



# International Human Rights: Protections and Violations Related to Reproductive Rights

The United Nations has numerous committees devoted to the protection of sexual, reproductive and other human rights relating to women, children and marginalized populations. Each committee corresponds with a treaty or convention and works to ensure that State Parties are in compliance with the terms of the treaty. They focus on a broad range of topics dealing with reproductive health and rights issues, such as bodily autonomy and security, access to sex and family planning education, and discrimination against women. Issues with which the committees continue to grapple include the spread of HIV/AIDS, rape as genocide, female genital cutting, and sex trafficking.

“State Parties” to a treaty are nations that have signed and ratified the treaty; they may or may not have gone through the process of codifying the treaty into national law. While signatories are obligated to abide by the “spirit” of the treaty, State Parties must comply with all the provisions, barring any reservations. State Parties are often required to submit reports to the UN showing how they are complying with the treaty provisions; nongovernmental organizations (NGOs) frequently submit their own “shadow reports” that fill in the gaps in the official state reports.

## PROTECTIONS

### Committee on the Elimination of Discrimination against Women (CEDAW)<sup>1</sup>

- Established in 1982, the Committee monitors compliance with the Convention on the Elimination of All Forms of Discrimination Against Women, which addresses discrimination against women in all spheres of their lives.
- CEDAW provides the strongest international legal support for women’s reproductive rights by explicitly outlining the right to health and family planning.<sup>2</sup> It has also mandated that State Parties act to change social norms that perpetuate traditional practices that are harmful and discriminatory against women and girls.<sup>3</sup>
- There are 186 nations that are party to the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>4</sup>

### Committee on the Rights of the Child (CRC)<sup>5</sup>

- The CRC, established in 1991, monitors compliance with the Convention on the Rights of the Child, which guarantees people under 18 years old the right to non-discrimination, life, survival and development, and political participation.
- Provisions of the CRC specific to the field of reproductive rights include the right to “impart and receive all kinds of information;” the responsibility of the state to ensure proper health care for mothers, children, and families; and the right to be protected from economic exploitation that would be hazardous to the child’s development.
- The Committee advocates for adolescent access to sex and family planning information, confidential counseling, and comprehensive reproductive health care services, as well as advising state parties to eliminate harmful practices to girl children, such as female genital cutting.<sup>6</sup>
- There are 193 nations that are party to the Convention on the Rights of the Child.<sup>7</sup>

### Human Rights Committee (HRC)

- Established in 1976, the HRC monitors compliance with the International Covenant on Civil and Political Rights (ICCPR). The ICCPR covers the right to life, liberty, security of person, and the right to privacy.

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- The HRC has stated that requiring rape survivors to press charges against their aggressors rather than the state prosecuting the crime violates the ICCPR; it has also criticized laws that do not consider marital rape to be an offense.<sup>8</sup>
- There are 164 nations that are party to the International Covenant on Civil and Political Rights.<sup>9</sup>

### Committee on Economic, Social and Cultural Rights (CESCR)<sup>10</sup>

- The CESCR was established in 1985 by the UN to monitor compliance with the International Covenant on Economic, Social and Cultural Rights. CESCR's mandate emphasizes governmental responsibility to ensure that all people have access to affordable and comprehensive reproductive health care, including contraception/family planning services and information.<sup>11</sup>
- CESCR emphasizes state responsibility in helping to curb the spread of HIV/AIDS through comprehensive sex education in schools, improving access to health services, reducing the high cost of medicines, and ensuring non-discrimination in health care.<sup>12</sup>
- General Comment 14 of the Covenant has explicitly defined the right of everyone to an education to include information about one's sexual and reproductive freedoms and asserts that State Parties take measures to ensure the resources necessary to act on that information.<sup>13</sup>
- There are 160 nations that are party to the International Covenant on Economic, Social and Cultural Rights.<sup>14</sup>

### Committee on the Elimination of Racial Discrimination (CERD)<sup>15</sup>

- Established in 1969, CERD monitors state compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. CERD has identified coercive sterilization, sexual violence, and forced pregnancy resulting from rape as examples of the intersection between gender and racial discrimination.<sup>16</sup>
- General Recommendation 25 of CERD (Gender Related Dimensions of Racial Discrimination) recognizes that racial discrimination "affects women in a different way and . . . may have consequences that affect primarily, or only, women, such as pregnancy resulting from racial bias-motivated rape . . ." <sup>17</sup>
- There are 173 nations that are party to the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>18</sup>

### Committee Against Torture (CAT)<sup>19</sup>

- The CAT was established in 1986 and monitors compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which aims to eradicate all forms of torture, including gender-based violence, sex trafficking, and withholding of medical care in detention.<sup>20</sup>
- Potentially, the Committee could recognize violations of the Convention in cases where the State Party is actively preventing women from accessing reproductive health care in light of extremely high rates of maternal death.<sup>21</sup>
- There are 146 nations that are party to the Convention Against Torture.<sup>22</sup>

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## VIOLATIONS

### One-Child Policy and Family Planning in China<sup>23</sup>

- China's "single child" family planning policy has been in force for nearly three decades, which limits most urban families to one child and rural families to two.<sup>24</sup>
- Violations result in substantial "social compensation fees," which can total twice the average annual income.<sup>25</sup> Coerced abortion, sterilization, or requirements to use intrauterine birth control are other consequences of this policy.<sup>26</sup>
- Although the law prohibits performing illegal abortions or ultrasounds for the purpose of sex-selective abortions, this practice remains due to the cultural preference for boys and the desire to ensure that one's only legal child is male.<sup>27</sup> Critics claim the ban on sex-selective abortion has led to an increase in trafficking of female children.<sup>28</sup>
- Despite criticism that the policy has created a gender imbalance, where there are 118 males to every 100 females according to the 2000 census, China readopted the policy in March 2008 and signaled that it would continue without adjustments for another decade.<sup>29</sup>

### Outlawing Female Circumcision/Female Genital Cutting (FGC)

- Female circumcision, or female genital cutting, is practiced by over 120 different ethnic groups. It is prevalent in 28 countries, mostly in North Africa, but also in the Middle East and Asia. Nearly half of all of these procedures occur in Egypt and Ethiopia.<sup>30</sup>
  - Between 100 and 140 million women have undergone FGC and approximately 3 million women and girls undergo FGC each year, most under the age of 15.<sup>31</sup>
- Known effects of FGM are tetanus, gangrene, repeated urinary tract infections, obstruction of menstrual flow which can lead to reproductive tract infections and infertility, prolonged labor and loss of sexual pleasure.<sup>32</sup>
- Seventeen African nations have enacted laws criminalizing FGC. Twelve industrialized nations, in an attempt to protect immigrants, have also enacted laws outlawing FGC.<sup>33</sup> Punishment ranges from monetary fines to prison sentences.
  - The effect of legislation in many of these countries, and the increased education about the negative health effects of FGC, has not served to reduce the prevalence of the practice, but has encouraged people to utilize "medicalized" methods of FGC, performed by trained healthcare professionals. While this approach may reduce the physical pain of the procedure, it does not address the human rights aspect. In Egypt, 94% of women arrange for their daughters to undergo the procedure medically.<sup>34</sup>
  - Despite legal bans, the wide social acceptability of FGC may drive women to seek underground practitioners or cross borders to countries where the practice is legal.<sup>35</sup>

### Reproduction Regulation of Garment Workers

- Women working in sweatshops throughout the world are subject to regulation of their reproductive capacities. In Honduras, women working in the maquiladoras like the SETISA factory may be forced to take pre- and post-employment pregnancy tests so that the factory can avoid paying for pre-natal care. There have been instances of mandatory sterilization as a condition of hiring, injections of the contraceptive Depo-Provera disguised as tetanus shots, oral contraceptives disguised as malaria medication, and forced abortions.<sup>36</sup>
- The implementation of treaties and oversight committees like CEDAW, ICCPR, ICESCR, the International Labour Organization and the HRC has been effective in helping stem some of these abuses. In 2000, Honduras passed a law to eliminate discrimination against women,

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formally denouncing the practice of coercive contraceptive use, abortions and mandatory pregnancy testing. Despite these legal measures, many of these practices continue due to lack of enforcement.<sup>37</sup>

- Garment workers in Saipan, in the U.S. commonwealth of the Mariana Islands, have been forced to have abortions, either legally on mainland China or illegally on the island.<sup>38</sup>

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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

<sup>2</sup> CTR. FOR REPRODUCTIVE RIGHTS, BRINGING RIGHTS TO BEAR: AN ADVOCATE'S GUIDE TO THE WORK OF UN TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS (2006) [hereinafter BRINGING RIGHTS TO BEAR].

<sup>3</sup> Id.

<sup>4</sup> United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited July 1, 2009).

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/bodies/crc/index.htm> (last visited July 1, 2009).

<sup>6</sup> BRINGING RIGHTS TO BEAR, supra note 2, at 25.

<sup>7</sup> United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited July 1, 2009).

<sup>8</sup> BRINGING RIGHTS TO BEAR, supra note 2, at 29.

<sup>9</sup> United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited July 1, 2009).

<sup>10</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, available at <http://www2.ohchr.org/english/bodies/cescr/>.

<sup>11</sup> BRINGING RIGHTS TO BEAR, supra note 2, at 17.

<sup>12</sup> Id.

<sup>13</sup> General Comment No. 14, Committee on Economic, Cultural, and Social Rights, 22nd Sess., U.N. Doc. E/C.12/2000/4 (2000).

<sup>14</sup> United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited July 1, 2009).

<sup>15</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, available at <http://www2.ohchr.org/english/bodies/cerd/>.

<sup>16</sup> BRINGING RIGHTS TO BEAR, supra note 2, at 21.

<sup>17</sup> General Recommendation XXV, Gender Related Dimensions of Racial Discrimination, 56th session (2000), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/76a293e49a88bd23802568bd00538d83?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?Opendocument).

<sup>18</sup> United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en) (last visited July 1, 2009).

<sup>19</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, available at <http://www2.ohchr.org/english/bodies/cat/>.

<sup>20</sup> BRINGING RIGHTS TO BEAR, supra note 2, at 9.

<sup>21</sup> Id.

<sup>22</sup> United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en) (last visited July 1, 2009).

<sup>23</sup> Population and Family Planning Law of the People's Republic of China, [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record052.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record052.htm).



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<sup>24</sup> Jim Yardley, *China Sticking with One Child Policy*, N.Y. TIMES, Mar. 11, 2008.

<sup>25</sup> United Nations Population Fund, *Easing Family Planning Rules Leads to Fewer Abortions and More Baby Girls, Chinese Province Finds*, <http://www.unfpa.org/news/news.cfm?ID=734> (last visited July 1, 2009).

<sup>26</sup> Committee on International Relations of the U.S. House of Representatives (2004) (statement of Henry Wu, Executive Director of the Laogai Research Foundation), available at <http://www.internationalrelations.house.gov/archives/108/wu121404.htm>.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> United Nations Population Fund, *supra* note 25. See also Ben Blanchard, *Gender Imbalance in China Could Take 15 Years to Correct*, THE GUARDIAN, Jan. 24, 2007.

<sup>30</sup> WORLD HEALTH ORG., *PROGRESS IN SEXUAL AND REPRODUCTIVE HEALTH RESEARCH* (2006), available at <http://www.who.int/reproductive-health/hrp/progress/72.pdf>.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Center for Reproductive Rights, *Female Genital Mutilation (FGM): Legal Prohibitions Worldwide*, Dec. 11, 2008, <http://reproductiverights.org/en/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide>.

<sup>34</sup> WORLD HEALTH ORG., *supra* note 30, at 5.

<sup>35</sup> Id.

<sup>36</sup> Jennifer M. Swedish, *The SETISA Factory: Mandatory Pregnancy Testing Violates the Human Rights of Honduran Maquila Workers*, 4 NW. U. J. INT'L HUM. RTS. 363 (2005).

<sup>37</sup> Id.; see also National Labor Committee, *Young Women in Free Trade Zones Injected with Depo Provera*, <http://www.nlcnet.org/campaigns/archive/honduras/depropro.shtml> (last visited July 1, 2009).

<sup>38</sup> Robert S. Florke, *Castaways on Gilligan's Island: The Plight of the Alien Worker in the Northern Mariana Islands*, 13 TEMP. INT'L & COMP. L.J. 381, 402 (1999).