

# Displaced and Disregarded: Refugees and their Reproductive Rights

*The current refugee crisis in Central Asia highlights the potential threats to the reproductive rights of refugees inherent in most refugee situations. Of the estimated 1.5 million refugees currently fleeing military action in Afghanistan, 375,000 are women of reproductive age (15-49). The United Nations Population Fund (UNFPA) estimates that 60,000 are pregnant, and 10,000 exhibit high-risk pregnancies that will require emergency care.<sup>1</sup> The increased vulnerability of Afghan refugees, particularly women and children, to infection, disease, pregnancy complications, and violence by virtue of becoming displaced is shared by nearly 22 million refugees worldwide. Increased focus on the reproductive rights of Afghan refugees should be a central part of comprehensive efforts to ensure their lives, health, and basic needs.*

*The most vulnerable of refugee populations, women and children constitute 80% of the world's refugees. Women refugees are particularly vulnerable to sexual coercion and gender violence, and they experience violations of these and other human rights during and after flight. Rates of maternal mortality and morbidity, sexually transmissible infections (STIs) including HIV/AIDS, unsafe abortions and unwanted pregnancies are high among refugee women, as are incidents of sexual violence against them. For example, it is estimated that at least half of the women and girls displaced during Sierra Leone's ongoing conflict were raped.<sup>2</sup>*

I.

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The Center for Reproductive Rights urges governments and the international community to honor relevant international legal obligations by:

- Ensuring the reproductive rights of refugee women and girls, including adolescents' specific reproductive health needs;
- Providing refugee women access to comprehensive reproductive health care, including integrated services directed at sexual violence, voluntary family planning, STIs, in particular HIV/AIDS, and safe motherhood services; and
- Investigating, prosecuting, and bringing to justice violators of the reproductive rights of refugees in their territories.

## INTRODUCTION

Women and children constitute the vast majority, and the most vulnerable, of the world's refugees.<sup>3</sup> Over the last decade, the number of refugees increased from 15 million to 22 million, with a spike to 27 million in 1995.<sup>4</sup> There are an additional 20-25 million internally displaced persons (IDPs), who fall outside the international definition of refugees.<sup>5</sup> The United Nations High Commissioner for Refugees (UNHCR), whose mandate is the protection and assistance of refugees, has issued directives specifically targeting refugee women, including "Guidelines for the Protection of Refugee Women," and "Sexual Violence Against Refugees: Guidelines on Prevention and Response." In addition, UNHCR, in conjunction with the World Health Organization (WHO) and UNFPA, has, after three years in the making, finalized and distributed an "Inter-agency Field Manual on Reproductive Health in Refugee Situations" (Inter-agency Manual).<sup>6</sup> The Inter-agency Manual highlights the previously neglected reproductive health concerns of refugee women and children, including reproductive health of adolescents, the prevention and treatment of STIs, especially HIV/AIDS, and sexual and gender-based violence. The manual also includes Appendix 2: "Legal Considerations – The Rights of Refugees Relating to Reproductive Health," which sets forth the foundation for reproductive rights of refugees.

Women refugees face a continuous risk of human rights abuses during and following flight. The Platform for Action of the 1995 United Nations Fourth World Conference on Women (Beijing Conference) states that "[t]he factors that cause the flight of refugee women, other displaced women in need of international protection, and internally displaced women may be different from those affecting men. These women continue to be vulnerable to abuses of their human rights during and after their flight."<sup>7</sup>

Yet, even with growing recognition of the critical need for the protection of women and girl refugees, the 2000 five-year review of the Beijing Conference lamented that:

[t]here has been a failure to provide sufficient resources, to adequately distribute those resources and to address the needs of increasing numbers

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of refugees, who are mostly women and children, particularly to developing countries hosting large numbers of refugees; international assistance has not kept pace with the increasing number of refugees.... Inadequate training of personnel dealing with the needs of women in situations of armed conflict or as refugees, such as a shortage of specific programmes that address the healing of women from trauma and skills training, remains a problem.<sup>8</sup>

As the human rights abuses to which refugee women are subjected often involve their rights to reproductive self-determination and health, this publication focuses on the reproductive rights of refugees. We examine these rights through the lens of the international human rights legal framework and discuss the relations between reproductive rights and refugee law.

### **II. REFUGEES AND REPRODUCTIVE HEALTH ISSUES**

A woman's reproductive health is particularly vulnerable when she is a refugee. In the initial stages of an emergency refugee situation, the breakdown of traditional structures of community and family results in limited protection from sexual and gender violence. Though there is a dearth of statistical research on refugee women, there is evidence to suggest that women refugees experience higher rates of gender violence, sexual exploitation, and maternal mortality than women in the general population.<sup>9</sup> Increased risk of sexual violence and exploitation subject women and girls to severe physical and psychological trauma, unwanted pregnancies, complications from unsafe abortions, and high rates of STI infection, in particular HIV/AIDS.

The WHO has noted the trend of high rates of both fertility and STIs among women in long-term refugee situations:

As the situation stabilizes – and life in a refugee settlement becomes routine – fertility rates often go up, sometimes to surprisingly high levels: women may want to replace lost children. As epidemic diseases are brought under control, sexually transmitted diseases – including AIDS – may become significant in illness statistics. The breakdown of family ties and community controls in refugee settlements often leads to increased unprotected sexual activity among young persons. As men lose their traditional roles and stature and have little work to do, excessive drinking and violence may result. The numbers of women with the complications of unsafe abortion may be high – especially if rape was common in the early stages of the emergency.<sup>10</sup>

#### ***A. Sexual and Gender-based Violence***

Women refugees in conditions of dependency on male authorities are particularly subject to sexual coercion. Refugee women and girls are at risk of physical and sexual abuse at the hands of male refugees, especially refugee leaders, and local relief officials.<sup>11</sup> Women refugees may be driven into prostitution or be in danger of rape by police officers, border guards, and male refugee leaders, who may demand sexual favors

in exchange for basic goods or services.<sup>12</sup> The 1994 United Nations International Conference on Population and Development (ICPD) Programme of Action highlighted this problem, and specifically called upon governments to take “[a]ll necessary measures ... to ensure the physical protection of refugees – in particular, that of refugee women and refugee children – especially against exploitation, abuse, and all forms of violence.”<sup>13</sup> The 2000 review of the Beijing Conference reasserted the need to “[t]ake measures to ensure the protection of refugees, especially women and girls, and their access to and the provision of gender-sensitive appropriate basic social services, including education and health.”<sup>14</sup>

The use of rape as a weapon of war against refugees and internally displaced people has been extensively documented in recent conflicts, including those in Chechnya, the Democratic Republic of Congo, East Timor, Rwanda, Sierra Leone, and the former Yugoslavia.<sup>15</sup> In times of population displacements or breakdowns in social and political order, rape has been used systematically as an instrument of torture or ethnic domination. Many refugee women who are rape survivors suffer from severe physical and psychological injuries, including social stigmatization, STIs, including HIV/AIDS, and complications resulting from unsafe abortions.<sup>16</sup> The codification of forms of sexual and gender-based violence as war crimes and as crimes against humanity in the 1998 Rome Statute establishing the International Criminal Court, reflect an official recognition by the international community of the gravity of such violations.<sup>17</sup>

### ***B. Risky, Unwanted Pregnancies and Unsafe Abortion***

High-risk pregnancies, in women under 18 or over 40, often occur among refugee women. UNFPA estimates that among pregnant refugees, one in five women “face a heightened risk of malnourishment and infectious diseases, and are subject to hazardous conditions when giving birth.”<sup>18</sup> Such women may be seriously physically weakened as a result of recent trauma, endemic diseases such as malaria and tuberculosis, and poor nutritional levels. Yet, they may have repeated and closely spaced pregnancies despite the fact that they lack access to appropriate health care services.<sup>19</sup> High rates of unwanted pregnancies are also associated with high rates of complications from unsafe abortions among refugees. Botched abortions constitute 25-50% of maternal deaths among refugees, compared with 13% of such deaths worldwide.<sup>20</sup> In many countries with large refugee populations, the illegal status of abortion makes access to safe services difficult or impossible for many refugee women.<sup>21</sup> Even in countries with more liberal abortion laws, “some refugees may not be able to obtain legal procedures because they simply do not know how to find them, or because they incorrectly believe abortion to be illegal.”<sup>22</sup> Moreover, conservative anti-choice interests in the United States have threatened U.S. funds to United Nations (UN), U.S. and private agencies for refugee assistance if abortion access is facilitated in any way.<sup>23</sup>

### ***C. Contraception and Family Planning***

High rates of unwanted pregnancy and the heavy reliance on unsafe abortion frequently derive from a lack of contraceptive services. For example, only 10% of Afghan women

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refugees in Pakistan utilize any family planning method.<sup>24</sup> According to UNHCR, availability of effective safe contraception is a priority, especially the provision of free condoms to prevent transmission of STIs, including HIV/AIDS.<sup>25</sup> Comprehensive family planning services are necessary to fulfill the demand for continued contraception use, and to address new interest in contraception given recent or ongoing precarious living conditions.

As discussed above, the persistence of sexual violence against women and girls during the emergency and post-crisis phases, raises concerns for their mental and physical well-being. The Inter-agency Manual mandates a “medical response to survivors of sexual violence, including emergency contraception, as appropriate.”<sup>26</sup> Withholding emergency contraception from women in refugee situations further endangers their personal security, health and reproductive autonomy by causing them to experience unwanted pregnancies or to resort to unsafe abortions.

### ***D. STIs and HIV/AIDS***

Refugee populations also exhibit alarming rates of STI infection, in particular of HIV/AIDS. According to the WHO, “the spread of STI/HIV is fastest in the conditions of poverty, powerlessness and social instability that accompany conflict and displacement.”<sup>27</sup> The UNHCR cautions that women refugees’ increased vulnerability to sexual abuse and assault result in their greater risk than men of contracting the HIV virus.<sup>28</sup> Among Rwandan refugees living in camps in Tanzania and former Zaire, 9% were infected with HIV, a prevalence rate nearly eight times higher than in their areas of origin.<sup>29</sup> The UNHCR reports that 80% of Rwandan women seeking counseling for rape during the conflict tested HIV-positive.<sup>30</sup>

In 2001, the Declaration of Commitment on HIV/AIDS, produced during the first UN General Assembly Special Session devoted to the pandemic, recognized that “populations destabilized by armed conflict, humanitarian emergencies and natural disasters, including refugees, internally displaced persons and in particular, women and children, are at increased risk of exposure to HIV infection.”<sup>31</sup> It consequently called on governments to factor such vulnerability to the epidemic in to national strategies and international assistance programs.<sup>32</sup>

### ***E. Limited Reproductive Health Services***

Health care services in refugee situations have, for many years, primarily focused on the needs of pregnant women.<sup>33</sup> Recently it has been recognized that the comprehensive health needs of women, including adolescent, elderly, and single women, must not be ignored. Support for services for young people and sexually active couples is growing. However, a study by the Women’s Commission for Refugee Women and Children reported that in the majority of refugee sites, the more comprehensive reproductive health needs of refugee and displaced women were not being met:

Sex education, family planning or birth-spacing information and services, the routine availability of contraceptive supplies in hospital and clinic pharmacies, clandestine abortion monitoring and treatment, legal abortion services, AIDS education and prevention, and the diagnosis and treatment of other sexually transmitted diseases and gynecologic condi-

tions – not to mention the provision of supplies for menstruating women, rape prevention and counseling, or programs to assist the victims of sexual abuse and forced prostitution – are all seriously neglected.<sup>34</sup>

While the Inter-agency Manual promulgates a comprehensive approach to the reproductive health of refugees, its application and implementation remains limited. For example, the Inter-agency Manual advocates for a Minimum Initial Service Package (MISP) to be available from the “initial phase to reduce maternal mortality and morbidity, particularly among women.”<sup>35</sup> The MISP outlines the following objectives: prevention and management of the consequences of sexual violence (including provision of emergency contraceptives, where appropriate); reduction of HIV transmission (including guaranteed availability of free condoms); provision of delivery kits to expectant mothers and midwives; and planning for comprehensive reproductive health services as an integrated part of primary health care.<sup>36</sup> Nonetheless, as with other UNHCR policies, partner non-governmental organizations (NGOs) are “encourage[d] but not systematically require[d] ... to provide reproductive health services – or a full range of such services – during emergencies.”<sup>37</sup> Some private humanitarian organizations active in many refugee situations provide limited or no comprehensive reproductive health services.<sup>38</sup>

### III. THE LEGAL AND POLICY FRAMEWORK OF REFUGEE PROTECTION

International instruments impose legal obligations on states parties to protect and promote the rights of refugees. It is national laws, however, which govern the admission of refugees and the types of services they are entitled to receive.<sup>39</sup> Therefore, domestic laws, informed by the country’s international legal obligations, determine the civil, social and economic rights of refugees.<sup>40</sup>

#### ***A. The 1951 Convention and the 1967 Protocol***

Celebrating its fiftieth anniversary in 2001, the 1951 United Nations Convention relating to the Status of Refugees (1951 Convention) sets forth the legal status of refugees and their rights and duties in their country of refuge. Under the 1951 Convention, a “refugee” is defined as a person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, or nationality, membership of a particular social group or political opinion, is outside the country of his [*sic*] nationality and is unable, or owing to such fear, is unwilling to avail himself [*sic*] of the protection of that country; or who, not having a nationality and being outside the country of his [*sic*] former habitual residence, is unable, or owing to such fear, is unwilling to return to it.”<sup>41</sup> The 1951 Convention is the basic international instrument relating to the status of refugees and reflects the desire of the international community to establish universal standards for their treatment.

The 1951 Convention was founded upon the principles, established by both the Charter of the United Nations and the Universal Declaration of Human Rights, that affirmed the concept that “human beings shall enjoy fundamental rights and freedoms without discrimination.”<sup>42</sup> The Universal Declaration does not distinguish between the rights of citizens and non-citizens; nor between the rights of nationals and non-nationals. In signing the 1951 Convention, the Contracting States agreed “to assure refugees the widest possible exercise of these fundamental rights and freedoms.”<sup>43</sup> Because the 1951 Convention sought to protect

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persons who were fleeing persecution following the outbreak of World War II and the Holocaust, it contained certain datelines and geographic restrictions. For example, it covered only those persons who became refugees as a result of events occurring before January 1, 1951.<sup>44</sup>

The international community broadened the application of the 1951 Convention by adopting the 1967 Protocol Relating to the Status of Refugees (1967 Protocol).<sup>45</sup> The 1967 Protocol applied the same substantive definition of “refugee,” yet removed the datelines and geographic restrictions of the earlier convention. The 1967 Protocol was adopted by the General Assembly of the United Nations, and it entered into force on October 4, 1967. The 1951 Convention and the 1967 Protocol set forth the principle of *non-refoulement*, i.e., the principle that countries may not forcibly return people to places where their lives or freedom would be threatened because of “race, religion, nationality, membership in a particular social group, or political opinion.” In addition, these documents established the rights of asylum-seekers to a fair hearing and expeditious processing of their asylum requests. Both the 1951 Convention and the 1967 Protocol have been widely ratified, with 141 countries party to one or both.<sup>46</sup>

The procedure for determining refugee status is not particularly sensitive to gender-related asylum claims. Gender is not one of the specific grounds on which a well-founded fear of persecution may be based in accordance with the 1951 Convention and 1967 Protocol. However, gender-related persecution is gaining recognition as a valid basis for a claim for asylum. The UNHCR has advocated that women asylum-seekers with gender-related claims be judged as members of a “particular social group.” In 1985, the Executive Committee of UNHCR stated that women constitute a “particular social group” and may be covered within the 1951 Convention definition of a refugee<sup>47</sup> if the persecution constitutes a type of harm that is particular to the applicant’s gender, or is imposed because of the applicant’s gender.<sup>48</sup> Moreover, while the 1951 Convention provides the definition for refugees and the general protections accorded to them, the state party remains the ultimate arbiter in determining refugee status and implementing relevant protections.<sup>49</sup>

### ***B. OAU Convention***

The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) broadened the definition of the term “refugee” on the regional level to include any person who, “owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his [sic] country of origin or nationality, is compelled to leave his [sic] place of habitual residence in order to seek refuge in another place outside his [sic] country of origin or nationality.”<sup>50</sup> The OAU Convention was adopted by the Assembly of Heads of States and Government at its Sixth Ordinary Session in Addis Ababa on September 10, 1969. It entered into force on June 20, 1974. The OAU Convention stated that the fundamental international human rights proclaimed by the Universal Declaration of Human Rights were equally applicable to refugees, displaced persons and persons of concern to the UNHCR.

### **C. Cartagena Declaration**

The 1984 Cartagena Declaration on Refugees (Cartagena Declaration) further extended the concept of a refugee to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”<sup>51</sup> Although the standard espoused in the Cartagena Declaration is not legally binding, many states in Central America have incorporated the standard into their national legislations. The Cartagena Declaration was the result of a colloquium convened by UNHCR entitled “*Coloquio Sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios*,” held in Cartagena, Colombia, November 19-22, 1984. The Cartagena Declaration noted that:

In view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights.<sup>52</sup>

The expansion of the definition of a refugee by the 1969 OAU Convention and the 1984 Cartagena Declaration responded to the experience of massive flows of refugees in Africa and Central America that did not fit the earlier model of refugee flows from armed conflicts between nations. Since the end of the Cold War, the nature of armed conflicts has changed to ethnic conflicts and civil wars that increasingly have targeted civilians and non-combatants, including women and children. The Cartagena Declaration broadened the concept of a refugee to reflect this new nature of armed conflict and realities outside Europe.

### **D. International Human Rights Standards**

The 1951 Convention and 1967 Protocol, the OAU Convention, and the Cartagena Declaration should be analyzed within the broader context of international human rights standards. Though refugees enjoy rights that are specific to their legal status, they also benefit from the rights generally contained in international human rights instruments. International human rights norms require governments to ensure that all individuals within their territories, regardless of citizenship, enjoy the equal protection of the law.<sup>53</sup> The problems of refugees and displaced persons should be resolved in accordance with the full range of relevant international human rights standards as expressed in the following documents, including:<sup>54</sup>

- Charter of the United Nations (1945)
- Universal Declaration of Human Rights (1948)
- Geneva Conventions (1949) and the Additional Protocols (1977) on humanitarian law in armed conflict<sup>55</sup>
- International Covenant on Economic, Social and Cultural Rights (1976)



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- International Covenant on Civil and Political Rights (1976)
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1976)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention on the Rights of the Child (1990)
- Declaration on the Elimination of Violence against Women (1993)

### ***E. ICPD and Beijing Programs for Action, and their Five-Year Reviews***

Reproductive rights are a composite of a number of separate human rights. Many of the above-mentioned international instruments refer to rights to reproductive self-determination and health care. International recognition of reproductive rights was strengthened by the international consensus documents agreed to at the ICPD and at the Beijing Conference. The ICPD Programme of Action defined reproductive rights as follows:

Reproductive rights embrace certain human rights that are already recognized in national laws, international laws, and international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights 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.<sup>56</sup>

Fundamental to the concept of reproductive rights is the applicability of universally recognized human rights principles to the right to reproductive health care, including the right to plan childbearing and to safeguard reproductive health. Reproductive rights extend equally to all couples and individuals; they neither discriminate between citizens and persons who have been forced to flee their homes, nor between nationals and non-nationals.

In 1999 and 2000, the respective five-year reviews for ICPD and the Beijing Conference reaffirmed the international consensus to improve and promote the reproductive health and rights of all people. The five-year review of ICPD set important targets for addressing maternal mortality, HIV/AIDS prevention, unmet family planning needs, and adolescents' reproductive and sexual health. It further recognized refugees and IDPs and called for greater reproductive health and family planning for displaced adolescents and women.<sup>57</sup> In addition, it emphasized training for health and relief workers in emergency situations in "sexual and reproductive health-care services and information."<sup>58</sup> At the five-year review of the Beijing Conference, the international community stressed the need for a "more holistic support for refugee and displaced women" that integrated a gender perspective into the design and implementation of assistance to victims of humanitarian emergencies and conflict situations.<sup>59</sup>

***F. The Rome Statute Establishing the International Criminal Court***

Support for the establishment of an international permanent mechanism to handle the gravest violations of international law solidified following the atrocities in the Former Yugoslavia and Rwanda, and the subsequent ad hoc tribunals created to address them. At a 1998 UN Diplomatic Conference held in Rome, the majority of member states (120) resolved to establish a permanent International Criminal Court (ICC) to prosecute the most serious offenses of global concern, such as genocide, war crimes and crimes against humanity.<sup>60</sup> The Rome Statute Establishing the ICC explicitly defines gender-based violence as war crimes and crimes against humanity, and calls for the prevention of such crimes and for the prosecution of perpetrators. Significantly, the statute recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as grave criminal offenses under international law.<sup>61</sup> Given the horrifying reality of massive sexual and gender-based violence perpetrated against women and girl refugees, the establishment of an ICC will help ensure that such abuses will be addressed as among the most serious and condemnable international crimes. The ICC will become operational upon the ratification of 60 states. Currently, 139 states have signed the statute, and 46 have ratified it.<sup>62</sup>

**IV. THE LEGAL FRAMEWORK OF REPRODUCTIVE RIGHTS AND REFUGEE PROTECTION**

Reproductive rights encompass civil, political, economic, social, and cultural rights. The following are references to the reproductive rights of refugees in international legal instruments and consensus documents:<sup>63</sup>

1. THE RIGHT TO HEALTH, REPRODUCTIVE HEALTH, AND FAMILY PLANNING

*Treaties and Conventions*

THE 1951 REFUGEE CONVENTION

**Article 24 (1)(b):** The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of ... Social security (legal provisions in respect of ... maternity, sickness, disability, old age, [and] death).

THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (THE RACIAL DISCRIMINATION CONVENTION)

**Article 5:** States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone [to] ... (e)(iv) the right to public health, medical care, social security and social services.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS COVENANT)

**Article 10.2:** Special protection should be accorded to mothers during a

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reasonable period before and after childbirth.

**Article 12.1:** The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

**Article 12.2:** The steps to be taken by the States Parties ... to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child ... (d) The creation of conditions which would assure to all medical services and medical attention in the event of sickness.

### **General Comment 14: The right to the highest attainable standard of health**

The Committee on Economic, Social and Cultural Rights, which oversees implementation of the Economic Rights Covenant, has interpreted the “right to the highest attainable standard of health” to include “the right to control one’s health and body, including sexual and reproductive freedom.”<sup>64</sup> Consequently, the realization of the right to health “requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity.”<sup>65</sup> In light of this definition, the Committee also asserts that states are obliged to “cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons.”<sup>66</sup>

### THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

**Article 10 (h):** [States Parties shall ensure] [a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

**Article 12.1:** States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health services, including those relating to family planning.

**Article 12.2:** States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

*Article 14.2:* States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas [and] ensure to such women the right: ... (b) To have access to adequate health care facilities, including information, counselling and services in family planning.

#### **General Recommendation 24: Women and Health**

In its General Recommendation 24 on women and health, the Committee on the Elimination of Discrimination Against Women, which oversees implementation of CEDAW, has stressed that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women.”<sup>67</sup> It further stated that “States parties should ensure that adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.”<sup>68</sup>

#### THE CONVENTION ON THE RIGHTS OF THE CHILD (THE CHILDREN’S RIGHTS CONVENTION)

*Article 24.1:* States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health services.

*Article 24.2:* States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; ... (d) To ensure appropriate pre-natal and post-natal health care for mothers; ... (f) To develop preventive health care, guidance for parents and family planning education and services.

#### *Concluding Observations by the Committee on the Rights of the Child*

The Committee on the Rights of the Child, which oversees the implementation of the Children’s Rights Convention, has recommended the “adopt[ion of] comprehensive legislation to ensure adequate protection of refugees and asylum-seeking children, including in the field of physical safety, health, education and social welfare, and to facilitate family reunification.”<sup>69</sup>

#### THE RACIAL DISCRIMINATION CONVENTION

*Article 5:* States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee [to] everyone ... (e)(iv) the right to public health, medical care, social security and social services.

#### *Conference Documents*

THE VIENNA DECLARATION AND PROGRAMME OF ACTION, UNITED NATIONS WORLD CONFERENCE ON HUMAN RIGHTS (THE VIENNA DECLARATION AND THE VIENNA PROGRAMME OF

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### ACTION)

**Paragraph 41:** The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. [T]he World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

### THE ICPD PROGRAMME OF ACTION

**Principle 8:** Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion.

**Paragraph 7.2:** Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women 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, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.

**Paragraph 7.46:** Countries, with the support of the international community, should protect and promote the rights of adolescents to reproductive health education, information and care and greatly reduce the number of adolescent pregnancies.

**Paragraph 10.25:** Refugees should be provided with access to adequate accommodation, education, health services, including family planning, and other necessary social services.

### THE ICPD FIVE-YEAR REVIEW

**Paragraph 29:** Governments are urged [that] ... [i]n planning and implementing refugee assistance activities, special attention should be given to the specific needs of refugee women and children and elderly refugees. Adequate and sufficient international support should be

extended to meet the basic needs of refugee populations, including ... protection from violence, [and] health services, including reproductive health and family planning.

**Paragraph 54:** The United Nations system and donors should support Governments [in] ensuring that all refugees and all other persons in humanitarian situations, particularly women and adolescents, receive appropriate health care, including sexual and reproductive health care and information.

#### THE BEIJING PLATFORM FOR ACTION

**Paragraph 89:** Women have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

**Paragraph 92:** Women's right to the enjoyment of the highest standard of health must be secured throughout the whole life cycle in equality with men.

#### THE BEIJING FIVE-YEAR REVIEW

**Paragraph 99 (m):** Take measures to ensure the protection of refugees, especially women and girls, and their access to and the provision of gender-sensitive appropriate basic social services, including education and health.

## 2. THE RIGHT TO BE FREE FROM SEXUAL VIOLENCE AND EXPLOITATION

### *Treaties and Conventions*

#### CEDAW

**Article 5 (a):** [States Parties shall take all appropriate measures] [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

**Article 6:** States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation or prostitution of women.

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### **Concluding Observations by the Committee on CEDAW**

In its Concluding Observations, the CEDAW Committee has expressed grave concern “at the reports of women who are raped, assaulted or tortured during war.”<sup>70</sup> It recommended that governments “adopt specific and structural measures, including legislation to protect women from [rape, assault, or torture during war] and [to] provide ... women victims of violence [with] psychological support and socio-economic integration measures. It also requests the Government to introduce awareness raising measures to emphasize the importance of maintaining human rights standards in times of war.”<sup>71</sup>

The CEDAW Committee has further recommended “that refugee and migrant women be provided with adequate information to protect them from traffickers and others who seek to exploit women for the purpose of prostitution.”<sup>72</sup>

### THE CHILDREN’S RIGHTS CONVENTION

**Article 19.1:** States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

**Article 34:** States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.

### THE ROME STATUTE OF THE ICC

**Article 7.1:** For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ... (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.<sup>73</sup>

### *Conference Documents*

#### THE VIENNA DECLARATION

**Paragraph 18:** Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.

#### THE VIENNA PROGRAMME OF ACTION

**Paragraph 38:** [T]he World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life....The World Conference on Human Rights ... urges States to combat violence against women....Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

**Paragraph 48:** Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against ... child prostitution, child pornography, as well as other forms of sexual abuse.

#### THE ICPD PROGRAMME OF ACTION

**Paragraph 4.10:** Countries are urged to identify and condemn the systematic practice of rape and other forms of inhuman and degrading treatment of women as a deliberate instrument of war and ethnic cleansing and take steps to assure that full assistance is provided to the victims of such abuse for their physical and mental rehabilitation.

**Paragraph 10.24:** All necessary measures should be taken to ensure the physical protection of refugees – in particular, that of refugee women and refugee children – especially against exploitation, abuse and all forms of violence.

#### THE FIVE-YEAR REVIEW OF ICPD

**Paragraph 54:** The United Nations system and donors should support Governments [in] ensuring that all refugees and all other persons in humanitarian situations, particularly women and adolescents, receive ... greater protection from sexual and gender based-violence.

#### THE FIVE-YEAR REVIEW OF BEIJING

**Paragraph 59:** [V]iolence against women resulting from cultural prejudice, racism, and racial discrimination, xenophobia, ... ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism and terrorism are incompatible with the dignity and worth of the human person and must be combated and eliminated.

### 3. THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

#### *Treaties and Conventions*

#### THE 1951 UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES

**Article 33 (1):** No Contracting State shall expel or return (“refouler”) a



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refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.  
THE OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA

**Article 2 (3):** No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him [*sic*] to return to or remain in a territory where his [*sic*] life, physical integrity or liberty would be threatened for the reasons set out in Article 1, paragraphs 1 and 2.

### THE CARTAGENA DECLARATION ON REFUGEES

**Article 5:** To reiterate the importance and meaning of the principle of *non-refoulement* (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*.

### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

**Article 5:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (THE CIVIL AND POLITICAL RIGHTS COVENANT)

**Article 7:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### THE CHILDREN'S RIGHTS CONVENTION

**Article 37 (a):** [States Parties shall ensure that] [n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

### THE CONVENTION AGAINST TORTURE

**Article 1:** [T]he term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for ... any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

### *Conference Documents*

### THE VIENNA PROGRAMME OF ACTION

**Paragraph 56:** The World Conference on Human Rights affirms that under human rights law and international humanitarian law, freedom

from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.

THE ICPD PROGRAMME OF ACTION

*Paragraph 4.10:* Countries are urged to identify and condemn the systematic practice of rape and other forms of inhuman and degrading treatment of women as a deliberate instrument of war and ethnic cleansing and take steps to assure that full assistance is provided to the victims of such abuse for their physical and mental rehabilitation.

**V. CONCLUSION**

Fundamental to the protection of refugee women is the promotion of their rights to reproductive self-determination and reproductive health. Governments and the international community must honor all relevant legal obligations to protect and promote the rights of refugees, including reproductive rights. In addition, governments must live up to international commitments negotiated at fora such as the World Conference on Human Rights, the ICPD and Beijing conferences, and their five-year reviews. CRLP calls upon these governments to uphold and be accountable for their relevant legal obligations to respect the reproductive rights of refugee women. As the high rates of gender violence and sexual exploitation among refugee women attest, the efforts of governments and the international community have not been adequate to meet these legal obligations and international commitments.

*October 2001*

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### Notes

1 See United Nations Population Fund (UNFPA), *Fast Facts, Humanitarian Crisis in Afghanistan*, available at

<http://www.unfpa.org/tpd/emergencies/afghanistan/index.htm> (last visited Nov. 15, 2001).

2 See Refugees International, *Sierra Leone: Essential for Peace Process — Psychosocial Programs* (July 18, 2000), available at <http://www.refintl.org/cgi-bin/ri/bulletin?bc=00121>.

3 See WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN FACTSHEET (Aug. 1996) (on file with the Center for Reproductive Rights).

4 See United Nations High Commissioner for Refugees (UNHCR), *Refugees by Numbers 2001*, available at [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+WwwBmeLqZw\\_wwwMwwwwwwFqzvxsqmwWx6hFqoUfIfRZ2ItFqnp1xcAFqoUfIfRZ2IDzmxwwwwww1Fqnp1xc/opensdoc.htm](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+WwwBmeLqZw_wwwMwwwwwwFqzvxsqmwWx6hFqoUfIfRZ2ItFqnp1xcAFqoUfIfRZ2IDzmxwwwwww1Fqnp1xc/opensdoc.htm) (last visited Nov. 16, 2001). In 1990, UNHCR reported 14,916,498 “people of concern,” compared to 21,793,300 in 2001. According to early 2001 estimates by region, Asia had the largest concentration of refugees (8,450,000), followed by Africa (6,072,900), and Europe (5,571,700). *Id.*

5 See *id.* Internally displaced persons (IDPs) are individuals forced to leave their homes but who have not crossed an international border into another country and thus are not protected under international law. The UNHCR currently assists 6.4 million out of the estimated 20-25 million IDPs. For a discussion of the definition of “refugee” under international law, see *infra* note 41 and accompanying text.

6 Notably, in 1995, two umbrella organizations with some overlapping members – the Reproductive Health for Refugees Consortium (RHRC) of NGOs, and the UN-chaired Inter-agency Working Group on Reproductive Health (IAWG) – formed to implement the growing demand for reproductive health services for refugees.

7 *Beijing Declaration and the Platform for Action*, Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, para. 226, U.N. Doc. DPI/1766/Wom (1996) [hereinafter *Beijing Declaration and Platform for Action*].

8 *Further actions and initiatives to implement the Beijing Declaration and the Platform for Action*, U.N. GAOR, 23rd Special Sess., New York, United States,

June 5-9, 2000, para. 16, U.N. Doc. A/Res/S-23 (2000) [hereinafter *Beijing +5 Review Document*].

9 See DEIRDRE WULF, REFUGEE WOMEN AND REPRODUCTIVE HEALTH CARE: REASSESSING PRIORITIES 3 (1994).

10 See *When Disaster Strikes: Caring for Mothers and Babies in Conflict and Disasters*, 23 SAFE MOTHERHOOD 1, 6-7 (1997).

11 See LAWYERS COMMITTEE FOR HUMAN RIGHTS, AFRICAN EXODUS: REFUGEE CRISIS, HUMAN RIGHTS AND THE 1969 OAU CONVENTION 82 (1995).

12 See *id.* The UNHCR reports that sex is routinely used as “currency” with which [women and girl refugees] are expected to ‘pay’ for things ranging from passing school exams to crossing a border.” A Sierra Leonean adolescent reported that she was gang raped in “exchange” for the safe passage of her family over the border into Guinea. See UNHCR News Stories, *Sex as currency makes refugee women more vulnerable to AIDS* (July 17, 2001), at <http://www.unhcr.ch>.

13 *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para. 10.24, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].

14 *Beijing +5 Review Document*, *supra* note 8, at para. 99(m).

15 See HUMAN RIGHTS WATCH (HRW), WORLD REPORT 2001, WOMEN'S HUMAN RIGHTS: WOMEN IN CONFLICT AND REFUGEES (2001), available at <http://www.hrw.org/wr2k1/women/women3.html> (last visited Nov. 16, 2001).

16 See *ICPD Programme of Action*, *supra* note 13, at para. 10.24.

17 See *infra* notes 60-62, 72 and accompanying text. Concurrently with discussions surrounding the ICC, in 2001 the ad hoc UN Tribunal for the former Yugoslavia convicted Bosnian Serb soldiers of war crimes and crimes against humanity for rapes perpetrated against civilian women. See UN Wire, *BOSNIA: UN, Rights Groups Hail Historic Verdict On Rape* (Feb. 26, 2001), at <http://www.unfoundation.org/unwire/archives/UNWIRE010226.asp#7>.

18 UNITED NATIONS POPULATION FUND (UNFPA), PREVENTING INFECTION AND PROMOTING REPRODUCTIVE HEALTH 21 (2001), available at <http://www.unfpa.org/aids/response/chapter08.htm>.

19 See Wulf, *supra* note 9, at 3.

20 See IPAS, ASSESSMENT TOOLS FOR IMPLEMENTING POSTABORTION CARE IN REFUGEE REPRODUCTIVE HEALTH PROGRAMS Preface (2000).

21 See *infra* notes 39-40 and accompanying text on the applicability of the laws of the host country to refugees. Article 24(1)(b) of the 1951 Convention, requires state parties to “accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of ... Social security (legal provisions in respect of ... maternity, sickness, disability, old age, [and] death).” Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 (*entered into force* Apr. 22, 1954) [hereinafter 1951 Convention].

22 See Center for Reproductive Rights, MEETING THE HEALTH NEEDS OF WOMEN SURVIVORS OF THE BALKAN CONFLICT 21 (1993). In a report on the health needs of women survivors of the Balkan conflict, Center for Reproductive Rights noted that despite the legality of abortion in the host country, women in refugee camps received little if any information on the availability of abortion services. *Id.*

23 See, e.g., Letter from Chris Smith, Chairman, Subcommittee on International Operations and Human Rights, U.S. Congress, to Sadako Ogata, UN High Commissioner for Refugees (Jan. 15, 1997) (on file with Center for Reproductive Rights).

24 See UNFPA, *Humanitarian Crisis in Afghanistan, Fact Sheet: Reproductive Health Indicators for Afghanistan*, available at <http://www.unfpa.org/tpd/emergencies/afghanistan/factsheet.htm> (last visited Nov. 1, 2001).

25 See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), REPRODUCTIVE HEALTH IN REFUGEE SITUATIONS: AN INTER-AGENCY FIELD MANUAL 49 (1999) [hereinafter INTER-AGENCY MANUAL]. The Inter-agency Manual seeks to “guarantee [the] availability of free condoms.” *Id.* at 12.

26 *Id.* at 13.

27 See WORLD HEALTH ORGANIZATION (WHO), REPRODUCTIVE HEALTH DURING CONFLICT AND DISPLACEMENT 2.3 (2000), available at [http://www.who.int/reproductive-health/publications/RHR\\_00\\_13\\_RH\\_conflict\\_and\\_displacement/RH\\_conflict\\_table\\_of\\_contents.en.html](http://www.who.int/reproductive-health/publications/RHR_00_13_RH_conflict_and_displacement/RH_conflict_table_of_contents.en.html). The increased vulnerability to infection is attributed to “displacement, military activity, economic disruption psychological stresses and increased migrations.” Therese McGinn, *Reproductive Health of War-Affected Populations: What Do We Know?* 26 INT’L FAM. PLAN.

PERSP. 174, 176 (2000).

28 See UNHCR News, *supra* note 12.

29 See McGinn, *supra* note 27, at 177.

30 See UNHCR, Executive Committee, *Refugees and HIV/AIDS*, para. 2, EC/51/SC/CRP.7 (2001).

31 *Declaration of Commitment on HIV/AIDS*, U.N. GAOR, 26th Special Sess., New York, United States, June 25-27, 2001,

para. 75, U.N. Doc. A/Res/S-26/2 (2001) [hereinafter *Declaration of Commitment*].

32 *Id.*

33 See Wulf, *supra* note 9, at 3.

34 See *id.*

35 INTER-AGENCY MANUAL, *supra* note 25, at 12.

36 *Id.* at 12-13.

37 See Francoise Girard and Wilhelmina Waldman, *Ensuring the Reproductive Rights of Refugees and Internally Displaced Persons: Legal and Policy Issues*, 26 INT’L FAM. PLAN. PERSP. 167, 171 (2000).

38 A 2000 study by the Reproductive Health for Refugee (RHR) Consortium surveyed 165 NGOs and public health schools involved in refugee and IDP assistance. Of the respondents, those who provide reproductive health care offer family planning (26%), HIV/AIDS services (22%), safe motherhood (19%) and youth services (8%). See Sara Casey et al., Women’s Commission for Refugee Women and Children, *RHR Consortium survey of refugee and IDP reproductive health services* (2001). Moreover, even amongst groups that provide reproductive health care, only 42% have a copy of the Inter-agency Field Manual. *Id.*

39 See GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 22, 140, 165 (1983).

40 See UNHCR, *Who is a Refugee?* available at <http://www.unhcr.ch> (last visited Nov. 1, 2001).

41 See 1951 Convention, *supra* note 21, at art. I(A)(2).

42 Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948).

43 1951 Convention, *supra* note 21, at preamble.

44 *Id.* at art. 1(B)(1).

45 Protocol Relating to the Status of Refugees, Nov. 18, 1967, 606 U.N.T.S. 267 (*entered into force* Oct. 4, 1967).

46 As of October 2001, the 1951 Convention and the 1967 Protocol have 137 state parties each, with 133

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signed to both. UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, *available at* <http://www.unhcr.ch> (last visited Nov. 16, 2001).

47 The UNHCR Executive Committee Conclusion No. 39 of 1985 on Refugee Women and International Protection recognized that “States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh and inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a ‘particular social group’” within the meaning of article 1(A)(2) of the 1951 Convention. Lauren Gilbert, *The Impact of Reproductive Subordination on Women’s Health Rights, Refugee Women and Reproductive Health*, 44 AM. U. L. REV. 1213, 1227 n.75, (1995).

48 In 1984, the European Community stated that women fearing cruel or inhuman treatment as a result of violating social mores of the society in which they live may be considered a “social group” within the meaning of the 1951 Convention. In 1993, the Canadian government broadened its definition of “refugee” to include the particular claims of women in its guidelines on gender-related asylum claims. For a broader discussion of the evolution of gender-related asylum claims under United States and Canadian asylum law, *see* Deborah Anker et al., *Women Whose Governments Are Unable or Unwilling to Provide Reasonable Protection from Domestic Violence May Qualify As Refugees Under United States Asylum Law*, 11 GEO. IMMIGR. L. J. 709 (1997); Deborah Anker, *Rape in the Community as a Basis for Asylum: The Treatment of Women Refugees’ Claims to Protection in Canada and the United States* (Parts I and II), 2 BENDER’S IMMIGR. BULL. 476, 608 (1997).

49 *See* GOODWIN-GILL, *supra* note 39, at 165; *see also* 1951 Convention, *supra* note 21, at art. 24.

50 Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa, *adopted* Sept. 10, 1969, 6th Sess., art. I(2) (1969).

51 Cartagena Declaration on Refugees, Coloquio Sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios [Colloquium on International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems], § 3, Cartagena, Colombia, Nov. 19-22, 1984.

52 *Id.*

53 *See* International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, arts. 2(1), 26, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

54 Also relevant are the Convention on the Nationality of Married Women (1957), and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964).

55 For the complete titles and a discussion of the four 1949 Geneva Conventions and the two 1977 Protocols *see* THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 23-26 (Dieter Fleck ed., 1995).

56 ICPD Programme of Action, *supra* note 13, at para. 7.3.

57 Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development, U.N. GAOR, 21st Special Sess., New York, United States, June 30-July 2, 1999, para. 29, U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter ICPD+5 Key Actions Document].

58 *Id.* at para. 54.

59 Beijing +5 Review Document, *supra* note 8, at para. 15.

60 *See* Press Release, United Nations (UN), UN diplomatic conference concludes in Rome with decision to establish permanent International Criminal Court (July 17, 1998), *available at* <http://www.un.org/icc/index.htm>.

61 Rome Statute of the International Criminal Court, *adopted* July 17, 1998, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, June 15-July 17, 1998, arts. 7.1(g), 8(2)(b)(xxii), 8(2)(e)(vi), U.N. Doc. A/CONF.183/9 (1998) [hereinafter Rome Statute of the ICC]. Forced pregnancy is defined as “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.” *Id.* at art. 7(2)(f).

62 *See* Coalition for an International Criminal Court Home Page, *at* <http://www.iccnw.org/index.html> (last visited Nov. 19, 2001).

63 For a more complete discussion of the legal foundations of reproductive rights, *see* CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS ARE

HUMAN RIGHTS (2001).

64 Committee on Economic, Social and Cultural Rights (CESCR), Gen. Comment 14, *The right to the highest attainable standard of health*, para. 8, U.N. Doc. E/C.12/2000/4 (2000).

65 *Id.* at para. 16.

66 *Id.* at para. 40.

67 Committee on the Elimination of Discrimination Against Women, Gen. Comment 24, *Women and Health*, art. 12, para. 6, U.N. Doc. A/54/38/Rev.1 (1999).

68 *Id.* at para. 16.

69 *Concluding Observations of the Committee on the Rights of the Child (CRC): India*, para. 62, U.N. Doc. CRC/C/15/Add.115 (2000).

70 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Republic of Congo*, para. 23, U.N. Doc. CEDAW/C/2000/I/CRP.3/Add.6/Rev.1 (2000).

71 *Id.*

72 *Concluding Observations of the Committee on*

*the Elimination of Discrimination Against Women: Azerbaijan*, para. 75, U.N. Doc. A/53/38 (1998).

73 These enumerated violations are considered to be both crimes against humanity and war crimes. See Rome Statute of the ICC, *supra* note 61, at arts. 7.1(g), 8(2)(b)(xxii). Crimes against humanity are highlighted because they can occur outside the context of war. According to the Finalized Draft Text of the Elements of Crimes negotiated to further delineate crimes enumerated under the Rome Statute of the ICC, crimes against humanity “need not constitute a military attack.” Preparatory Commission for the International Criminal Court, *Finalized Draft Text of the Elements of Crimes*, at Article 7: Crimes against humanity, Introduction, para. 3, PCNICC/2000/1/Add.2 (2000), available at [http://www.un.org/law/icc/statute/elements/english/1\\_add2e.doc](http://www.un.org/law/icc/statute/elements/english/1_add2e.doc) (last visited Nov. 19, 2001). Whereas for conduct to constitute a war crime it must take place in “the context of and [be] associated with an international armed conflict.” See *id.* at Article 8 (2)(b)(xxii)-1: War crime of rape, Elements, para. 3.