

# Beijing and International Law: UN Treaty Monitoring Bodies Uphold Reproductive Rights

In 1995, governments made a historic pledge to protect and promote women’s human rights—including their sexual and reproductive rights—by adopting the Platform for Action of the Fourth World Conference on Women in Beijing, China (Beijing Platform)<sup>1</sup>. Ten years later, the commitments made in Beijing are gaining force in international, regional, and national law.

One of the most promising developments has been the growing acknowledgment of sexual and reproductive rights by the following six United Nations human rights bodies:

- the Committee against Torture (CAT);
- the Committee on Economic, Social and Cultural Rights (CESCR);
- the Committee on the Elimination of Discrimination against Women (CEDAW Committee);
- the Committee on the Elimination of Racial Discrimination (CERD);
- the Committee on the Rights of the Child (CRC); and
- the Human Rights Committee (HRC).

These treaty monitoring bodies, which are charged with monitoring government compliance with major human rights treaties, have raised many of the concerns addressed in the Beijing Platform. Most now routinely recommend that governments take action to ensure sexual and reproductive rights for women, thus removing any doubt that these rights are protected in binding human rights treaties. Advocates can and should use the recommendations of the treaty monitoring bodies to help speed implementation of the Beijing Platform within their national legal systems.

This briefing paper summarizes some of the Beijing Platform’s key provisions on sexual and reproductive rights and includes a sample of recommendations from UN treaty monitoring bodies.

Topics covered include the following:

- family planning;
- safe pregnancy;
- abortion;

For more information on the treaty monitoring bodies and reproductive rights, see the following publications from the Center for Reproductive Rights:

- **Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights (Center for Reproductive Rights & University of Toronto International Programme on Reproductive and Sexual Health Law, 2002) (report).**
- **Step-by-Step Guide: Using the UN Treaty Monitoring Bodies to Promote Reproductive Rights (briefing paper).**

- female genital mutilation;
- adolescents;
- HIV/AIDS;
- rape and sexual violence; and
- marriage and family law.

## FAMILY PLANNING

Paragraph 94 of the Beijing Platform states that implicit in the concept of reproductive health is the ability “to have a satisfying and safe sex life” and “have the capability to reproduce and the freedom to decide if, when and how often to do so.”<sup>2</sup> Men and women, therefore, have the right “to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law. . . .”<sup>3</sup>

Most of the treaty monitoring bodies have recognized women’s need for increased access to contraceptive methods. The committees generally frame lack of access to family planning as a violation of the right to health and, in the case of the HRC and the CEDAW Committee, as a potential violation of the right to life and a form of discrimination against women.<sup>4</sup>

In response to the report of Vietnam to the CEDAW Committee in 2001, the committee stated the following:

*The Committee urges the Government to maintain free access to basic health care and to continue to improve its family planning and reproductive health policy, inter alia, through making modern contraceptive methods widely available, affordable and accessible. The Committee also urges the Government to promote sex education for both boys and girls, paying special attention to HIV/AIDS prevention.*<sup>5</sup>

## SAFE PREGNANCY

Paragraph 94 of the Beijing Platform acknowledges men and women’s right to access “appropriate health-care services that will enable women to go safely through pregnancy and childbirth. . . .”<sup>7</sup> Paragraph 106(e) provides more specifics, calling for sexual and reproductive health care that is accessible, available, and affordable, with particular emphasis on maternal and emergency obstetric care. Paragraph 106(i) further calls upon governments to “reduce ill health and maternal morbidity and achieve world wide the agreed-upon goal of reducing maternal mortality by at least 50 per cent of the 1990 levels by the year 2000 and a further one half by the year 2015. . . .”<sup>8</sup>

Nearly, all of the treaty monitoring bodies have expressed concern over maternal health and have recommended that states parties implement measures to improve it.<sup>9</sup>

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In response to the report of Mali to the HRC in 2003, the committee stated the following:

*While noting the considerable efforts made by the State party, the Committee remains concerned by the high maternal and infant mortality rate in Mali, due in particular to the relative inaccessibility of health and family planning services, the poor quality of health care provided, the low educational level and the practice of clandestine abortions (article 6 of the Covenant).*

*So as to guarantee the right to life, the State party should strengthen its efforts in that regard, in particular in ensuring the accessibility of health services, including emergency obstetric care. The State party should ensure that its health workers receive adequate training. It should help women avoid unwanted pregnancies, including by strengthening its family planning and sex education programmes, and ensure that they are not forced to undergo clandestine abortions, which endanger their lives. In particular, attention should be given to the effect on women's health of the restrictive abortion law.<sup>10</sup>*

### ABORTION

The Beijing Platform, in Paragraph 106(k), reaffirms the language relating to abortion adopted at the International Conference on Population and Development in 1994. It focuses primarily on the impact of unsafe abortion and the need to reduce recourse to abortion through expanded family planning services. It entitles women who have unwanted pregnancies access to reliable information, compassionate counseling, and, where abortion is not against the law, safe abortion services. It also stresses that women seeking abortions should have access to quality post-abortion care and counseling, as well as education and family-planning services aimed at preventing repeat abortions. Finally, it calls upon governments to “review laws containing punitive measures against women who have undergone illegal abortions.”<sup>11</sup>

Several treaty monitoring bodies have addressed some of the human rights implications of illegal and unsafe abortion. The HRC, the CESCR, the CEDAW Committee, and the CRC have made the important connection between illegal, unsafe abortion and high rates of maternal mortality. These committees have either explicitly or implicitly characterized high rates of maternal mortality caused by unsafe abortion as a violation of women's rights to health and life.<sup>12</sup>

In 2004, the HRC stated the following in response to Poland's periodic report:

*The Committee reiterates its deep concern about restrictive abortion laws in Poland, which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health. It is also concerned at the unavailability of abortion in practice even when the law permits it, for example in cases of pregnancy resulting from rape, and by the lack of information on the use of the conscientious objection clause by medical practitioners who refuse to carry out legal abortions. The Committee further regrets the lack of information on the extent of illegal abortions and their consequences for the women concerned (art. 6). The*

*State Party should liberalize its legislation and practice on abortion. It should provide further information on the use of the conscientious objection clause by doctors, and, so far as possible, on the number of illegal abortions that take place in Poland. These recommendations should be taken into account when the draft Law on Parental Awareness is discussed in Parliament.*<sup>13</sup>

In response to Chile's report to CAT in 2004, the committee stated the following:

*[E]liminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of prohibited abortion; investigate and review convictions where such statements have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention. In accordance with World Health Organization guidelines, the State Party should ensure immediate and unconditional treatment of such persons seeking emergency.*<sup>14</sup>

#### **FEMALE GENITAL MUTILATION (FGM)**

The Beijing Platform, in paragraph 107(a), calls for government action to “[g]ive priority to both formal and informal educational programmes” that empower women to make decisions regarding their sexual and reproductive health, “placing special focus on programmes for both men and women that emphasize the elimination of harmful attitudes and practices, including [FGM] . . . and recognizing that some of these practices can be violations of human rights and ethical medical principles. . . .”<sup>15</sup> Paragraph 124(i) calls upon governments to adopt and enforce laws against FGM while vigorously supporting the efforts of non-governmental and community organizations to eliminate FGM and other forms of violence against women.<sup>16</sup>

Most of the treaty monitoring bodies have addressed FGM, with the CEDAW Committee and the CRC making the issue a priority. These committees have condemned the practice and recommended measures to combat it, focusing mainly on punitive legal measures.<sup>17</sup>

The HRC, in response to a report by Gambia in 2004, stated the following:

*The Committee expresses its concern over the fact that female genital mutilation continues to be practised widely in the State party's territory, notwithstanding the adoption of the First National Action Plan for the Eradication of Female Genital Mutilation (FGM) in March 1997. The Committee reaffirms that the practice of FGM is contrary to article 7 of the Covenant.*

*The State party should take prompt legal and educational measures to combat the practice of female genital mutilation. Rather than censoring radio and television broadcasts designed to combat the practice of FGM, such broadcasts should be reinstated and encouraged.*<sup>18</sup>

## ADOLESCENT

The Beijing Platform, in paragraph 107(g), calls upon governments to “[r]ecognize the specific needs of adolescents and implement specific appropriate programmes, such as education and information on sexual and reproductive health issues and on sexually transmitted diseases, including HIV/AIDS, taking into account the rights of the child and the responsibilities, rights and duties of parents. . . .”<sup>19</sup> In paragraph 108(k), the Platform states that governments should work to meet “the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality.”<sup>20</sup>

The CEDAW Committee, the CRC, the HRC, and the CESCR have linked lack of access to modern contraceptive methods with high rates of adolescent pregnancy.<sup>21</sup> They have also criticized states for not ensuring access to sexual education. The CEDAW Committee and the CESCR, in particular, have often discussed sexual education as a means to reduce maternal mortality, rates of abortion, adolescent pregnancies, and prevalence of HIV/AIDS.<sup>22</sup>

In its recommendations in 2002 to the government of Uruguay, the CEDAW Committee stated the following:

*The Committee recommends that the State party examine the situation of adolescents as a matter of priority, and urges it to take action to ensure that effective reproductive and sexual health services are provided and that due attention is paid to the information requirements of adolescents, including through programmes and policies to provide information on the different kinds of contraceptives available and how they are to be obtained, on the basis of the principle that family planning is the responsibility of both the man and the woman. The Committee requests the State party to include information on the impact of programmes to reduce and prevent pregnancy among adolescents in its next periodic report.*<sup>23</sup>

The CRC, in its comments to Pakistan in 2003, said this:

*The Committee recommends that the State party continue to strengthen its efforts to address adolescent health issues and develop a comprehensive policy to provide adolescents in both urban and rural areas with reproductive health counselling and services, including family life education, especially on the effects of early marriage and on family planning, as well as to prevent and combat HIV/AIDS and the harmful effects of drugs.*<sup>24</sup>

## HIV/AIDS

The Beijing Platform, in paragraphs 108(a)–(p), outlines a series of steps that governments and the international community should undertake to prevent the spread of

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HIV/AIDS and to meet the needs of individuals living with HIV/AIDS.<sup>25</sup> These steps include reviewing and amending laws and combating practices that contribute to women's vulnerability to HIV/AIDS;<sup>26</sup> encouraging all sectors of society, both public and private, to develop non-discriminatory and compassionate policies that protect the rights of people living with HIV/AIDS;<sup>27</sup> investing in educational programs for women, men, and adolescents about prevention of HIV/AIDS transmission;<sup>28</sup> ensuring access to appropriate, affordable HIV/AIDS prevention services and expanding counseling and voluntary and confidential testing and treatment services for women;<sup>29</sup> and ensuring that health-care services receive high-quality condoms and medication for the treatment of sexually transmissible infections.<sup>30</sup>

The CEDAW Committee, the CRC, and the CESCR have made strong recommendations on specific measures for the prevention and treatment of HIV/AIDS. These committees, as well as CERD, have also addressed the issue of discrimination against people living with HIV/AIDS. In addition, the CEDAW Committee has sought to address the causes of HIV infection among women.<sup>31</sup>

In 2003, the CESCR made the following recommendation in response to a report from Russia:

*The Committee, in line with its general comment No. 14 (2000) on the right to the highest attainable standard of health, calls upon the State party to take urgent measures to stop the spread of HIV/AIDS. The State party should ensure that all persons know about the disease and how to protect themselves, including through sex education in schools, and that methods of protection are available at affordable prices. Moreover, awareness-raising campaigns should aim at preventing discrimination against HIV-positive people.*<sup>32</sup>

## RAPE AND SEXUAL VIOLENCE

The Beijing Platform, in paragraph 124, requires states to “condemn violence against women and refrain from invoking any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women. . . .”<sup>33</sup> In particular, it calls upon states to refrain from committing violence against women and to prevent violence by private actors by enforcing existing criminal penalties and adopting additional legislation targeting gender-based violence.<sup>34</sup> The Beijing Platform also recommends that states study the causes of violence against women and take policy measures to modify social and cultural patterns that perpetuate tolerance for gender-based violence.<sup>35</sup>

All of the treaty monitoring bodies have condemned violence against women. The CEDAW Committee has treated violence as a form of discrimination against women

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and has discussed the role of traditional discriminatory attitudes in fostering violence against women. In addition, the committees have persistently emphasized the need for legal remedies for sexual violence.<sup>36</sup>

In 2001, in response to Jamaica's report, the CEDAW Committee stated the following:

*The Committee urges the Government to place a high priority on measures to address violence against women in the family and in society, in accordance with general recommendation 19 of the Committee and the Declaration on the Elimination of Violence against Women. The Committee recommends that the Government raise public awareness about violence against women and urges the Government to strengthen its activities and programmes to focus on sexual violence, sexual crimes, incest and prostitution, especially prostitution associated with tourism. The Committee urges the Government to ratify the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women in order to strengthen the Government's programmes in that area.*<sup>37</sup>

### MARRIAGE AND FAMILY LAW

Paragraph 274 of the Beijing Platform instructs governments to “enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses” and “enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary. . . .”<sup>38</sup> It also requires governments to “[e]liminate the injustice and obstacles in relation to inheritance faced by the girl child so that all children may enjoy their rights without discrimination, by . . . enacting, as appropriate, and enforcing legislation that guarantees equal right to succession and ensures equal right to inherit, regardless of the sex of the child. . . .”<sup>39</sup>

The CEDAW Committee and the HRC have developed extensive recommendations on the rights of women within marriage. These committees have devoted significant attention to child marriage.<sup>40</sup>

In 2000, the CEDAW Committee made the following comment in response to India's report to the committee:

*The Committee is concerned that India has not yet established a comprehensive and compulsory system of registration of births and marriages. The Committee notes that inability to prove those important events by documentation prevents effective implementation of laws that protect girls from sexual exploitation and trafficking, child labour and forced or early marriage. The Committee is also concerned that failure to register marriages may also prejudice the inheritance rights of women.*<sup>41</sup>

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### ENDNOTES

1. *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Declaration and Platform for Action*].
2. *Id.* para. 94.
3. *Id.*
4. CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO INTERNATIONAL PROGRAMME ON REPRODUCTIVE AND SEXUAL HEALTH LAW, BRINGING RIGHTS TO BEAR 133 (2002) [hereinafter BRINGING RIGHTS TO BEAR].
5. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Viet Nam*, 25th Sess., 518-519th mtg., para. 267, U.N. Doc. A/56/38 (2001).
6. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 94.
7. *Id.* para. 106(e).
8. *Id.* para. 106(i).
9. BRINGING RIGHTS TO BEAR, *supra* note 4, at 121.
10. *Concluding Observations of the Human Rights Committee: Mali*, 77th Sess., 2083-2084th mtg, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003).
11. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 106(k).
12. BRINGING RIGHTS TO BEAR, *supra* note 4, at 156.
13. *Concluding Observations of the Human Rights Committee: Poland*, 82nd Sess., 2240-2241st mtg., para. 8, UN Doc. CCPR/CO/82/POL/Rev. 1 (2004).
14. *Concluding Observations of the Committee Against Torture: Chile*, 32nd Sess., 602nd, 605th mtgs., para. 7(m), U.N. Doc. CAT/C/CR/32/5 (2004).
15. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 107(a).
16. *Id.* para. 124(i).
17. BRINGING RIGHTS TO BEAR, *supra* note 4, at 77.
18. *Concluding Observations of the Human Rights Committee: Gambia*, 81st Sess., 2023-2024th mtg., para. 10, U.N. Doc. CCPR/CO/75/GMB (2004).
19. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 107(g).
20. *Id.* 108(k).
21. BRINGING RIGHTS TO BEAR, *supra* note 4, at 121.
22. *Id.* at 143.
23. *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Uruguay*, 26th Sess., 541st-542nd mtg., para. 203, U.N. Doc. A/57/38 (Part I) (2002).
24. *Concluding Observations of the Committee on the Rights of the Child: Pakistan*. 34th Sess., 900-901st mtg., para. 55, UN Doc CRC/C/15/Add.217 (2003).
25. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 108(a)-(p).
26. *Id.* para. 108(b).
27. *Id.* para. 108(c).
28. *Id.* para. 108(i),(k),(l).
29. *Id.* para. 108(m).
30. *Id.*
31. BRINGING RIGHTS TO BEAR, *supra* note 4, at 169.
32. *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*, 31st Sess., 41st, 43rd mtgs., para. 62, U.N. Doc. E/C.12/1/Add.94 (2003).
33. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 124(a).
34. *Id.* para. 124(b-d).
35. *Id.* para. 124(k).
36. BRINGING RIGHTS TO BEAR, *supra* note 4, at 66.
37. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Jamaica*, 24th Sess., 502-503rd mtg., para. 226, U.N. Doc. A/56/38 (2001).
38. *Beijing Declaration and Platform for Action*, *supra* note 1, para. 274(e).
39. *Id.* para. 274(d).
40. BRINGING RIGHTS TO BEAR, *supra* note 4, at 48.
41. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: India*, 22nd Sess., 452- 453rd, 462nd mtg., para. 62, U.N. Doc. A/55/38 (2000).



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