



International Human Rights: Protections and Violations Related to Reproductive Rights

The United Nations (UN) has numerous expert 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 comply with the terms of the treaty. They focus on a broad range of topics dealing with reproductive rights and health issues, such as bodily autonomy and security, access to sex and family planning education, and discrimination. Issues with which the committees continue to grapple include the spread of HIV/AIDS, rape as genocide, female genital cutting, and human 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 frequently submit their own “shadow reports” to supplement official state reports.

Additional resources: LSRJ’s *Human Rights Law Primer* explores reproductive rights under international human rights law, filling critical gaps left by most international and human rights law courses. You can download the primer at www.lsrj.org/resources/#humanrightslawprimer

PROTECTIONS

Committee on the Elimination of Discrimination against Women

- The Committee, established in 1982, monitors compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹ 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.² 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.³
- There are 186 state parties to CEDAW.⁴ **The U.S. signed the treaty in 1980, but it has not been ratified by the Senate.⁵ The U.S. has also not signed or ratified the optional protocol.⁶**

Committee on the Rights of the Child⁷

- The Committee, established in 1991, monitors compliance with the Convention on the Rights of the Child (CRC),⁸ 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 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 practices harmful to girl children, such as female genital cutting.⁹
- There are 193 state parties to the CRC.¹⁰ **The U.S. signed the treaty in 1995, but it has not been ratified by the Senate.¹¹ The U.S. signed both the optional protocols—**

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on children in armed conflict and on children in pornography and prostitution—in 2000 and ratified them, with reservations and understandings, in 2002.¹²

Human Rights Committee (HRC)

- The HRC, established in 1976, monitors compliance with the International Covenant on Civil and Political Rights (ICCPR).¹³ The ICCPR protects, among other things, the right to life, liberty, security of person, and the right to privacy.
- 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.¹⁴
- There are 164 state parties to the ICCPR.¹⁵ **The U.S. has signed and ratified the treaty, with five reservations.¹⁶ The U.S. has not signed or ratified either of the optional protocols.¹⁷**

Committee on Economic, Social and Cultural Rights

- The Committee, established in 1985, monitors compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁸ The Committee's mandate includes governmental responsibility to ensure that all people have access to affordable and comprehensive reproductive health care, including contraception/family planning services and information.¹⁹
- The Committee emphasizes state responsibility in helping 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.²⁰
- General Comment 14 of the ICESCR has explicitly defined the right of everyone to an education that includes 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.²¹
- There are 160 state parties to the ICESCR.²² **The United States signed the treaty in 1977, but it has not been ratified by the Senate.²³**

Committee on the Elimination of Racial Discrimination

- The Committee, established in 1969, monitors state compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).²⁴ It has identified coercive sterilization, sexual violence, and forced pregnancy resulting from rape as examples of the intersection between gender and racial discrimination.²⁵
- 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”²⁶
- There are 173 state parties to CERD.²⁷ **The United States signed the treaty in 1966 and, with three reservations, ratified the treaty in 1994.²⁸**

Committee Against Torture

- The Committee, established in 1986, monitors compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²⁹ which aims to eradicate all forms of torture, including gender-based violence, sex trafficking, and withholding of medical care in detention.³⁰

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- Potentially, the Committee could recognize violations of the CAT in cases where the state party is actively preventing women from accessing reproductive health care in light of extremely high rates of maternal death.³¹
- There are 146 state parties to the CAT.³² **The United States signed the treaty in 1988 and ratified it in 1994.**³³ **The United States has not signed or ratified the optional protocol.**³⁴

SELECTED VIOLATIONS

One-Child Policy and Family Planning in China³⁵

- 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.³⁶
- Violations result in substantial "social compensation fees," which can total twice the average annual income.³⁷ Coerced abortion, sterilization, or requirements to use intrauterine birth control are other consequences of this policy.³⁸
- 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.³⁹ Critics claim the ban on sex-selective abortion has led to an increase in trafficking of female children.⁴⁰
- Despite criticism that the policy has created a gender imbalance (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.⁴¹

Outlawing Female Genital Cutting (FGC)

- Female circumcision, or female genital cutting, is practiced by over 120 different ethnic groups.⁴² It is prevalent in 28 countries, mostly in North Africa, but also in the Middle East and Asia.⁴³ Nearly half of all of these procedures occur in Egypt and Ethiopia.⁴⁴
 - 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 15.⁴⁵
- Known effects of FGC 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.⁴⁶
- Seventeen African nations have enacted laws criminalizing FGC.⁴⁷ Twelve industrialized nations, in an attempt to protect immigrants, have also enacted laws outlawing FGC.⁴⁸ Punishment ranges from monetary fines to prison sentences.
 - The effect of legislation in many of these countries, along with increased education about the negative health effects of FGC, has not reduced 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.⁴⁹
 - 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.⁵⁰

Reproduction Regulation of Garment Workers

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- Women working in sweatshops throughout the world are subject to regulation of their reproductive capacities.
 - In Honduras, women working in factories may be forced to take pre- and post-employment pregnancy tests so the employer 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.⁵¹
 - 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.⁵²
- The implementation of treaties and oversight committees has been effective in helping stem some of these abuses. For example:
 - Honduras signed the CEDAW in 1980 and ratified it in 1983.⁵³
 - In 1994, Honduras set up a Special Public Prosecutor's Office for Women.⁵⁴ In 2000, Honduras passed a law to eliminate discrimination against women, 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.⁵⁵

¹ Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/189, UN GAOR (34th Sess.), Supp. No. 46, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981).

² CTR., FOR REPROD. 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].

³ *Id.*

⁴ Convention on the Elimination of All Forms of Discrimination Against Women, UNITED NATIONS TREATY COLLECTION [UNTC], http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited July 7, 2011).

⁵ HUMAN RIGHTS WATCH, UNITED STATES RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES 3-4 (2009).

⁶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Oct. 6, 1999, G.A. Res. 20378, UN GAOR (54th Sess.), U.N. Doc. A/Res/54/4 (1999), 2131 U.N.T.S. 123 (*entered into force* Dec. 2000). It is still open for signature by those states which signed the CEDAW (which includes the U.S.).

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, UNTC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en (last visited July 7, 2011).

⁷ Office of the United Nations High Commissioner for Human Rights [UNHCHR], <http://www2.ohchr.org/english/bodies/crc/index.htm> (last visited July 1, 2009).

⁸ Convention on the Rights of the Child, *adopted* Dec. 18, 1979, G.A. Res. 44/25, annex, UN GAOR (44th Sess.), Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

⁹ BRINGING RIGHTS TO BEAR, *supra* note 2, at 25.

¹⁰ See Convention on the Rights of the Child, UNTC,

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited July 7, 2011).

¹¹ HUMAN RIGHTS WATCH, *supra* note 5, at 5-6.

¹² Optional Protocol to the Convention on the Rights of the Child in the Involvement of Children in Armed Conflict, *adopted* May 25, 2000, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (*entered into force* Feb. 12, 2002); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *adopted* May 25, 2000, G.A. Res. 54/263, U.N. Doc. A/RES/54/263, 2171 U.N.T.S. 227 (*entered into force* Jan. 18, 2002).

¹³ International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), UN GAOR (21st Sess.), Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

¹⁴ BRINGING RIGHTS TO BEAR, *supra* note 2, at 29.

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- ¹⁵ International Covenant on Civil and Political Rights, UNTC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited July 7, 2011).
- ¹⁶ U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., Apr. 2, 1992). Reservations primarily reject the prohibition of capital punishment and reinforce Constitutional obligations/protections. *Id.* The Senate also made a declaration that the treaty was not self-executing (does not create a private cause of action). *Id.*
- ¹⁷ See Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), U.N. Doc. A/6316 (1933), 999 U.N.T.S. 302 (*entered into force* March 23, 1976).; Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, *adopted* Dec. 15, 1989, G.A. Res. 44/128, 1642 U.N.T.S. 414, (*entered into force* July 11, 1991).
- ¹⁸ International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), UN GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976).
- ¹⁹ BRINGING RIGHTS TO BEAR, *supra* note 2, at 17.
- ²⁰ *Id.*
- ²¹ General Comment No. 14, Committee on Economic, Cultural, and Social Rights, 22nd Sess., U.N. Doc. E/C.12/2000/4 (2000).
- ²² International Covenant on Economic, Social and Cultural Rights, UNTC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.
- ²³ *Id.*
- ²⁴ International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, G.A. Res. 2106 (XX), 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1965).
- ²⁵ BRINGING RIGHTS TO BEAR, *supra* note 2, at 21.
- ²⁶ General Recommendation XXV, Gender Related Dimensions of Racial Discrimination, 56th session (2000), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/76a293e49a88bd23802568bd00538d83?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?Opendocument).
- ²⁷ International Convention on the Elimination of All Forms of Racial Discrimination, UNTC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en (last visited July 7, 2011).
- ²⁸ *Id.* Reservations primarily note protections already afforded by the Constitution as the extent to which the US is obligated. *Id.* The Senate also made a declaration that the treaty was not self-executing (does not create a private cause of action) and submitted an understanding related to federalism limitations. *Id.*
- ²⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46 annex, 39 UN GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June, 26, 1987)
- ³⁰ BRINGING RIGHTS TO BEAR, *supra* note 2, at 9.
- ³¹ *Id.*
- ³² Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, UNTC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#12 (last visited July 7, 2011).
- ³³ *Id.* The Senate submitted to the UN a notification (a condition of ratification) that the treaty did not require or authorize domestic legislation or action contrary to the Constitution. *Id.*
- ³⁴ The Optional Protocol establishes a mechanism for independent monitors to make site visits to detention facilities maintained by state parties in order to ensure compliance with the Convention. Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 18, 2002, G.A. Res. 57/199, (57th Sess.) U.N. Doc. A/RES/57/199 (*entered into force* June 22, 2006).
- ³⁵ Population and Family Planning Law of the People's Republic of China, (Dec. 29, 2001), http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record052.htm.
- ³⁶ Jim Yardley, *China Sticking with One Child Policy*, N.Y. TIMES, Mar. 11, 2008.
- ³⁷ 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://commdocs.house.gov/committees/intlrel/hfa49740.000/hfa49740_of.htm.
- ³⁸ *Id.* http://commdocs.house.gov/committees/intlrel/hfa49740.000/hfa49740_of.htm.
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ Ben Blanchard, *Gender Imbalance in China Could Take 15 Years to Correct*, THE GUARDIAN, Jan. 24, 2007, available at <http://www.guardian.co.uk/world/2007/jan/24/china.international>; Jim Yardley, *China Sticking with One-Child Policy*, N.Y. TIMES, March 11, 2008, available at http://www.wunrn.com/news/2008/03_08/03_10_08/031008_china.htm.



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⁴² WORLD HEALTH ORG., PROGRESS IN SEXUAL AND REPRODUCTIVE HEALTH RESEARCH (2006), *available at* <http://www.who.int/reproductive-health/hrp/progress/72.pdf>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Ctr. for Reprod. Rights, Female Genital Mutilation (FGM): Legal Prohibitions Worldwide, Dec. 11, 2008, <http://reproductiverights.org/en/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide>.

⁴⁸ *Id.*

⁴⁹ WORLD HEALTH ORG., *supra* note 42, at 5.

⁵⁰ *Id.*

⁵¹ 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).

⁵² *See, e.g.*, Rebecca Claren, *Paradise Lost: Greed, Sex Slavery, Forced Abortions and Right-Wing Moralists*, MS. MAGAZINE, Spr. 2006, http://www.msmagazine.com/spring2006/paradise_full.asp.

⁵³ UNTC, *supra* note 4.

⁵⁴ Comm. on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Honduras*, ¶ 5, CEDAW/C/HON/CO/6 (Aug. 10, 2007), *available at* http://www.un.org/womenwatch/daw/cedaw/cedaw39/concludingcomments/Honduras_Advance%20unedited.pdf.

⁵⁵ For example, the Committee noted that “women’s ability to bring cases of discrimination before the courts is limited by factors such as poverty, lack of assistance in pursuing their rights, lack of information about their rights and attitudes of law enforcement and judicial officials that create obstacles for women seeking access to justice.” *Id.* at ¶ 12. *See also* Swedish, *supra* note 51.