



## Women's Rights Are Human Rights

A series of human rights treaties and international conference agreements, forged over several decades by governments — increasingly influenced by a growing global movement for women's rights — provides a legal foundation for ending gender discrimination and gender-based rights violations. These agreements affirm that women and men have equal rights, and oblige states to take action against discriminatory practices.

The starting point is found in the principles of the United Nations Charter and the Universal Declaration of Human Rights, to which all member states of the United Nations subscribe. Specific descriptions of rights and freedoms have been elaborated since these two instruments were written in the 1940s, but every subsequent human rights treaty has been rooted in the founders' explicit recognition of equal rights and fundamental freedoms for individual men and women, and their emphasis on protecting the basic dignity of the person.

As expressions of the world's conscience, the consensus decisions of international conferences are also powerful instruments for promoting change both within countries and internationally. The Vienna Declaration and Programme of Action, the Programme of Action of the Inter-

national Conference on Population and Development and the Platform for Action adopted at the Fourth World Conference on Women (FWCW) are international consensus agreements that strongly support gender equality and women's empowerment.

In particular, the ICPD and FWCW documents, drawing on human rights agreements, clearly articulate the concepts of sexual and reproductive rights — including the right to sexual and reproductive health; voluntary choice in marriage, sexual relations and child-bearing; freedom from sexual violence and coercion; and the right to privacy<sup>1</sup> — which are essential to gender equality.

### Human Rights Treaties

The Preamble of the **United Nations Charter**, adopted in 1945, reaffirms “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. The Charter recognizes that one purpose of the United Nations is “to achieve international cooperation in . . . promoting and encouraging respect for human rights and for fundamental

PHOTO: Judge in Ghana. Human rights treaties provide a legal foundation for ending gender-based human rights violations.

Jorgen Schytte/Still Pictures



freedoms for all without distinction as to race, sex, language, or religion”.

The **Universal Declaration of Human Rights**, adopted in 1948, further elaborated the scope of human rights. Article 1 summarizes all of the subsequent articles and succeeding treaties and conventions when it says, “All human beings are born free and equal in dignity and rights.” In some matters, such as marriage rights, the declaration goes into some detail in specifying the ways in which men and women should be treated. It specifies that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses.”

More than 20 years after adopting the Universal Declaration of Human Rights, the international community agreed on two covenants spelling out in more detail the rights embodied in the declaration. These were the **International Covenant on Civil and Political Rights** (often referred to as the political covenant) and the **International Covenant on Economic, Social and Cultural Rights** (often referred to as the economic rights covenant). Both entered into effect in 1976. These are legally binding on states that have ratified them. However, many member states have not done so, and many others have done so only with substantial reservations. (States can make reservations to treaty articles that they do not wish to be bound by, as long as these are not contrary to the meaning of the treaty.)

Both covenants incorporated understandings based on the declaration, many of which have important implications with regard to gender and reproductive rights; these include the right of women to be free of all forms of discrimination, the right of freedom of assembly and association, and family rights. The political covenant, among other things, recognizes the rights to “liberty and security of the person” (Article 9) and “freedom of expression”, including “freedom to seek, receive and impart information and ideas of all kinds” (Article 19); and affirms that “no marriage shall be entered into without the free and full consent of the intending spouses” (Article 23).

### **Convention on the Elimination of All Forms of Discrimination against Women**

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 and had 165 states parties as of January 2000. The Convention seeks to address pervasive social,

cultural and economic discrimination against women, declaring that states should endeavour to modify social and cultural patterns of conduct that stereotype either sex or put women in an inferior position. It also declares that states should ensure that women have equal rights in education and equal access to information; eliminate discrimination against women in access to health care; and end discrimination against women in all matters relating to marriage and family relations. The Convention declares that states must act to eliminate violations of women's rights whether by private persons, groups or organizations.

The Convention sets clearer definitions and standards than the earlier covenants with respect to gender equality and expands the protections against discrimination. In particular, it recognizes that because socially defined gender roles differ, provisions against discrimination and abuse cannot simply require equal treatment of men and women; there must be a more positive definition of responsibilities that applies appropriate rights standards to all. The Convention recognizes the need to examine rules and practices concerning gender in society to make sure that they do not weaken rights guarantees ensuring the equality of the two sexes in all aspects of their lives.

Nearly all states have ratified the **Convention on the Rights of the Child**, making it a strong tool for holding governments accountable on human rights issues. In addition to upholding specific rights of children, this Convention, adopted in 1989, deals more broadly with gender relations. It reaffirms, for example, the right to family planning services, recognized by prior conventions and conferences.

Article 24 obligates states “to ensure appropriate prenatal and post-natal health care for mothers”. It also calls on them to take “all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”; this is an explicit recognition of the deleterious effects of such practices as female genital mutilation. Article 34 says that states must “undertake to protect the child from all forms of sexual exploitation and sexual abuse”. Article 17 states that the child should have access to information “aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”.

Applying the Convention, the Committee on the Rights of the Child has, for example: recommended that specific laws be enacted and enforced to prohibit FGM (1997); called on Kuwait to take action to prevent and combat early marriage (1998); and called on Mexico to raise and equalize the minimum legal ages for marriage of boys and girls (1999).

***Universal Declaration of Human Rights, 1948: “All human beings are born free and equal in dignity and rights.”***



## Human Rights Treaty Bodies: Reports and Recommendations

Countries that have ratified human rights treaties are required to report regularly on actions they have undertaken to ensure the exercise and enjoyment of the specified rights. Established bodies monitor the implementation of rights instruments. For example, the Human Rights Committee monitors compliance with the International Covenant on Civil and Political Rights and receives complaints from individuals whose rights have been violated, while the Committee on Economic, Social and Cultural Rights monitors implementation of the economic rights covenant.

Treaty bodies offer recommendations and interpretations to assist in monitoring, reviewing and evaluating the international human rights treaties. Their recommendations can take several forms. Some clarify treaty provisions, for example, by specifying actions that states, groups or individuals should take. These monitoring bodies can also define standards and recommend actions needed to protect or expand a right. NGOs may also submit “shadow reports” when a state is before a treaty body.

The **Committee on Economic, Social and Cultural Rights** has issued a number of recent rulings on reproductive rights. For instance, it has called on Cameroon to eliminate the practices of polygamy, forced marriages and FGM, and bias in favour of the education of boys (1999); noted with concern the high incidence of pregnancies among females of school age in Saint Vincent and the Grenadines (1997); and noted that Switzerland’s Parliament had not yet recognized the right of pregnant women to maternity benefits as Article 10 requires (1998).

Concerned about the high number of suicides of adolescent girls, “which appear in part to be related to the prohibition of abortion,” the **Human Rights Committee** called on Ecuador to help adolescents facing unwanted pregnancies to obtain adequate health care and education (1998). Regarding Poland, the committee voiced concern about: strict abortion laws leading to high numbers of unsafe clandestine abortions; limited access for women to affordable contraceptives; the elimination of sexual education from schools; and the insufficiency of public family planning programmes (1999).

In March 2000, the committee adopted a comprehensive new General Comment on gender equality, spelling out what Article 3 of the political covenant entails and what information states parties are expected to provide in their reports. It states that gender equality applies to the enjoyment of all rights — civil, cultural, economic, political and social — and is not

merely a right to non-discrimination; affirmative action is required. States parties are obliged to prohibit discrimination on grounds of sex, and to “put an end to discriminatory actions both in the public and the private sector”.

The **Committee on the Elimination of Discrimination against Women** monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. At its January 1992 session, the committee adopted General Recommendation 19 on violence against women, which states that “gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms is discrimination” within the treaty’s purview.

In 1994, the committee found that violence against women within families constituted a violation of the “right to non-discrimination against women in all matters relating to marriage and family relations”. It called for: criminal penalties and civil remedies in domestic violence cases; outlawing the “defence of family honour” as a justification for assault or murder; services to ensure the safety of victims of family violence; rehabilitation programmes for perpetrators of domestic violence; and support services for families where incest or sexual abuse had occurred.

The committee subsequently decried the high incidence of teenage pregnancy in Belize, which it linked to a lack of adequate family planning information and contraceptive use; it also expressed concern that schools are free to expel girls because of pregnancy, and that only a few allow girls to continue their education after pregnancy (1999). It ruled that in Chile, “deep-rooted social and cultural prejudices” hold back the achievement of equality for women; it expressed concern at high rates of teenage pregnancy, which it linked to sexual violence; and it urged the Government to revoke laws imposing criminal penalties on women who undergo abortions and requiring health professionals to report them (1999).

It urged Nepal to amend discriminatory laws on property and inheritance, marriage, nationality, birth registration and abortion; and to punish persons who procure women for prostitution or for trafficking; and it expressed concern about harmful traditional customs and practices, such as child marriage, dowry, polygamy, and ethnic and religious practices that force girls to become prostitutes (1999). The committee expressed concern about Peru’s high incidence of domestic violence, including incest, and sexual violence against rural and indigenous women, including teenagers; it recommended that the Government review its law on abortion and ensure that women have access to

*Countries that have ratified human rights treaties are required to report regularly on progress.*

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## The Right to Reproductive Health Care

Access to health care, including reproductive health, is a basic right under the Convention on the Elimination of All Forms of Discrimination against Women. Article 12 requires states to eliminate discrimination in access to health services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement, and the post-natal period.

In 1999, the Committee on the Elimination of Discrimination against Women elaborated a general recommendation on Article 12 of the Convention. Key points include:

“States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.

“States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.”

States parties to the Convention are urged, in particular, to:

- Place a gender perspective at the centre of all policies and programmes affecting women's health and involve women in planning, implementing and monitoring the provision of health services to women;
- Remove all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and allocate resources for programmes to prevent and treat sexually transmitted diseases including HIV/AIDS among adolescents;
- “Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion;
- “Monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care;
- “Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;
- “Ensure that the training curricula of health workers includes comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.”

complete health services which include safe abortion and to emergency medical attention when complications arise from abortions (1998).

Only a small number of countries report to the committee each year. The impact of recommendations and rulings gains from their general relevance and cumulative application.

On 10 December 1999, Human Rights Day, the **Optional Protocol** to the Convention on the Elimination of All Forms of Discrimination

against Women was opened for signature, ratification and accession. As of 28 March 2000, 33 countries had signed the protocol and some had started parliamentary procedures required before ratification; 10 ratifications are needed for the protocol to enter into force. The Optional Protocol is a legal instrument that will enable victims of gender discrimination to submit complaints to the Committee on the Elimination of Discrimination against Women. By accepting the protocol, a state would recognize the committee's competence to receive and consider complaints from individuals or groups of individuals within its jurisdiction in cases where they have exhausted domestic remedies.

The Optional Protocol also enables the committee to initiate inquiries into situations of grave or systematic violations of women's rights. Although the protocol allows states upon ratification or accession to declare that they do not accept the inquiry procedure, it explicitly provides that no reservations may be entered to its terms. Upon its entry into force, the protocol will put the Convention on an equal footing with other human rights instruments that have individual complaints procedures, such as the International Covenant on Civil and Political Rights.

The **Committee on the Elimination of Racial Discrimination** in April 2000 adopted a general recommendation which recognized that some forms of racial discrimination have unique and specific impacts on women. The committee resolved to take gender factors into account when examining racial discrimination.

In addition to the work of the treaty monitoring bodies, the **Commission on Human Rights** monitors states' compliance with international human rights law and investigates alleged rights violations. Operating through special rapporteurs and working groups, the Commission sends fact-finding missions to developing and developed countries in all parts of the world. There is, for example, a special rapporteur on violence against women.

In April 1999, the commission adopted consensus resolutions that called on governments to take effective action to combat trafficking in women and girls and violence against women. It also urged that all treaty bodies, special procedures and other United Nations human rights mechanisms systematically take a gender perspective into account in implementing their mandates.

## International Conference Consensus Agreements

While agreements reached at international conferences are not legally binding, the human



rights treaty monitoring bodies can take their recommendations into account, for example, in setting standards and in making interpretations and recommendations. As expressions of international consensus, the conference agreements are also strong advocacy tools that can and do influence the formulation of national laws and policies. Several of the major conferences of the 1990s addressed issues of gender equality and women's rights.

The **World Conference on Human Rights**, held in Vienna in 1993, declared human rights to be a universal norm, independent of the standards of individual states. The Vienna Declaration emphasizes that the rights of women and girls are "an inalienable, integral and indivisible part of human rights", requiring special attention as part of all human rights activities.

The conference urged that increased priority be given to eradicating all forms of discrimination on grounds of sex; to ensuring women's full and equal participation in political, civil, economic, social and cultural life; and to ending all forms of gender-based violence. Countries agreed that women's enjoyment of rights — including equal access to resources — is both an end in itself and essential to their empowerment, to social justice, and to overall social and economic development.

The Vienna Declaration also affirms that women should enjoy the highest standards of physical and mental health throughout their lifespans. It reaffirms the principle of equality between men and women, and the right to equal access to all levels of education. And it acknowledges women's right to accessible and adequate health care and the widest range of family planning methods and services.

As a result of the Vienna recommendations, the General Assembly in December 1993 adopted by consensus the **Declaration on the Elimination of Violence against Women** — which stipulates that all states parties, in accordance with national legislation, should prevent, investigate and punish acts of violence against women, whether perpetrated by the state or private persons — and appointed a special rapporteur to monitor implementation of measures designed to end violence against women.

### International Conference on Population and Development

The 1994 ICPD recognized that empowering women and improving their status are important ends in themselves and essential for achieving sustainable development. The ICPD Programme of Action<sup>2</sup> affirmed that universally recognized human rights standards apply to all aspects of population programmes.

The Programme of Action sets out the context and content of reproductive rights. Paragraph 7.3 spells out the underlying precepts:

*[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.*

Another landmark event in efforts to achieve full equality for women was the **Fourth World Conference on Women**, held in Beijing in 1995. The Platform for Action<sup>3</sup> adopted by the FWCW affirms that women's human rights are inalienable, universal, indivisible and interdependent. It puts forth the principle that rights for all must be defended in order that rights for any are preserved. It calls on all governments, organizations and individuals to promote and protect the human rights of women, through the full implementation of all relevant human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women, and to work to ensure that equality of the sexes and non-discrimination based on gender exist both in the law and in practice.

The Beijing platform identifies "12 critical areas" of action needed to empower women

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### The ICPD Programme of Action and Gender Equality

**P**inciple 4 of the ICPD Programme of Action states: "Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes. The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in civil, cultural, economic, political and social life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex, are priority objectives of the international community."



and ensure their human rights: women and poverty; education and training of women; women and health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; institutional mechanisms for the advancement of women; human rights of women; women and the media; women and the environment; and the girl-child.<sup>4</sup>

The FWCW reaffirmed and strengthened the consensus that had emerged at the ICPD in Cairo the year before. Much of the ICPD language on reproductive rights was incorporated directly into the Platform for Action. Paragraph 92 states: "Good health is essential to leading a productive and fulfilling life, and the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment." Paragraph 96 states: "The human rights of women include their 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."

Following the FWCW, the **Commission on the Status of Women** was mandated to regularly review the Platform for Action's critical areas of concern and play a catalytic role in follow-up to the conference. The Commission, established in 1946, meets annually to make recommendations and reports promoting equal rights for women and men in political, economic, civil, social and educational fields. Among other things, it ensured that the Universal Declaration on Human Rights included provisions on gender equality.

### Five-year Reviews

The consensus documents of the ICPD and other conferences are intended to lead to action. Five-year reviews have assessed progress towards the agreed goals, identified obstacles and set new benchmarks

The "ICPD+5" follow-up, for example, took place in 1998 and 1999 in a series of events<sup>5</sup> culminating in a special session of the General Assembly. The special session adopted a document on key actions for the further implementation of the ICPD Programme of Action. While endorsing all of the provisions of the ICPD Programme of Action, it went beyond

that document in certain areas, including the reproductive rights of adolescents and of women in emergency situations.

The special session called on governments to respect, protect and promote the human rights of women and girls — particularly freedom from coercion, discrimination and violence, including harmful practices and sexual exploitation — by developing, implementing and effectively enforcing gender-sensitive policies and legislation. It called for intensified action on: reproductive and sexual health; maternal mortality; the reproductive health needs of adolescents; reducing abortion and addressing the health consequences of unsafe abortion; prevention of HIV/AIDS; gender issues and education (Boxes 4 and 7).

Governments were encouraged to sign, ratify and implement the Convention on the Elimination of All Forms of Discrimination against Women; to remove reservations incompatible with the convention's objective and purpose; and to consult with civil society in the human rights treaty-reporting process. United Nations bodies responsible for indicators relating to women's human rights were urged to incorporate sexual and reproductive health issues.

The "Beijing+5" review, entitled "Women: 2000: Gender Equality, Development and Peace for the 21st Century", took place 5-10 June 2000. The General Assembly session assessed progress in implementing the Nairobi Forward-looking Strategies for the Advancement of Women, adopted in 1985, and the FWCW Platform for Action, and considered future actions and initiatives (Box 5).

For the rights written into treaties and consensus documents to become a reality, they need to be incorporated into national laws, policies and programmes. The monitoring mechanisms growing out of the international conferences have made it much easier than in the past to keep abreast of national progress in turning ideals into realities.

Understandings about what human rights entail, and how they should be protected and monitored, are developed in a variety of processes, internationally and within countries. Consideration of gender factors needs to become an integral and systematic part of all these processes. Despite important progress, this largely remains to be achieved.