### **Conversion therapy<sup>55</sup>**

Another especially toxic issue in the sexual rights landscape was the continued promotion of “conversion” therapy, which subjects people to psychological and medical interventions designed to change patients' relationships to sexual orientation, gender, and gender expression. This practice has been discredited as both unethical and ineffective, and the United Nations considered it a form of torture in certain circumstances. Conversion therapy was raised as an issue for inclusion in the 2016 Republican Party platform, but did not succeed, and there were legal victories against the practice in the U.S during the period under review. In 2015, a New Jersey court found a gay-to-straight conversion therapy group (Jews Offering New Alternatives for Healing) guilty of consumer fraud, including misrepresentation of their services and engaging in “unconscionable commercial practices”. It was ordered to shut down, reimburse the victims and pay \$3.5 million in legal fees. In 2016, California's ban on conversion therapy was upheld by a federal court.

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55 For more information, see UN CAT (2015), UN Human Rights Council (2011); see also, Dart (2016), Ross & Epstein (2017).



## Foreign policy

There were equally significant developments on SOGI in the realm of US foreign policy. In December 2011, the Obama administration released a Presidential Memorandum on “International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons”. This came on the heels of a high-profile announcement by Secretary of State Hillary Clinton at the UN Human Rights Council in Geneva (discussed in greater detail below). The Memorandum directed US officials to combat attempts by other governments to criminalize LGBT status or conduct, protect LGBT refugees and asylum seekers, promote engagement on these issues in multilateral institutions, provide foreign assistance, enhance US efforts to protect LGBT people abroad, and to promote non-discrimination efforts (The White House, 2011).

This last item in the Presidential Memorandum was interpreted by some as a form of “aid conditionality”, which had ramifications in various global spheres.<sup>56</sup> Concerns about aid conditionality certainly pre-dated Obama’s directive, and the global debates it triggered were, in fact, more centered on British foreign policy. Yet the US Memorandum opened another door for states to tag development assistance funding as “coercive” – and an incursion on their sovereignty – when “conditional” on providing full human rights and anti-discrimination protections to their citizens. These debates fed further North / South conflict, even as the regional boundaries dividing “pro-SOGI” states blurred.

There was opposition, too, from another front: conservative forces in the US pushed back against these foreign policy efforts with fervor and with misinformation. One example was the attempt to discredit the Global Equality Fund (GEF), which had been established in 2011. The GEF was the first US foreign policy stream dedicated to supporting groups engaged in LGBTI human rights programming, and was a pioneering collaborative effort

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56 One Kenyan official in the governing party noted “What informs America to hold the issue of gay agenda as being so key to its foreign policy?” Irungu Kang’ata, See footnote 79.

among governments, companies, foundations and NGOs “to empower LGBTI persons to live freely and exercise their rights without fear of discrimination or abuse” through provision of funding for emergency, short and long term assistance (US Dept. of State, n.d.). In 2015, it was erroneously reported first in US media and then internationally that \$700 million had been spent to “promote homosexuality” – when, in reality, only \$24 million had been provided in over 80 countries and territories via the fund (US Dept. of State, 2016). Although the numbers reported by those opposed to this funding stream were wildly inflated, the story gained traction both in the US and internationally and was used to malign the Obama administration for its support of rights related to sexual orientation and gender identity.

## On marriage and the (heteronormative) family

In the Obama years, as before, US policy continued to privilege marriage, and those who chose it, through tax and inheritance benefits as well as through access to a range of social services and health insurance. These benefits were less accessible to people in domestic partnerships or who were otherwise unmarried. Since same-sex marriage was legalized in the US, there have been indications that benefits previously accorded to those in domestic partnerships might dry up, thereby creating financial incentive for marriage among those who might otherwise not choose it: certain health insurance plans, for instance, began to limit their coverage for non-married heterosexual and same sex couples (Bernard, 2015).

Furthermore, other policies and social discourse favored monogamous marriage, but carried an “anti-sex” message. For instance, while there was no federal policy regulating sex outside marriage among married individuals, in 2014, “adultery” was still criminalized in 21 of the 50 US states. Although many of these laws were and are not enforced, they threatened fines or imprisonment.<sup>57</sup> There were a few advances, though: two states, New Hampshire and Colorado, decriminalized “adultery” in this period (Reuters, 2014).

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<sup>57</sup> See USA Today (2014).

Policy around marriage and family was inevitably influenced by the economic recession as poverty levels increased until 2012. In Obama's first term, anti-poverty efforts focused on economic recovery, and his hard fought stimulus package (that directed spending after the financial crisis) helped channel additional resources to poor people. The 2009 "American Recovery and Reinvestment Act" was considered by the non-partisan Congressional Budget Office to be an overall success in providing funds to states and localities, enabling low-income people to purchase goods and services, and providing temporary tax relief to individuals and businesses (CBO, 2015).

US federal social insurance programs (such as Medicaid, discussed above, and Medicare, which provides health insurance support to older people and food support) have always been ideologically-laden. They encompass a vision of the "ideal" family and regulate who is considered to be "deserving" (for instance, workers and two-parent families) as opposed to "undeserving" (ie. non-working people, single mother families, and the homeless). In the debate over who should qualify, there have been persistent divisions between those who support expanded social insurance and those who argue against any interference in the 'free market' system.

By the Obama era, the main program to support low-income families was the Temporary Assistance to Needy Families (TANF) program.<sup>58</sup> One historical analysis of TANF notes that "[s]tates spend about seventy-three percent of their [TANF] funds on other TANF-related purposes, some of which are grounded in traditional ideas about gender and sexuality. States can spend federal TANF funds for any of the four purposes listed in the statute: "(1) assisting needy families so children can be cared for in their own homes; (2) reducing the dependency of needy parents *by promoting job preparation, work, and marriage*; (3) *preventing out-of-wedlock pregnancies*; and (4) *encouraging the formation and maintenance of two-parent families*." (emphasis added) (Gilman, 2014).

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58 TANF was created during the Clinton Administration through the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996 – the name of which says it all. Since then, the number of people receiving TANF has continually declined and the restrictions on eligibility have increased. Moreover, states can use TANF funds in a variety of ways that bring to light the sexuality assumptions behind the idea of who is "needy".

TANF has mostly failed in its goals to increase marriage or reduce the number of single-parent (read female-headed) families, despite millions of dollars invested in marriage promotion, with little result to show for an already too-large expenditure. For instance, in Oklahoma, TANF funds were used for a marriage counseling class and the Oklahoma Marriage Initiative (Clark, 2016). The major study of marriage promotion programs directed at unwed parents found that these interventions “had no effect on relationship quality or whether the parents stayed together or got married” (Clark, 2016). And, while teenage pregnancy rates were falling in the US in the period under survey, they had been doing so for some time and there was no statistically significant evidence of a relationship between receiving TANF funding and the reduction in teenage pregnancy.

While a number of innovative alternatives to TANF were proposed in Congress in the Obama years, the partisan animosity ensured none received reasonable consideration (Clark, 2016). Opposition from religious and cultural conservatives also put up unnecessary hurdles, and rendered the process even more inefficient. For instance, all federal “family-related” policies were required to go through an assessment process put in place during the Reagan Administration. This was strengthened over time and was still in place during the Obama administration. This “‘pro-family’ mandate requires that agencies must consider ‘the personal responsibility of youth and norms of society,’ and ‘actions that erode the authority and rights of parents’” (Maril, 2013). These points reveal conservatives’ investment in regulating the sexuality of young people and in defending a heteronormative nuclear family felt to be under threat.

Legalization of same sex marriage marked a significant departure from this otherwise mostly heteronormative area of policy formation and implementation. In June 2013, the US Supreme Court found that the Defense of Marriage Act, which had been signed under President Bill Clinton in 1996, was unconstitutional. The case was brought by 84-year-old Edie Windsor, who argued that after the death of her long-term lesbian partner, she should not have had to pay federal taxes on the assets left to her, as these taxes were those from which legally married couples were exempt. In a 5-4 decision, the Court found that Windsor faced a “deprivation of the equal

liberty of persons that is protected by the Fifth Amendment” of the US Constitution (Scotusblog, 2017). With that decision, the legal, political and social landscape in the US was forever changed: same-sex couples could now marry (and subsequently divorce).

Not surprisingly, the conservative right wing rallied against - and created an electoral wedge issue about - the supposed federal imposition of “immoral policy” on individual states. The Obama administration was portrayed as promoting the demise of the nuclear heterosexual family around the world and in the UN system. These criticisms were, and are consistently deployed to attack the administration’s foreign policy as well as Obama himself.

Yet, for all the excitement the Windsor case (and those it rested on) generated, many sexual rights advocates struggled to believe that this landmark policy victory signified anything more than an assimilationist new entry point to the conservative and limiting institution of marriage (Beyond Same-Sex Marriage, 2006). For instance, Professor Katherine Franke, in her book on the topic, held that marriage, no matter for whom, was still rooted in dated ideas about property and ownership (Franke, 2015). Others, such as the Sylvia Rivera Law project, emphasized the importance of racial and economic justice as a (possibly more) foundational LGBT issue, while the National Center for Lesbian Rights called attention to the importance of access to abortion for lesbian and bisexual women and trans men. (Allen, 2015)] Activists also questioned the resources that went into extensive political organizing and drawn-out legal battles to support a marriage agenda that had too little to do with sexual liberation and freedom.<sup>59</sup>

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<sup>59</sup> Many expressed concern that alongside the right to marry, the deepest political organizing in the last decades focused on non-discrimination in the military. See, for instance, Allen (2015)

## Sexuality education, abstinence and sexuality of young people

Sexuality education is intimately connected to people's decision-making and bodily autonomy, and the experiences of and rights to pleasure, as well as to living a healthy life more generally. It is also deeply connected to a range of human rights issues, including rights to education, information, dignity, security and scientific progress as well as freedom from discrimination and violence. Yet, sexuality education in the US – and US (lack of) support for sexuality education globally – has not been anchored in this human rights analysis, nor in scientific evidence or the clear support from professional communities. Instead, opposition to comprehensive sexuality education has relied on “anti-sex” moralistic positions, including concerns about inclusion of information about contraception, condom use, non-heterosexual sexual relationships, and abortion, among other issues.

At the urging of conservative Members of Congress, the US government continued to pour millions of dollars into abstinence-only sexuality education until well into Obama's second term, despite some efforts to update the policy guidelines and ample evidence about the failure of this policy approach. While “ABC” was no longer required as it was during the Bush Administration, the changes never fully reversed previous conservative policy. And, since a significant part of education policies are made at the state level, there was (and continues to be) wide divergence on adolescent sexuality policies and programming from one state to another.

President Obama did manage to push comprehensive sexuality education programming forward in his first year in office, with the help of the Democratic majority in Congress, through the enactment of the Teen Pregnancy Prevention Initiative (TPPI) and the Personal Responsibility Education Program (PREP). These resulted in creation of about \$185 million in new spending in the field (Melby, 2012).

But despite the Obama Administration's efforts, much of the CSE policy agenda was blocked in Congress by the Republican majority. More than \$1.5 billion in taxpayer dollars was spent funding abstinence education

between 1996 and 2009 (Koebler, 2011) - at odds with evidence, science and logic, and despite repeated efforts to defund such policy strategy. Obama attempted to abolish the two largest federal programs funding abstinence education in the 2012 federal budget, but the programs were revived and inserted by Republican members of Congress into the Affordable Care Act (Koebler, 2011). Since the establishment of PEPFAR, the US has spent \$1.4 billion on “abstinence before marriage” as a strategy for HIV prevention in 14 countries in sub-Saharan Africa, despite expanding evidence that the strategy did not work either for HIV prevention or for pregnancy prevention. Those expenditures were based on a 2003 stipulation from religious conservatives that at least a third of PEPFAR’s prevention budget had to be spent on the “ABC” strategy. According to the most comprehensive, independent study conducted to date at the time of the effort, “the money was pretty much wasted.”<sup>60</sup>

In the spring of 2016, President Obama once again proposed eliminating funding for domestic abstinence education in the 2017 federal budget. At the same time, the Administration proposed increasing funding for comprehensive sex education in schools (Christobel, 2016). While these cuts would have reduced domestic ABC programming, the US continued to fund such programming internationally through PEPFAR. Even after PEPFAR dropped its requirement that a third of prevention funding be used for ABC in 2008 and the amounts of funding continued to decline, such programs still received US grants.<sup>61</sup>

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60 One could argue that this funding was not only wasted, but also damaging. Many have noted the human rights implications of denying potentially life-saving information about health and sexuality, and the rights implications of abstinence policies. See also, Rothschild (2007).

61 Based on staff appointments and proposed budget funding for abstinence, it is clear that the Trump administration intentions are to bring these policies back to center stage. See, in particular, Achenbach & et.al. (2017) and Crary (2017)



## US sex work policy

Sex-workers remain among the most marginalized communities both in the US and globally. Through the Obama years, sex work remained illegal in all US states except Nevada, and was generally conflated with trafficking in the minds of US lawmakers and of society at large. All the same, sex worker mobilization advanced significantly during this period, resulting in some expansion in the availability of funding to support advocacy in defense of their rights and their health. These realities contributed to the deepening analysis that sex work was not by definition exploitative, that it should be decriminalized, and that those who participate ought to have labor rights and protections afforded to other workers.

Still, sex-workers remained targets of brutal violence and discrimination. Crimes against people engaged in sex work went uninvestigated and perpetrators were too often not held accountable. In addition, sex workers faced persistent persecution by the police and other state actors. One of the most contradictory and damaging policies that perpetuated this persecution was authorities' use of condoms as "evidence" of prostitution: merely having condoms in one's possession implied *intent* to sell sexual services, thereby putting people at risk of arrest for simply carrying safer sex materials.

A 2011-2012 Human Rights Watch (HRW) study in four US cities documented the extreme vulnerability of sex workers, along with trans women, particularly around access to services and justice (HRW, 2012). The research highlighted the glaring policy contradiction between public health and policing goals. Following the evidence about HIV risk, public health departments spent millions on HIV prevention - promoting and distributing condoms for HIV prevention, and providing PrEP – to people considered to be most at risk of contracting HIV in the US: in addition to sex workers, this included trans people, and gay and bisexual men, especially those who

are young.<sup>62</sup> And yet members of these “key populations” – particularly sex-workers - feared getting arrested for carrying condoms. This concern resulted in an increased risk of unprotected sex (HRW, 2012).<sup>63</sup>

In 2013, the US Presidential Advisory Council on HIV/AIDS (PACHA) confirmed that using condom possession as evidence of criminal intent undermined the effectiveness of HIV programming. The Council called upon Departments of Justice and Health and Human Services to “amend criminal laws and health policies to ensure consistency with medical and scientific knowledge and human rights.” (Presidential Advisory Council on HIV/AIDS, 2013). This had various immediate results: District attorneys in Nassau County, NY, and San Francisco, CA stopped using condoms as evidence of prostitution, and police in Washington DC, – where this became a major cross-movement advocacy issue – started to provide educational materials to key populations, clarifying that the Metropolitan Police Department “cannot interfere with possession of condoms and providing information on how to file a complaint against an officer for harassing, stopping, or searching a person on the basis of carrying condoms” (HRW, 2012).

Another issue that increased violence and discrimination against sex workers was that in states with sex offender registries (official lists of the names of people who have been convicted of various sex-related crimes and misdemeanors), sex work was often included as one of the crimes requiring registration. This had a deep and profound impact on those convicted of prostitution. For instance, when sex workers living with HIV were arrested in Tennessee, they faced accelerated prostitution charges, raising the usual misdemeanor solicitation charge to felony status, which carries with it compulsory sex offender registration. People who had been convicted of engaging in sex work were thus not only considered to be felons - they were also denied access to many important public programs, which left them without access to substance abuse treatment, domestic violence shelter care, or subsidized housing. Felony charges and sex offender convictions also drastically limit

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62 Women of color in the South of the US were also at higher risk of contracting HIV, but few public health departments paid sufficient attention to prevention, treatment, care and support for and with them.

63 See also, Wurth & et.al. (2013).

a person's eligibility for employment, fueling a cycle of risk and limited options for securing an income (Fried & Kelly-Green, 2011).

At the global level, the US wielded a heavy influence on policies related to sex work by promoting anti-trafficking policies. Consider as an example the “Trafficking in Persons” reports, in which countries are graded by the US on their efforts. These too often erroneously linked trafficking and prostitution,<sup>64</sup> and the impact of this conflation continues to damage sex workers' rights and health: as noted above, the criminalization of sex work is often at odds with other laws and policies – particularly in relation to health and HIV prevention.

Through its focus on trafficking, the US exported its laws that punish sex workers and their clients through restrictions and conditionalities associated with public health and development funding, and by attaching funding to its ratings of countries' anti-trafficking policies noted above (Richards, 2015). Still, US policies and their impact remained as incoherent and contradictory as in other areas of sexuality policy. So, on the one hand, US policy condemned sex work and, in the context of trafficking policy, conflated trafficking for forced sex with all sex work. On the other, despite its penchant for criminalization of sex work, USAID has been funding sex worker HIV programming since the early 1990s (Wilson, 2015).

The impact of the US's punitive approach has been felt around the world. As the objects of anti-trafficking efforts, sex workers often find themselves “rescued” against their will by NGOs that receive support from the US government or by national police whose governments receive US anti-trafficking support. Since 2003, the US has also required all organizations who receive anti-trafficking funding through the Trafficking Victims Protection Act (TPVA) and HIV funding through PEPFAR to sign an “anti-prostitution pledge”, an organization-wide policy condemning prostitution and trafficking. This was condemned by many in the field of public health and sexual rights as counter-productive to the HIV prevention, treatment, care and support goals of PEPFAR.

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64 Anti-trafficking laws are addressed here only to the extent that they have an impact on sex workers and sexuality policy.

Thus, while public health authorities sought to encourage key populations (including sex workers) to seek HIV services, the anti-prostitution pledge dissuaded sex workers from seeking those very same services. Efforts to remove this pledge from PEPFAR were defeated by Congress in 2008, but extensive advocacy finally weakened the pledge through a revised 2010 Health and Human Services guidance note on implementation. The “anti-prostitution” principle was reaffirmed, but a formal written “pledge” was no longer required as a precondition for funding (Wilson D. , 2015).

Many, but not all, of the limiting provisions included in the guidance were struck down in January 2015 (Krueger, 2015). US organizations and their affiliates were no longer required to sign an anti-prostitution pledge, but non-US organizations received PEPFAR funding were still required to do so (CHANGE, 2016). Still, the fact that it remained a policy principle had ongoing impact, along with the fact that the US continued to criminalize sex work and supported other countries in doing so. It is important to stress that the anti-prostitution requirement covered all of an organization’s funding, thereby restricting even its use of non-US funds, much like the Helms Amendment and its anti-abortion stipulations. This “on-the-books, off-the-books” process left many non-US organizations unsure about the status of the anti-prostitution pledge. And such uncertainty continued to have a chilling effect on public inclusion of sex workers in USAID funded programs.

Despite all these caveats, there were meaningful advances in policies promoting the rights of sex workers globally during the years under survey. More funding was directed toward sex workers’ self-organizing around HIV outside of the US. Sex worker self-organizing was also validated as a critical part of countries’ HIV strategies through work by the World Health Organization (WHO, n.d.). Several UN agencies and Amnesty International explicitly called for the decriminalization of sex work.<sup>65</sup> And sex worker collective organizing grew throughout the world.

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<sup>65</sup> See, for instance, UNDP (2012).

## Violence and sexual assault

In the eight years of the Obama presidency, as in many previous periods, the relationship of sexuality to violence continued to receive significant attention in the media as well as in calls for legislative action.<sup>66</sup> When the issue of sexual violence received public attention, it was often sensationalized, trivialized, or both. This heightened the perception of danger associated with sex and sexuality.<sup>67</sup>

The parade of well-known men accused of sexual harassment, sexual assault and/or rape was prominent in public discourse. Two high profile examples are worthy of mention: the entertainer Bill Cosby was both vilified and protected in mainstream media after approximately 60 women alleged sexual misconduct over three decades.<sup>68</sup> And in 2016, Dennis Hastert, the former Republican Speaker of the US House of Representatives and a staunch conservative legislator with a long history of supporting restrictive sexuality-related policies, was found guilty of violating federal banking regulations and lying to the FBI about using illegally - withdrawn funds to conceal the fact that he had molested a male student several decades earlier.<sup>69</sup>

The question of rape on college campuses made news headlines in 2015.<sup>70</sup> Several cases of alleged rape received media attention, elevating the issue to a national policy debate beyond the actions at individual academic institutions. Among other issues, the proposal of a requirement of “affirmative consent” promoted

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66 Starting in September 2017, the issue of sexual assault and sexual harassment exploded in the news, as several well-known men were accused of habitual sexual assault and coercion, with claims about others quickly following and many losing their jobs. See Stolberg (2017)

67 Sex panics have a long and sordid history in the US and globally. For a more detailed discussion about sex panics in the US, see Lancaster (2011) and Herdt (2009). See, especially, chapter 3, Cathy J. Cohen, “Black Sexuality, Indigenous Moral Panics, and Respectability: From Bill Cosby to the Down Low Cathy J. Cohen” and chapter 7, Janice Irvine, “Transient Feelings: Sex Panics and the Politics of Emotions”. See also Rubin (1992), Weeks (1989), among others.

68 In June 2017, Cosby’s trial ended in a mistrial with a hung jury. A new trial is taking place in 2018.

69 In the summer and fall of 2017, the issue of sexual harassment and sexual assault by high profile men escalated to new levels, to the point where a number of powerful men (e.g. Harvey Weinstein, Senator Al Franken, and Congress member Trent Franks, among others) have had to resign.

70 Betsy de Vos, Secretary of Education under Trump, has promised to rewrite rules on campus assault that will provide more protection to the accused. See Saul & Goldstein (2017).

vigorous conversation and consternation.<sup>71</sup> New affirmative consent laws and policies were put in place. For instance, New York State legislation passed in 2015 says that “[a]ffirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity” (Keenan, 2015).

At the national policy level, the federal Violence Against Women Act (VAWA) was reauthorized in 2013, providing important protections for victims of violence (including women, men and trans people). It strengthened provisions for LGBT people and immigrants, increased support for training police and prosecutors, and continued to support community responses. It also relied heavily on increased criminalization by calling for heavier penalties, resulting in more prosecutions and convictions and longer sentences of offenders. (Obama White House Archives, n.d.) These increased penalties had significant racial implications, as communities of color were most often negatively affected by these interventions.

Although VAWA was first passed into law in 1994, the 2013 reauthorization was met with pushback from some feminist activists and scholars who contested its “carceral” turn - its increasing embrace of criminal law as the main solution to socio-economic ills that included violence against women.<sup>72</sup> Some argued that while imprisoning perpetrators might remove the immediate threat of intimate partner violence, it did not necessarily advance the economic security of violence survivors.<sup>73</sup> The over-use of incarceration - the overwhelming tendency to turn to criminal punishment over any alternative - in the context of sexual violence also arose around the incarceration of juveniles who were found guilty of sexual assault. Many states in the US put juvenile “sex offenders” on sex

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71 The call for “affirmative consent” regulations on college campuses stems, in part, from the accumulation of evidence about the high levels of sexual assault faced by women college students from their male counterparts. For instance, a Washington Post/Kaiser Family Fund poll released in June 2015, found that 25% of young women and 7% of young men reported that they experience unwanted sexual incidents while in college. Twenty percent of the young women said they had been sexually assaulted, while others reported that they had “endured attempted attacks or suspect that someone violated them while they were unable to consent. Some say they were coerced into sex through verbal threats or promises.” Nick Anderson (2015).

72 The “carceral turn” refers to the tendency that has increased over the past few decades to look to the criminal law as the means of setting social policy. See, for instance, Whittier (2016) and Engle (2015).

73 See Kim (2014) and Richie (2015).

offender registries, with significant life-long consequences.<sup>74</sup> Over-reliance on custodial solutions remains a serious challenge overall, given racial disparities in terms of who gets imprisoned and the duration of prison sentences.

## The US and its position in world affairs

Under the Obama presidency, the US role in international spaces, and in the UN system in particular, was contradictory. The US remained a commanding superpower, able to protect its interests through bully-tactics. But as a long-standing pattern, pre-dating Obama, the US continued to use “human rights” to assert itself geo-politically as the defender of a certain set of liberal values, particularly against the increasing impact of the Russian Orthodox Church, the Organization of Islamic Cooperation<sup>75</sup> and various other conservative global forces. At the same time, State Department positions were much more feminist and progressive, with bolder articulations of rights of people in marginalized groups, and, in particular, women and LGBT people.

At moments, the administration and its representatives said and did what sexual rights and reproductive rights activists had demanded for years. Sometimes there was nuance in policy and in discussions where there had not been previously. Economic, military and ideological interests remained at the core of US positioning, but discourse and negotiating positions shifted depending on the venue, how high the stakes were seen to be, and as always, a calculation of the risks involved, including the presumed loss or gain of a US voting electorate. The crux of the issue was that the US was ideologically inconsistent; it took positions based on what it could gain or protect from each venue or negotiating partner.

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74 For more on the detention of juveniles charged with sex offenses, see: HRW (2013), Balko (2014), Beitsch (2015), among others.

75 This is a loose bloc of states that functions at the UN. It often expresses anti-SOGI sentiment in negotiations, as one example of anti-human rights positioning.



Take, for instance, the varying positions the US took at the UN: Sometimes, the US was bold, sometimes recalcitrant, sometimes acting visibly and sometimes well behind the scenes. One notable example arose in negotiations about the 2030 Agenda for Sustainable Development. For the first time, the US stated – through its deputy ambassador to the U.N, Richard Erdman – that it would use the terminology of “sexual rights” as a way to express “support for the rights and dignity of all individuals regardless of their sex, sexual orientation, or gender identity (Associated Press, 2015). Alluding to the Beijing Platform for Action, Erdman said that the term expressed people’s “right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence”; that it characterized the human rights of women; and that it “stressed equality between men and women in matters of sexual relations and sexuality (UN, 1995).”

At the same time, however, Erdman clarified that the term would be used “to express rights *‘that are not legally binding,’* and that sexual rights *‘are not enshrined in international human rights law’*” (emphasis added). (Gass, 2015). In other words, the Ambassador was suggesting that term “sexual rights” was a convenient description in relation to women’s sexuality and reproduction, but should not be taken to mean that sexual rights are real rights. This argument, and the deployment of a false hierarchy of rights, has been used by those who oppose rights related to sexuality and the actual term “sexual rights” for decades.

Another example of a contradiction in policies and positioning was in the loosening of restrictions on funding for health services for sex workers in the context of foreign assistance. As an overall principle, the US government still supported a position calling for the criminalization of sex work. Yet, HIV services for sex workers was a topic encompassed in the PEPFAR Key Populations Fund (see above).<sup>76</sup> One policy arena conflicted with others.

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<sup>76</sup> At the time of writing, it was not yet clear what the impact on PEPFAR will be with the new Republican administration, other than to note that the head of PEPFAR, Ambassador Deborah Brix, has retained her position.

This was true, as well, at the UN spaces that focus on women's rights. The US took prominent positions in support of women's rights in UN fora, with high-level members of the US government (Secretary of State Hillary Clinton and Melanne Verweir, Ambassador at Large on Global Women's Issues, sometimes taking bold and feminist negotiating positions, for instance). Yet, it remains one of the only countries in the world that has not signed and ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The administration's stances were sometimes ideological and sometimes strategic, with an occasional "sitting on hands" and stepping aside to allow space for leadership of Southern states on particular issues, and with an ongoing nod to the undeniable power of the US fundamentalist right wing, whether in NGOs or elected office. But at all times, those stances were expedient and taken carefully.

The "moving target" nature of emphasis and priorities is clear, also, in relation to SOGI as compared with other sexual rights issues. The Obama administration gave clear support to rights related to sexual orientation and gender identity with an emphasis on anti-discrimination and anti-violence at the UN Human Rights Council in Geneva. Yet, in the same forum, the US positions were much more tepid in relation to the right to safe abortion or comprehensive sexuality education, or rights to access to sexual health services.

Another example of the complexity and contradiction in the US's positions at the UN took place in the Security Council in 2015, when the US and Chilean governments spearheaded that Council's first session ever on sexual orientation. This convening focused on ISIL/Daesh-driven killings of and violence against men accused of committing homosexual acts in Syria and Iraq. Some activists applauded this effort and were pleased that the Security Council was willing to take on issues that were explicitly related to SOGI. Others saw dangers with future risks to gay men in particular in those countries because of the high profile of the meeting, and still others asked why this meeting would be convened at that precise moment, and what foreign policy interests it might have served alongside exposure of atrocities.<sup>77</sup>

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<sup>77</sup> See, for instance, Al Jazeera (2015), Long (2015), Hamzic (2017).

Several other questions remained pertinent and unanswered: what was particular about homosexuality and gender expression at that time, in the imagination of the US government, that allowed overt support for a Security Council gathering? What undercurrent of an anti-terrorism narrative buttressed this very public programming? And why was it that other forms of gender-based violence, and sexual violence against women in particular, were not cause for heightened engagement of the US state?

Consider, for instance, the fact that ISIL/Daesh's alleged imprisonment and sexual abuse of women did not receive a similar outcry within the US government, and there was little effort to convene a full Security Council meeting on this topic.<sup>78</sup> Clearly, some gender and sexuality issues rose to the fore while others fell into the background. Why this happens in any particular case depends on the priorities and obscurities of geopolitics.

While it is not possible to answer these questions in full here, or maybe at all, it is clear that LGBT issues had much wider support within the Obama administration, and in the voting public as well, than did several other sexuality issues, such as forced slavery. Generally, the Obama Administration, as with previous ones, chose to publicly advance issues that it believed it could easily "win" in specific venues without generating a large amount of right-wing push back. The Administration could boldly assert that SOGI rights concerns were legitimate, but would not assert that same blanket legitimacy for the broader arena of "sexual rights" itself, or for various other specific issues, especially those that fully affirmed women's sexuality, and reproductive and bodily autonomy.

These kinds of rifts and tensions could be seen throughout the eight years of the Obama Administration, sometimes because of different points of view within the Administration, and sometimes because of the reality of a divided and partisan government with no clear majority in its Congress.

Between the Bush and Obama administrations, there was perhaps no ideological shift in foreign policy in the

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78 See UN News Centre (2015) and Alter (2015).

arenas of sexuality and gender greater than that around sexual orientation and gender identity. In December 2011, at the United Nations in Geneva, then Secretary of State Hillary Clinton delivered an International Human Rights Day address that was the highest profile US articulation of LGBT human rights concerns – and the highest profile commitment of the US government to address them – that had ever been delivered on an international governmental stage.

In a speech that asserted that “gay rights are human rights”, Clinton announced the new US presidential directive (also discussed above) and placed SOGI-related human rights squarely in the universe of foreign policy – and foreign aid. Funding streams were opened to support non-governmental organizations outside the US in their anti-violence and anti-discrimination efforts, a new US Envoy for the Rights of LGBTI Persons was named, embassy staff were “sensitized” and trained, many press releases were issued, and various other “pro-LGBT” initiatives were undertaken (The White House, 2015).

Such bold LGBT and SOGI policy shifts had significant ripple effects domestically and globally. The US stood accused of a form of ideological neo-colonialism - using its economic and geopolitical power to impose a value-system that was (supposedly) anathema to many in the Global South. And while that assertion of US global dominance often holds true, this critical contradiction became visible: the US administration was also surfacing real abuses and often brutal violence and discrimination - much of which remains secondary or generally invisible in most states’ foreign policy.

The “fallout” from this tension was evident during Obama’s first state visit to Senegal in 2013. In this case, Obama’s public support of the just-decided US same sex marriage case during a press conference led liberal President Macky Sall to push back at Obama’s call for African states to eliminate discrimination against gay people. In essence, Sall claimed the US had no right to tell Senegal what to do, and to further proclaim that Senegal was not ready to decriminalize homosexuality (Gevisser, n.d.). He also made a human rights jab at the US about its retention of the death penalty, which Senegal had already abolished (Nossiter, 2013).

One other infamous example comes to mind here: In July 2015, Obama visited his father's homeland – Kenya – as part of a US initiative to strengthen ties and build trade and investment opportunities in Africa. As the trip approached, media on both sides of the Atlantic questioned whether Obama would raise LGBT issues and how his Kenyan counterpart Uhuru Kenyatta would respond.<sup>79</sup> State representatives on both sides of this equation used human rights concerns – including killings and torture – to their benefit: Obama, indeed, worked in references to LGBT anti-violence and non-discrimination, and Kenyatta positioned some of these concerns as a “non-issue” best left for national governments to address. Both were designed to meet – and met – the assumed interests of domestic constituencies and various regional or economic alliances’ interests.

Even among rights activists who welcomed a greater openness to sexual orientation and gender identity in foreign policy – and who welcomed the US’s stand against violence and brutality against LGBT people – there was concern about collateral damage resulting from the US sometimes aggressively advocating this new SOGI-friendly policy. And, notably, there were some African activists who welcomed the naming of violations enacted because of homophobia and transphobia, who saw a new opening where there had been few and an articulation of important human rights concerns. But overall, this posed a dilemma: Silence about SOGI human rights issues ought not to have been the answer, yet any articulation of these issues by the US government was likely to have been seen by (and positioned by) some as an affront.

Both the naming and the responses were strategic and political. They rested on legitimate human rights concerns, and the decades-long calls from activists in the South and North to take these abuses seriously. They also rested on the legacies of imperialism and racism, and the need for states’ foreign policy to “read” both regional priorities and a domestic voting audience. In truth, this tension is a complex one that highlights an often-tenuous relationship between foreign policy and commitments to anti-discrimination.

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79 See, for instance, Onishi (2015), Essa (2015), Misiko (2015). Their actual exchange is available in a Youtube video.

This suggests a series of urgent questions for future study: How can governments that are and are seen to be neo-imperial integrate “new” and valid social movement concerns into foreign policy without these efforts being coercive? When they aren’t coercive, how can they be kept from being disingenuously positioned that way by conservative forces? How can governments that deny the demands of social movements be called to task for using the notion of “sovereignty” as a cloak to justify suppression of human rights? And last, how can the realities of people’s lives be addressed in foreign policy arenas respectfully and not in ways that cause further risk or harm? Current realities point to the need for nuanced interpretations, as well: there may not be clear right or wrong answers to these questions. Although they are beyond the scope of this analysis, further explorations at both domestic and global levels are necessary – from both academic and social movement perspectives.

## *Section 4*

# The Mourning After - the Trump scenario and somber prospects

## Reflecting on the Obama years

Throughout this analysis, we have highlighted how US sexual politics and policies in the period between 2009 and 2016 revealed an uneven and mixed record. The Obama era was not uniformly positive from a sexual rights perspective – both because of limitations within the Administration itself as well as in the Republican Congressional majority that thwarted many progressive efforts. Yet, even if not comprehensive, the sexuality-related achievements in that time were real and made significantly positive differences in many people's lives.

Given that the Obama era followed the conservative Bush period, and now is followed by a return to moralistic and equally conservative discourse and policy, we cannot underestimate the need to defend the Obama-era advances. Some of the clearest gains were in rights related to sexual orientation and gender identity, the elimination of some abortion-related prohibitions, support for comprehensive sexuality education, relaxation of the prohibition on international funding for sex work in the context of HIV, reduction of support for abstinence in HIV prevention and provision of health care insurance to many who did not previously have it, including for contraception. Overall, these positive developments could be found both in overt pronouncements and under-the-radar policy changes. Regardless of how they were made, it is imperative to defend the “wins” that took years, and sometimes decades, to achieve and then implement.

While we have focused in this piece on sexuality policy and discourse during the Obama years, our understanding of this period is not untouched by the current crises within US politics. While analyzing these is not the main purpose of this article, we feel we cannot address the period of 2009-2016 without a view to the current landscape and an eye to the future. Our purpose in this conclusion isn't to provide an exhaustive overview of

what has transpired in the “new regime”, but to highlight some of the deepest human rights and sexual rights concerns we have at this time.

As Donald Trump took office in 2017, people took to the streets in protest at levels not seen in the US for decades. This level of activism is an important expression of defiance and hope in a troubling political, social and cultural moment. The election of Trump as Barack Obama’s successor as US President featured sexuality in ways that were both expected (anti-abortion and anti-LGBT sentiment, for instance) and also shocking (video emerging with Trump’s claiming he grabs women “by the pussy” and reveling in his belief that these women can’t do anything about it because he is so powerful). When we get past the prurient fascination with the bad political pornography during and since the US election period (i.e. links between Trump, hotel rooms in Russia, sex workers and “golden showers”, as one example<sup>80</sup>), we are left with daunting hurdles to overcome – and a sense of the progress actually made, despite all the contradictions, in the Obama years.

## The key challenges facing sexuality policy and politics in the Trump era

To some, the Trump edicts and actions related to sexuality may appear as a capricious approach. From our view, it illustrates the strong influence, or even obedience, to extreme religious conservative views – such as those often articulated by Vice President Mike Pence.<sup>81</sup> We have commented in previous sections on early actions by Trump to reinstate and expand the Global Gag Rule and the administration efforts to support discrimination in the guise of “religious freedom.”

One of the most telling examples of the current status of debate on sexuality policy was the December 2017 Administration directive to the US Centers for Disease Control (CDC) to ban its use of seven words in its

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<sup>80</sup> See Ledbetter (2017) for a creative response to the leaked dossier on this episode.

<sup>81</sup> See for instance, the recent analysis by Mayer (2017).



2019 budget documents: “vulnerable,” “diversity,” “entitlement,” “transgender,” “fetus,” “evidence-based,” and “science-based” (Ravitz, 2017). The choice of words aptly reveals the 180-degree nature of the Trump administration’s attack on progressive sexuality discourse and policy and its complete acquiescence to religious fundamentalist politics: in striking the words “transgender” and “fetus”, not only is an actual group of people erased from public health discourse, but so is the term that simply describes an embryo and its pre-natal noun form. Equally daunting is the assault on the very idea of fact-based knowledge – “evidence-based” and “science-based” approaches have become threats rather than givens.

At the time of writing, the Department of Health and Human Services (the body in the US Administration that “oversees” the CDC) has denied that there has been a ban and claims that the guidance was misinterpreted. However, other terms have also been forbidden, which implies that censorship and word games are clear tactics within the Trump playbook. The same guidance document calls on the agency to replace any reference to the “Affordable Care Act” or “ACA” with the term “Obamacare” (Eilperin & Sun, 2017). And some documents within the State Department now refer to sexuality education as “sexual risk avoidance” (Eilperin & Sun, 2017).

## Attacks on multilateralism

Trump’s election was fueled by – and has in turn buttressed – a resurgence of conservative populist anti-sexuality sentiment. In his first year in office, we have seen the entrenchment of religious freedom exemptions for businesses and individuals which will legally allow discrimination, and an overall disregard for the anti-discrimination protections that have been put in place after decades of activism and progressive policy-making. We have also seen efforts to transfer federal anti-discrimination “power” to individual states so local lawmakers can haphazardly protect or impinge on related rights. Shifting power to states is an issue that has been high on the list of Republican party priorities for years.

Diplomacy and commitment to multilateralism are also in the cross-fire, as the Trump Administration threatens

to limit participation in and voluntary financial contributions to the United Nations system (including and with some emphasis on the agencies that focus on HIV/AIDS and sexual and reproductive rights and health). For instance, in April 2017, Trump announced that the US would no longer fund the UN Population Fund (UNFPA) in keeping with the Global Gag Rule. The Administration has withdrawn from the UN Educational, Scientific and Cultural Organization (UNESCO) and continues to make threats about its participation in the UN Human Rights Council. In December 2017, the Administration pulled out of a UN conference on migration, and has threatened to pull out of yet additional treaties and agreements, such as the climate-focused Paris Agreement.<sup>82</sup>

## Allegiance to religious conservatism

There is now a direct right wing ideological presence within highest levels of government, including in the inner circles of advisors. Vice President Mike Pence is known for his anti-gay history, including his support for conversion therapy and for legislation that permits people to justify discrimination based on sexual orientation on religious grounds, as noted above. Stephen Bannon, Trump's key advisor until he was fired in August 2017, was the head of white nationalist "alt-right" Breitbart News, which, among other incendiary efforts, allegedly tried to trademark the term "*big gay hate machine*" to refer to the LGBT movement.<sup>83</sup> While some argue that Trump himself may not hold fundamentalist and extremist views on social issues, many in his most trusted spheres do. What is of most concern is that Trump and his team feel a sense of loyalty and obligation to right-wing voters for having helped elect them. Early cabinet appointments revealed this patronage.<sup>84</sup>

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82 Where the Administration wants to "play both sides of the fence," it does so in contradictory ways. Consider the US articulating its affirmation of reproductive health care while simultaneously voicing its opposition to abortion in its "Explanation of Position" at the 2017 UN Commission on the Status of Women. US Mission to the UN, 24 March 2017, "Explanation of Position on Agreed Conclusions at the 2017 UN Commission on the Status of Women." Available at <https://usun.state.gov/remarks/7724>. See Lynch (2017).

83 Bannon has remained an unaccountable advisor to Trump and is often cited as the backbone of the white supremacist, xenophobic "chaos strategy" deployed by the White House.

84 For instance, Tom Price, the initial Trump appointee as head of Health and Human Services, is avowedly anti-abortion, anti-gun control, and has promoted anti-gay and anti-immigrant positions throughout his career.

## Continued struggle over abortion

Anti-abortion advocates helped secure this Republican victory, including through attacks on (and threats to defund) Planned Parenthood, which receives federal grants for provision of women's health services, and which remains a target. As discussed above, immediately after Trump's inauguration, the Administration reinstated the Global Gag Rule but with broader, sweeping scope to address all non-governmental groups receiving US federal funds for "global health assistance", rather than only groups focusing on international family planning. This marked both an attack on women's lives and a clampdown on the autonomous decision-making of non-governmental organizations.

## The fate of the Supreme Court

The entrenchment of right-wing ideology has also advanced to the Supreme Court: the administration's first Supreme Court appointee, Neil Gorsuch, has been a bold proponent of the religious exemption legal strategy, which, as described above, allows arbitrary denial of services and denial of health insurance coverage for contraception. The Trump team has put forward a "religious liberty" Executive Order, which, if its provisions were to be adopted, would also open doors to random discrimination, including against LGBTI and gender non-conforming people. The Supreme Court is already deliberating a case based on denial of services – in this instance, a business's refusal to sell a wedding cake to a gay couple. It is likely that in the future, the court system will be clogged with cases pitting anti-discrimination protections against "religious freedom" and conscience clauses. It is also likely that as these play out, acts of discrimination and violence will proliferate.

## Contradictions and gender-based violence

At the same time, other mechanisms for protection are being dismantled. Trump's transition team suggested significant cuts to the budget of the Office on Violence Against Women, which sits in the US Department of Justice. It is hard not to recall with irony the fact that during the campaign, Trump was accused of sexually predatory and likely criminal behavior by more than ten women, including the rumored rape of a 13-year-old girl. Still, Trump's administration was willing to use "gender-based violence" as a way of halting immigration and "fighting" terrorism: his second "travel ban" Executive Order in March 2017 imposed restrictions on people from six majority Muslim states and included language seeking collection of data on "gender-based violence against women" perpetrated by "foreign nationals". In other words, while on one hand, the new administration sought to defund the programs that could address gender-based violence, the other sought to collect information about that violence in order to promote anti-Muslim counter-terrorism efforts.<sup>85</sup>

### January, 2017 Executive Order protecting the nation from foreign terrorist entry into the US. Otherwise known as Pinkwashing and the first "travel ban"<sup>86</sup>

The first "travel ban" Executive Order (EO), issued in January of 2017, included language that could be interpreted as attempting to defend a mystery code of "national values." To do this, it invoked a commitment to women's rights and rights related to sexual orientation. In truth, these commitments in the EO were deployed in the service of a xenophobic, discriminatory and anti-Muslim counter-terrorism strategy: *In order to protect*

85 The implementation of this Executive Order had been impeded as a number of courts did not find its provisions constitutional, but some of its provisions were deemed permissible by the Supreme Court in June 2017. See the EO at <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>, especially Section 11 (iii).

86 Pinkwashing is a term that implies state promotion of "pro-LGBT" ideology or policy in ways that intentionally obscure other negative or anti-human rights positions. See <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>, especially Section 1.

*Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including “honor” killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.*

## The repealing of the Affordable Care Act and other public health rollbacks

Intensive efforts were launched early in Trump’s tenure to repeal the Affordable Health Care Act (“Obamacare”), which provided 20 million formerly uninsured people with health insurance, including for HIV-related coverage. In a fairly stunning and unusual blow to Trump, who had promised repeal of the ACA in his campaigning, the Republican Congress failed to generate enough votes to support their draconian alternatives. The sexual rights implications are both subtle and overt. Estimates for the first health care “replacement” programs suggested by the US House and Senate Republicans indicated that these changes would result in a loss of coverage for between 16 and 24 million people, with threats specifically for poor, older and younger constituencies. Also at risk were those with so-called “pre-existing conditions”, an ill-defined concept that could include being pregnant or having survived rape.<sup>87</sup> The contraception provision remained a lightning rod in these Republican efforts. While this effort failed by a razor thin voting majority, Trump and his team, including still-frustrated Republican members of Congress, have continued to look for ways to undermine the ACA’s efficacy, including through barely-negotiated provisions in the major tax reform overhaul.

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<sup>87</sup> Resistance to the draft Trump plan and Republican plans to replace the ACA was vociferous. There has been outrage about their provisions that would allow insurers to charge higher rates for people with “health conditions” attained at a particular time in relation to the insurance application process. <http://www.businessinsider.com/trumpcare-ahca-pregnancy-rape-domestic-violence-preexisting-conditions-2017-5>

In other noteworthy rollback efforts, the Administration appears to have closed or at least disabled the Office for National AIDS Policy, as its website was shut down soon after the inauguration. In June of 2017, six members of the Presidential Advisory Council on HIV/AIDS resigned in frustration. The remaining members of the Council were fired in late December of 2017.<sup>88</sup>

## Trans Rights

The Administration has also revoked anti-discrimination protections for transgender students to use the bathroom of their choice in public schools. The Supreme Court was to hear a related case in 2017 and decided not to, based on the February 2017 federal decision that revoked Obama era protections. Instead, the Court sent the case back to the Appeals Court level. Meanwhile, state level efforts now under way seek to regulate bathroom use and the Trump administration has made anti-trans appointments to key posts: in one particularly cynical example, Bethany Kozma, a vocal anti-trans activist, was appointed to be Trump's senior advisor to the Office of Gender Equality and Women's Empowerment at USAID (Feder, 2017). In addition, amidst chaotic congressional discussions about repealing the Affordable Care Act, in July of 2017 Trump announced that transgender people would no longer be allowed to serve in the US military.<sup>89</sup> Early analysis points to cynical realities: Trump and his closest advisors likely made his announcement to deflect attention from the failing Republican health care effort, and also to force this as a new "culture war" issue to be fought over by Democrats and Republicans in the 2018 "mid-cycle" elections.

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88 See Nedelman (2017) and Guarino (2017).

89 See footnote 51 for more detail about Trump's tweeted announcement. <https://mobile.nytimes.com/2017/07/26/us/politics/trump-transgender-military.html>.

## Sexual orientation policy

Trump and his team tacked to the right on sexual orientation rights issues, which is also perhaps a strategy connected to the 2018 mid-term elections. Hours after the transgender military decision was issued in July 2017, the US Department of Justice made it clear that it did not intend to interpret federal civil rights law to protect people from employment discrimination on the basis of their sexual orientation. It remains to be seen how and whether this connects to the religious liberties strategy discussed above.<sup>90</sup>

On the international stage, the close links between Trump and his key personnel and Vladimir Putin and the Russian state suggest that the US will do little to counter the Russian government and the Russian Orthodox Church in their anti-sexual and reproductive rights and human rights agendas, which are particularly evident in UN spaces. As information surfaces that links Russia and Putin to influencing the 2016 US election and supporting the Trump candidacy, the connections between US and Russian officials, business interests (including those of the oil industry) and Russian efforts in Eastern Europe become increasingly sinister, and less likely to be placed at risk.

## Rallying points for future action

As we write, severe damage already has been done in the realm of sexuality policy, as well as more broadly in an encroachment on democracy and systems of governance. There may be little quick recourse as long as Congress remains under Republican control and the Trump cabinet continues to undo decades of slow, progressive work in the area of sexuality policy, as well as in the areas of environmental, tax, and health care policy, among others. One beacon of light remains, though: in November of 2018 a number of state elections

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90 The Department of Justice, under the leadership of Jeffrey Sessions, who for many years has been dogged by allegations about his racism, asserted in an amicus brief submitted for a New York court case that the 1964 Civil Rights Act does not cover sexual orientation. See Feuer (2017).

will take place which, with Democratic victories, could shift the federal legislative balance of power. This, in turn, could recreate a system of “checks and balances” that would slow – or even thwart – the Trump agenda. Sexuality issues are likely to remain on the public political agenda since they keep serving as useful electoral tools. Some of these will continue to be deployed in cynical conservative efforts. But sexual rights issues will also remain high in activist agendas both to combat these efforts, but also because there are legitimate and emerging opportunities for advancement.

Sexual rights activists and policy-makers should anticipate:

- Preparing for major set-backs in abortion rights and reproductive justice stemming from a more conservative US Supreme Court, a Republican-controlled Congress and Senate, and Republican control of many states' governorships.
- Grappling with massive reductions in domestic and international funding for family planning, sexual and reproductive health services and health services more generally with an expanded Global Gag Rule.
- Ensuring “religious exemptions” do not infringe on the rights of people to be free from discrimination in seeking contraception or abortions, and that these religious loopholes are not used against people because of their sexual orientation, gender identity or gender expression.
- Addressing the right of intersex infants, children and adults to their bodily integrity (e.g. not to be subject to infant or child genital surgery).
- Resisting efforts to imbue embryos and fetuses with legal personhood.
- Continuing the legal battle against “conversion therapy”, despite the recent trend of banning the practice.
- Focusing on the importance of disentangling “trafficking” and sex work as policy issues.
- Ensuring federal public health responses to threats such as the Zika virus do not undermine claims to abortion (including late term procedures), and do not promote simplistic responses to women, such as “simply delay pregnancy.”



There is also the urgent need to counter the continued engagement of the US Christian right and Catholic institutions in promoting heteronormativity and discrimination in the US and globally, including in UN and regional governmental spaces. Our efforts will be fortified if we can consistently work with a broad intersectional analysis that blends the domestic and the global, and can develop deeper understandings of the implications of global attacks on structures of national, regional and global governance and accountability. We also need to sustain a laser-like focus on the connections between Christian white supremacist nationalism, concentrations of power within government and “anti-sex” ideologies.

While the period between 2009 and 2016 saw concrete advances in the policies and discourse surrounding sexuality, some hopes never materialized into concrete change, bolder successes or faster movement. Those disappointments were and are real. Next steps in some areas will be to regain what was lost from the Obama era, to solidify what remained but might be under threat now, and to keep marching toward new liberatory ideas about sexuality and gender, toward more effective implementation of good policy, and toward a vision of real social justice. Recent months in this dawn of a post-Obama socio-political landscape shed light on how precarious rights, or the ability to enjoy them, can be. They also reveal how important it is never to be complacent about successes in social justice advocacy – as when social winds shift, the teardown can be remarkably fast.

## Section 5

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