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Women Welfare and Human Rights

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ABSTRACT: Women are entitled to enjoy the same human rights and fundamental freedoms as other individuals. International human rights treaties require State parties to take proactive steps to ensure that women's human rights are respected by law and to eliminate discrimination, inequalities, and practices that negatively affect women's rights. Under international human rights law, women may also be entitled to specific additional rights such as those concerning reproductive healthcare. As a particularly vulnerable group, women have special status and protection within the United Nations and regional human rights systems. International human rights treaties prohibit discrimination on the basis of gender and also require States to ensure the protection and realization of women's rights in all areas – from property ownership and freedom from violence, to equal access to education and participation in government.

KEYWORDS: women, rights, welfare, human, fundamental, international, law, protection, property ownership

I. INTRODUCTION

The United Nations (UN) Convention on the Elimination of Discrimination against Women (CEDAW) is the most comprehensive treaty on the rights of women. It condemns any form of discrimination against women and reaffirms the importance of guaranteeing equal political, economic, social, cultural and civil rights to women and men. See Convention on the Elimination of all Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13. As of May 2014, 188 States are party to CEDAW, out of 193 UN Member States.

CEDAW provides that there should be equal political, economic, social, cultural and civil rights for women regardless of their marital status and requires States to enact national legislation banning discrimination (articles 1, 2 and 3). It permits States to take temporary special measures to accelerate the achievement of equality in practice between men and women (Article 4), and to take actions to modify social and cultural patterns that perpetuate discrimination (Article 5). States parties agree that contracts and other private instruments that restrict the legal capacity of women "shall be deemed null and void" (Article 15). The Convention also addresses the need for equal access to education (Article 10). [1,2]

CEDAW requires States to take appropriate measures to eliminate discrimination in matters relating to marriage and family and underlines the equal responsibilities of men and women in the context of family life (Article 16). The Convention also emphasizes the need for childcare facilities and other social services to help women satisfy family obligations along with work responsibilities and participation in public life (Article 11).

CEDAW calls for non-discriminatory health services for women, including family planning services (Article 12). Special attention is given to the problems faced by rural women (Article 14), sexual trafficking of women, and other sexual exploitation of women (Article 6).

States have made numerous reservations to CEDAW, purporting to limit the treaty's domestic application. Most of the reservations are designed to preserve the authority of national or religious law that may contradict CEDAW, or to

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withdraw the State from the arbitration provision found in Article 29. Nonetheless, CEDAW remains the most widely applicable human rights treaty dedicated to women's rights.[2,3]

Regional Treaties

Some regional human rights treaties also focus specifically on women's rights. In Africa, the Protocol to the African Charter on the Rights of Women in Africa, known as the "Maputo Protocol," addresses issues of particular importance in Africa, such as genital mutilation. Protocol to the African Charter on the Rights of Women in Africa ("Maputo Protocol") (adopted 11 July 2003, entered into force 25 November 2005), CAB/LEG/66.6 (15 September 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, art. 5. It also specifies that women have the right to dignity (Article 3), the right to equality in marriage (Article 6), and the right to decide whether to have children (Article 14). The protocol also addresses the problem of trafficking in women (Article 4).

In the Americas, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, known as the "Convention of Belém do Pará," recognizes the rights of women to be free from violence in both the public and private spheres. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (adopted 6 September, entered into force 3 May 1995), 33 I.L.M. 1534 ("Convention of Belém do Pará,") art. 3. The Convention also reaffirms the right of all women to enjoy and exercise the rights protected by other regional and international human rights instruments (Article 4). The State parties recognize that violence prevents a woman from "the free and full exercise of her civil, political, economic, social and cultural rights" (Article 5). The Convention also imposes duties on States to take affirmative steps to prevent, punish, and eradicate violence against women and to progressively undertake measures to address the social and cultural factors contributing to violence or discrimination against women (Article 7).

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Istanbul Convention"), which entered into force in August 2014, includes similar provisions. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Istanbul Convention") (adopted 11 May 2011, entered into force 1 August 2014), ETS 210. The Istanbul Convention recognizes that sexual harassment, rape, forced marriage, honor crimes, genital mutilation, and other forms of violence constitute serious human rights violations and "a major obstacle to the achievement of equality between women and men." Istanbul Convention, preamble. The Convention also establishes a monitoring mechanism consisting of 10 to 15 independent experts that will monitor the implementation of the Istanbul Convention. Istanbul Convention, art. 1(2), 66.

II. DISCUSSION

Gender equality is a principal objective and foundational concept in the struggle to achieve women's human rights. Gender equality means "equal rights, responsibilities and opportunities of women and men and girls and boys." Office of the Special Advisor on Gender Issues and Advancement of Women, Gender Mainstreaming: Strategy for Promoting Gender Equality (2001), p. 1. Men and women must have equal opportunity to enjoy the full spectrum of human rights in all spheres of life. See, e.g., CEDAW, preamble; Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women), UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000.

Although many key human rights instruments contain prohibitions on gender discrimination and progress has been made toward the achievement of gender equality, critical objectives for the empowerment and equality of women have not yet been reached. See generally UN Women, Annual Report 2012-2013 (2013).

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For example, in many countries women remain underrepresented in government and corporate leadership positions, earn lower wages, and are less likely than their male counterparts to obtain a primary education. See United Nations Statistics Division, Statistics and indicators on women and men.[3,4]

The realization of gender equality will require governments, institutions and individuals to commit resources, develop mechanisms, and hold one another accountable for the promotion and protection of women's rights. See United Nations, Beijing Declaration and Platform of Action (adopted 15 September 1995 at the Fourth World Conference on Women), UN Doc. A/CONF.177/20, p. 10. To this end, 189 governments adopted the Beijing Declaration and Platform of Action, which is not legally binding but has nonetheless been integral to the identification of areas of critical concern and the development of a forward-looking agenda for achieving gender equality. It identifies twelve priority topics where action is needed to address gender inequality: poverty, education, health, violence against women, armed conflict, the economy, power and decision-making, institutional mechanisms for women's advancement, human rights, the media, the environment, and girl children. Recognizing that "discrimination against women begins at the earliest stages of life and must therefore be addressed from then onwards," the Declaration and Platform advance strategic objectives to improve the situation of women. Id. at p. 17, 21-22.

Gender Discrimination

Gender discrimination negatively impacts women's enjoyment of human rights around the world. See, e.g., Human Rights Watch, *This Old Man Can Feed Us, Will You Marry Him: Child and Forced Marriage in South Sudan* (2013); Human Rights Watch, *Those Who Take US Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (2013). International human rights law prohibits discrimination on the basis of gender.

CEDAW defines discrimination against women as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW, art. 1.

Gender discrimination is not only a consequence of existing laws and policies, but also of long standing traditions, cultural practices and religious customs. See Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women), UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, para. 5. For example, in many places around the world women may be denied employment or educational opportunities because of their gender, may be subjected to harmful practices like female genital cutting, and may not have adequate access to legal and law enforcement protection against domestic violence.[4,5]

States have an obligation to ensure that both men and women have the opportunity to equally enjoy all of their rights by eliminating all forms discrimination against women. See CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28, 2010, para. 16. As such, States must take all appropriate measures including adopting anti-discrimination legislation, establishing legal protection for the rights of women, and modifying or abolishing discriminatory laws and practices. See, e.g., CEDAW, art. 2; Maputo Protocol, art. 2.

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III. RESULTS

Despite States' obligations under international law, women around the world continue to experience violations and abuses of their human rights. Some of the most harmful and prevalent abuses occur in the following areas: violence against women, reproductive health, participation in society and government, marriage and family, labor and employment, and property rights. In addition, the international community has recognized the particular challenges faced by women who are human rights defenders.[5,6]

Violence against Women

Violence against women has been defined to include "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." UN G.A. Res. 48/104, Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, art. 1.

Freedom from violence and fear of violence is essential to the full enjoyment of all human rights. Under international human rights law, States have an obligation to refrain from committing acts of violence against women (for example, the State is responsible for ensuring that soldiers do not commit rape) and to put in place laws and policies to prevent others from doing the same (such as by criminalizing domestic violence). See, e.g., Convention of Belém Do Pará, art. 7.

In fulfilling the latter duty, the State cannot be expected to prevent all violence between individuals; however, the State must implement effective mechanisms to reduce the frequency of the violence, prosecute perpetrators, and assist victims. See, e.g., ECtHR, *Eremia v. Republic of Moldova*, no. 3564/11, Judgment of 28 May 2013, paras. 48-52, 56; I/A Court H.R., *Rosendo Cantú et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216; IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), 21 July 2011.

Along with the more general protection against violence for all persons, such as the rights to life and freedom from cruel and degrading treatment, women may be entitled to specific protection against violence committed by the State or third parties under specialized treaties. See, e.g., Maputo Protocol, art. 4; Convention of Belém Do Pará, art. 7.

For example, the Inter-American Court of Human Rights examined Mexico's responsibility for violations of both the American Convention on Human Rights and the Convention of Belém Do Pará in connection with a wave of murders and disappearances of girls and women in Ciudad Juarez. See I/A Court H.R., *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205, para. 232 et seq. The Court found the State responsible for violating the victims' rights to life, humane treatment, personal liberty, due process, and judicial protection in relation to its obligation under the Convention of Belém do Pará to prevent, punish and eradicate violence against women. *Id.* at paras. 388-389. The Court pointed to "irregularities in the handling of evidence, the alleged fabrication of guilty parties, the delay in the investigations, the absence of lines of inquiry that took into account the context of violence against women in which the three women were killed, and the inexistence of investigations against public officials for alleged serious negligence" and concluded, "This judicial ineffectiveness when dealing with individual cases of violence against women encourages an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women is tolerated and accepted as part of daily life." *Id.* at para. 388. As such, the Court determined that Mexico had failed to adopt the domestic legislation or measures necessary to ensure that authorities

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conducted an effective investigation, as required by the American Convention and Convention of Belém do Pará. Id. at para. 389.[6,7]

Violence against women takes many forms, including but not limited to sexual violence, sexual violence in conflict zones, genital mutilation, and domestic violence.

Sexual Violence

Sexual violence includes rape, enforced prostitution, and other forms of sexual assault. As with other forms of violence, as described above, States have an obligation to prevent State actors from committing sexual violence against women, as well as a duty to adopt laws and policies to prevent such abuses by private persons and to ensure the effective investigation and prosecution of those responsible. See, e.g., Convention of Belém Do Pará, art. 7; ECtHR, *Aydin v. Turkey*, ECtHR, no. 23178/94, Rep. 1997-IV, Judgment of 25 September 1997. For example, the European Court of Human Rights has interpreted the European Convention on Human Rights to require States “to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse.” ECtHR, *M.C. v. Bulgaria*, no. 39272/98, ECHR 2003-XII, Judgment of 4 December 2003.

Moreover, the State is responsible for taking measures to prevent, investigate, and remedy sexual violence by State agents and may be held internationally accountable for those agents’ actions. In *Aydin v. Turkey*, the European Court of Human Rights found that the rape of a 17-year-old detainee by a State agent constituted torture. ECtHR, *Aydin v. Turkey*, Judgment of 25 September 1997. The European Court also recognized a positive State obligation to investigate allegations of rape. It noted that the victim’s medical examination had improperly focused on whether she was a virgin rather than on whether she had been raped and found that a person alleging rape must be examined “with all appropriate sensitivity, by medical professionals with particular competence in this area and whose independence is not circumscribed by instructions given by the prosecuting authority as to the scope of the examination.” Id. at para. 107.

Similarly, the European Court found Turkey responsible for violating Article 3 (prohibition on inhuman treatment) when police failed to provide appropriate medical examinations to a woman in custody and the government could not offer a plausible explanation for the injuries she had sustained in detention. See ECtHR, *Algür v. Turkey*, no. 32574/96, Judgment of 22 January 2002 (French only). And in a third Turkish case, the European Court condemned State agents’ application of “virginity tests” without medical or legal necessity to women in detention, as well as the government’s failure to investigate the women’s allegations of ill treatment. ECtHR, *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, Judgment of 17 March 2009.[7,8]

The Inter-American Commission on Human Rights reached a similar conclusion in *Ana, Beatriz & Celia González Pérez*, in which it held that the rape of the petitioners by military personnel and the subsequent lack of inquiry by Mexican authorities constituted violations of the applicants’ rights to humane treatment, privacy, personal liberty, a fair trial, and judicial protection under the American Convention. IACHR, Report No. 53/01, Case 11.565, *Ana, Beatriz & Celia González Pérez* (Mexico), 4 April 2001; see also IACHR, Report No. 5/96, Case 10.970, *Raquel Martín de Mejía* (Peru), 1 March 1996; IACHR, Report No. 6/94, Case 10.772, *María Dolores Rivas Quintanilla* (El Salvador), 1 February 1994.

Sexual Violence in Conflict Zones

Sexual violence against women is especially prevalent in conflict zones. Militaries and rebel groups have used rape and other forms of sexual violence as a military tactic against civilian populations. In 2013, the UN Security Council adopted Resolution 2106, which recognized the need for collective action by States, civil society and international

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actors to implement preventative measures, protect civilians during conflict, and punish perpetrators. UN S.C. Res. 2106, S/RES/2106, 24 June 2013.

The African Commission on Human and Peoples' Rights has condemned armed forces' use of sexual violence as a military tactic against civilian populations. See, ACommHPR, D.R. Congo v. Burundi, Rwanda, and Uganda, Communication No. 313/05, 33rd Ordinary Session, May 2003. In the case of D.R. Congo, armed forces of Burundi, Rwanda, and Uganda raped and killed women in the Democratic Republic of Congo, among other violations. Id. at paras. 4-5. The Democratic Republic of Congo also alleged that the Rwandan and Ugandan forces specifically attempted to decimate local populations by spreading AIDS through the rape of Congolese women and girls. Id. at para. 5. The African Commission found violations of the First Protocol Additional to the Geneva Conventions and the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights. Id. at para. 86.[8,9]

Sexual violence may also constitute a crime against humanity, and the international criminal tribunals for both Rwanda and the former Yugoslavia have prosecuted individuals in connection with sexual violence committed against women during conflict. See UN Women, Fact Sheet No. 5: Women and Armed Conflict (2000); Prosecutor v. Akayesu (Case No. ICTR-96-4), ICTR, Chamber 1, Judgment of 2 September 1998, § 452; Prosecutor v. Anto Furundžija (Case IT-95-17/1-T), ICTY, Trial Chamber, Judgment of 10 December 1998 (conviction confirmed on appeal in Prosecutor v. Anto Furundžija (Case IT-95-17/1-A), ICTY, Appeals Chamber, Judgment of 21 July 2000).

Female Genital Mutilation

As described by the World Health Organization (WHO), the practice of female genital mutilation (FGM) includes "procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons." There are no health benefits to FGM and many young women die or suffer from serious health problems as a result. World Health Organization, Factsheet No. 241, Female Genital Mutilation (2014). The UN Committee on Economic, Social and Cultural Rights (CESCR) has interpreted Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to require States parties to the ICESCR to protect women from being coerced to participate in this harmful cultural practice. See CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, 11 May 2000, paras. 22 and 35.

In order to protect the right to health, the CEDAW Committee recommends that all States enact and enforce laws to prevent the practice of FGM. CEDAW Committee, General Recommendation No. 24, Women and Health, UN Doc. A/54/38/Rev.1 (I), 1999; CEDAW Committee, General Recommendation No. 14: Female Circumcision, UN Doc. A/45/38(SUPP) p. 438, 1990. The UN General Assembly, the Commission on the Status of Women, and other UN bodies have called upon the international community to take active measures to prevent the practice of FGM. See, e.g., UN G.A. Res. 67/146, Intensifying global efforts for the elimination of female genital mutilation, UN Doc. A/RES/67/146, 20 December 2012; Commission on the Status of Women, Ending female genital mutilation, UN Doc. E/CN.6/2008/L.2/Rev.1, 2008.

IV. CONCLUSIONS

Domestic violence may be emotional, psychological, physical, or sexual. Although this kind of abuse involves relationships between individuals and generally takes place in the private sphere, States still have a positive obligation to provide legal mechanisms to protect women from domestic violence, including the investigation and prosecution of those responsible. See, e.g., IACHR, Jessica Lenahan (Gonzales) et al. (United States), 21 July 2011.[9,10]

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Human rights bodies have held that States have positive obligations to investigate and prosecute domestic violence. In a landmark decision concerning Brazil, the Inter-American Commission declared that the State had an affirmative obligation to take all measures to prevent and end violence against women, including prosecution of domestic violence. IACHR, Report No. 54/01, Case 12.051, Maria da Penha Maia Fernandes (Brazil), 16 April 2001. Similarly, the European Court of Human Rights held Bulgaria responsible for its failure to promptly enact interim measures to protect the applicant from further violence and explained the State's duty to investigate and provide mechanisms to prosecute allegations of domestic violence. ECtHR, *Bevacqua and S. v. Bulgaria*, no. 71127/01, Judgment of 12 June 2008; see also ECtHR, *Opuz v. Turkey*, no. 33401/02, ECHR 2009, Judgment of 09 June 2009.

In this regard, the CEDAW Committee has noted that “[w]omen’s human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.” CEDAW Committee, *Ms. A. T. v. Hungary*, Communication No. 2/2003, Views of 26 January 2005.

Where the State is aware of the threat of violence, it must take action to prevent harm to the individual at risk. See, e.g., ECtHR, *Eremia v. Republic of Moldova*, Judgment of 28 May 2013 (finding that the State violated Article 3 (prohibition of inhuman and degrading treatment) and Article 14 (prohibition of discrimination) taken in conjunction with Article 3 for when it failed to protect the first applicant from a known threat of domestic violence and punish the perpetrator.) See also ECtHR, *Kontrová v. Slovakia*, no. 7510/04, Judgment of 31 May 2007 (finding that the State failed to protect the applicant’s family when her husband murdered their children after having engaged in numerous violent assaults of the applicant that had been reported to authorities and where police were told that he was in possession of a firearm and had threatened the applicant and her family.)

The CEDAW Committee has also considered similar issues. In two complaints brought on behalf of women who had been killed by their husbands after multiple violent incidents over a significant time period, the Committee focused on the fact that the women had each made multiple appeals for assistance from law enforcement and courts. CEDAW Committee, *Goekce v. Austria*, Communication No. 5/2005, Views of 6 August 2007; CEDAW Committee, *Yildirim v. Austria*, Communication No. 6/2005, Views of 6 August 2007. The CEDAW Committee found the State had violated Article 2(a, c-f), which requires States to take appropriate steps to eliminate discrimination against women, and Article 3 read in conjunction with Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women as well as General Recommendation 19 (violence against women). The Committee determined that under the circumstances, the police knew or should have known that the victims were in serious danger, and were therefore accountable for failing to exercise due diligence. CEDAW Committee, *Goekce v. Austria*, Views of 6 August 2007, paras. 12.1.3-12.3; CEDAW Committee, *Yildirim v. Austria*, Views of 6 August 2007, para. 12.1.3-12.3.

Sexual & Reproductive Rights and Health

Sexual and reproductive health are critical to a woman’s overall health and well-being. See, e.g., Human Rights Committee, Concluding Observations on Poland, Report of the Human Rights Committee to the General Assembly, 66th Session, UN Doc. CCPR/C/79/Add.110 (1999), paras. 10-11. Under international human rights law, States have an obligation to ensure that all women have access to comprehensive reproductive health services. See, e.g., CEDAW Committee, General Recommendation No. 24, Women and Health, UN Doc. A/54/38/Rev.1 (I), 1999; CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, 11 May 2000, paras. 14, 20-21. Reproductive health services should include sexual health information and education, family planning, maternal healthcare, and STI/HIV testing and treatment. See CRR & UNFPA, Briefing Paper: The Right to Contraceptive Information and Services for Women and Adolescents (2010). States should utilize a gender-based approach to healthcare policies and management, so that barriers do not unduly restrict women’s access to sexual and reproductive health services. CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, 11 August 2000, para. 20. Barriers preventing equal access to healthcare include “high

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fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport.” CEDAW Committee, General Recommendation No. 24, Women and Health, UN Doc. A/54/38/Rev.1 (I), 1999, para. 21.

The human rights to privacy and to non-discrimination have been interpreted to protect women’s sexual rights. For example, the UN Human Rights Committee has stated, “Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment.” Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women), UN Doc. HRI/Gen/1/Rev.9 (Vol. I), 2000, para. 31. In other areas, however, international human rights law continues to develop and evolve with regard to the specifics of sexual and reproductive rights. The various regional and United Nations human rights bodies have interpreted States’ obligations and individuals’ rights differently and have not yet addressed many issues related to contraception, conception and family planning.

Abortion

With the exception of the Maputo Protocol, the core international and regional human rights treaties do not explicitly address the issue of abortion. The Maputo Protocol requires State parties to: ...protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. Maputo Protocol, art. 14(2)(c).

However, even where clear treaty obligations do not exist, the UN Human Rights Committee and European Court of Human Rights have addressed the issue of abortion. The European Court of Human Rights has found that States have a “broad margin of appreciation” in determining when abortions will be permitted under domestic law. However, once a State has chosen to enact legislation allowing access to abortion, the State has a duty to ensure that the legal framework takes into account the legitimate interests of all relevant parties and respects its other obligations under the European Convention on Human Rights. See ECtHR, A, B, and C v. Ireland [GC], no. 25579/05, ECHR 2010, Judgment of 16 December 2010, para. 249.[10,11]

In the case of A, B, and C v. Ireland, the European Court examined the validity of a law that prohibited abortion in Ireland except where the mother’s life was at risk but permitted women to travel abroad to obtain abortions for health reasons. With regard to applicant A, who sought an abortion to avoid the depression that accompanied her prior pregnancies, and applicant B, who would be unable to care for a child, the European Court held that the Irish law struck a “fair balance between [their rights] to respect for their private lives and the rights invoked on behalf of the unborn.” Id. at para. 241. Regarding applicant C, a former cancer patient who had been unable to obtain health information in Ireland regarding the possible consequences for her health and that of the fetus, the European Court held that the law violated her right to respect for private life by failing to provide “an accessible and effective procedure by which [she] could have established whether she qualified for a lawful abortion in Ireland...” Id. at para. 267; see also ECtHR, P. and S. v. Poland, no. 57375/08, Judgment of 30 October 2012.

Where abortions have been made legally available, the State also has a duty to ensure that women can obtain the information necessary to make a timely, informed decision. The European Court found that a woman’s inability to access the appropriate diagnostic services to determine the existence of a fetal malformation prevented her from making an informed decision about having an abortion. See ECtHR, R.R. v. Poland, no. 2761/04, ECHR 2011 (extracts), Judgment of 26 May 2011. Since domestic law allowed for abortion in the case of fetal malformation, the State had an obligation to ensure pregnant women could access full, reliable information concerning the fetus’s health. The State’s failure to fulfill this obligation resulted in a violation of the applicant’s right to privacy and freedom from cruel, inhuman and degrading treatment. See id.

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Additionally, both the UN Human Rights Committee and European Court have found that denying access to an abortion when necessary to ensure other human rights, such as the life and well-being of the mother, may violate a States' human rights obligations. The European Court found that Poland violated the applicant's right to private life by failing to meet its positive obligations "to secure the physical integrity of mothers-to-be" when the applicant was refused permission to obtain an abortion even though she had been advised that pregnancy and delivery could risk her eyesight, which it subsequently did. See ECtHR, *Tysi c v. Poland*, no. 5410/03, ECHR 2007-I, Judgment of 20 March 2007.

Similarly, the UN Human Rights Committee found that the State violated the rights of a minor by denying her the right to a therapeutic abortion when she was carrying a fetus with a fatal anomaly. See UN Human Rights Committee, *Karen Noelia Llantoy Huam n v. Peru*, Communication No. 1153/2003, Views of 24 October 2005. The applicant was compelled to carry the fetus to term and to feed the baby until its inevitable death several days later. The Human Rights Committee found violations of Article 17 (arbitrary interference with privacy) and Article 7 (cruel, inhuman or degrading treatment) of the ICCPR, reasoning that the applicant suffered mental distress. It noted the applicant's particularly vulnerable position as a minor and the failure of the State to provide adequate medical and psychological support. *Id.* But see, ECtHR, *A, B, and C v. Ireland*, Judgment of 16 December 2010 (finding that the State had a wide margin of appreciation when balancing competing interests and that the ability to travel outside of the State for an abortion and the fair balance struck between the rights of the applicants and the rights of the unborn were sufficient to justify a prohibition on in-country abortions for health and well-being.)

The Inter-American Commission and Court have also taken steps to prevent irreparable harm when there is a risk to the life of a pregnant woman. The Commission issued precautionary measures on behalf of a woman whose pregnancy was placing her health and well-being at risk. The woman who already suffered a number of illnesses including lupus and kidney disease was pregnant with a fetus that would not survive outside the womb. The Commission requested that El Salvador implement the measure necessary to allow the medical treatment intended to protect the woman's life, personal integrity and health. When the State failed to comply with the precautionary measures within a reasonable time, the Inter-American Court issued provisional measures requiring the State to ensure that physicians could take the necessary medical action to avoid irreparable harm to the health and well-being of the woman. The provisional measures were lifted after El Salvador allowed the doctors to perform a caesarean section to extract the "infant" and provide additional care to the woman following the procedure. *I/A Court H.R., Provisional Measures with Regard to El Salvador (Matter of B)*, 19 August 2013.

International human rights bodies have not held that abortion violates the right to life and have generally declined to establish an absolute right to life before birth. The European Court of Human Rights, recognizing the diversity of views on when life begins, has found that the determination is within the margin of appreciation of the State. ECtHR, *Vo v. France* [GC], no. 53924/00, ECHR 2004-VIII, Judgment of 8 July 2004, para. 82. Although the Court has not ruled on the whether or not a fetus is a "life" as protected by the European Convention on Human Rights, it has asserted that a fetus must be treated with dignity and respect because it has the potential and capacity to become a person. *Id.* at para. 84.[11,12]

The ECtHR specifically noted that unlike Article 4 of the American Convention on Human Rights, which states that the right to life "shall be protected by law and, in general, from the moment of conception," the European Convention is silent on the "temporal limitations" of the right to life. See ECtHR, *Vo v. France* [GC], Judgment of 8 July 2004. In interpreting Article 4 of the American Convention, the Inter-American Court of Human Rights has held that "conception" occurs when the fertilized egg is successfully implanted in the uterus and that the words "in general" in Article 4(1) "infers exceptions to a rule" intended to allow "an adequate balance between competing rights and interests" that takes into account a "gradual and incremental" respect for the right to life based on human development. *I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica . Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257, paras. 187, 189, 263, 265.*

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In interpreting the American Declaration of Human Rights, which contains a different definition of the right to life, the Inter-American Commission on Human Rights declined to declare that unrestricted access to abortion before fetal viability violated the United States' human rights obligations, specifically rejecting the petitioners' argument that the Declaration protected life from the moment of conception. See IACHR, Report No. 23/81, Case 2141, Baby Boy (United States of America), 6 March 1981.[12,13]

Forced Sterilization

Forced sterilization is another area where international human rights law protects women's rights to make informed decisions concerning their reproductive rights and health. The CEDAW Committee found that Hungary had violated the complainant's rights under articles 10(h) (right to information about family planning), 12 (discrimination in health) and 16 (1)(e) (right to decide number and spacing of children) of CEDAW when a public hospital forced her to undergo a sterilization procedure. CEDAW Committee, *A. S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006.

In the decision, the Committee cited its General Recommendation 19 which states that "compulsory sterilization . . . adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children." *Id.* at para. 11.4; see also IACHR, Report No. 71/03, Petition 12.191, *María Mamérita Mestanza Chávez* (Peru), 22 October 2003. The European Court of Human Rights similarly upheld the right of Roma women to review their own medical records when they believed they had been subjected to sterilization procedures without their knowledge. *ECtHR, K.H. and Others v. Slovakia*, no. 32881/04, ECHR 2009 (extracts), Judgment of 28 April 2009.

Medically Assisted Procreation

While international human rights law generally protects the right to have a child by natural means, it may not necessarily guarantee a right to medically assisted procreation. Human rights bodies have recognized that "the right of a couple to conceive a child and to make use of medically assisted procreation for that purpose is . . . an expression of private and family life" protected by human rights norms, but that the interpretation of this area of international law "is subject to a particularly dynamic development in science and law..." See, e.g., *ECtHR, S.H. and Others v. Austria* [GC], no. 57813/00, ECHR 2011, Judgment of 3 November 2011, paras. 82, 118.

Whether a State's laws on this topic are found to violate its international human rights obligations will likely depend on the specific characteristics of the law or policy, whether there is consistency of practice among States on the issue, and which body is deciding the case. Compare *ECtHR, S.H. and Others v. Austria* [GC], Judgment of 3 November 2011 with *I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Judgment of November 28, 2012.

The European Court found violations in Italy's law restricting access to in vitro fertilization for sterile or infertile couples and men with sexually transmitted diseases only. See *ECtHR, Costa and Pavan v. Italy*, no. 54270/10, Judgment of 28 August 2012. With regard to the applicants, who were carriers of cystic fibrosis, the European Court found the restriction to be a disproportionate interference with their right to respect for private and family life because the Italian legislature's reasoning was inconsistent in restricting IVF in order to protect the health of the mother and child, preserve the dignity and freedom of conscience of the medical profession, and avoid its use in eugenics, while simultaneously allowing abortions on medical grounds. See *id.*

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However, in an earlier case concerning a narrower limitation, the Grand Chamber of the European Court of Human Rights held that the State's prohibition of egg and sperm donation for in vitro fertilization was within the government's margin of appreciation and therefore compatible with the European Convention on Human Rights. The Court also took into account the national legislature's careful balancing of competing interests and allowance of other forms of medically assisted procreation as well as the absence of any strong European consensus on whether donation for in vitro fertilization should be allowed. ECtHR, *S.H. and Others v. Austria* [GC], Judgment of 3 November 2011, paras. 99-118.[13,14]

The Inter-American Court held that Costa Rica's complete prohibition of in vitro fertilization violated the American Convention's provisions on humane treatment, personal liberty, privacy, and rights of the family because it was a disproportionately "severe interference in relation to [the couples'] decision-making concerning the methods or practices they wished to attempt in order to procreate a biological child" but offered only "very slight" protection of prenatal life. I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Judgment of November 28, 2012. paras. 284, 315.

Political and Civil Participation

Under international human rights law, women and men have an equal right to participate in political and civil society. See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, (ICCPR) art. 3; CEDAW, art. 7; Convention of Belém Do Pará, art. 4(j). States have a duty to ensure that their laws and policies allow women to take part in civic and political processes such as voting and running for political office.

Education

States are also obligated to remove barriers that hinder women's meaningful participation by ensuring equal access to education. In this regard, CEDAW requires States parties to ensure that women have the same conditions and opportunities in schools by taking action to reduce female student drop-out rates and other similar problems. CEDAW, art. 10. In the case of *Mónica Carabantes Galleguillos*, the applicant argued that her right to protection of honor and dignity and equality before the law had been violated when she was expelled from school for having become pregnant. The case resulted in a friendly settlement, approved by the IACHR, and included a State scholarship for MCG to continue her studies. IACHR, Report No. 33/02, Petition 12.046, *Mónica Carabantes Galleguillos (Chile)*, 12 March 2002.

The European Court has also recognized that a ban on headscarves in educational settings implicates the right to education of women who wear headscarves for religious reasons. See ECtHR, *Leyla Sahin v. Turkey* [GC], no. 44774/98, ECHR 2005-XI, Judgment of 10 November 2005. Ultimately, the Court found that the restriction did not violate the right to education because it was foreseeable, pursued the legitimate aims of protecting the rights and freedoms of others and the public order, and was proportional to those aims. However, a dissenting opinion argued that excluding an applicant from lectures and from the university "rendered her right to education ineffective and, therefore, impaired the very essence of that right." ECtHR, *Leyla Sahin v. Turkey* [GC], Judgment of 10 November 2005 (dissenting opinion of Judge Tulkens), para. 17

Political and Public Life

Article 7 of CEDAW specifically prohibits discrimination against women in political and public life and is interpreted broadly to encompass all areas of political and public life. CEDAW Committee, General Recommendation No. 23,

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Political and Public Life, UN Doc. A/52/38, 1997. Full political participation includes, but is not limited to, voting in elections, registering as a candidate, campaigning, and holding office. Article 3 of the International Covenant on Civil and Political Rights (ICCPR) also specifically protects women's equal right to participate in political and civil life. See also Human Rights Committee, General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), UN Doc. HRI/Gen/1/Rev.9 (Vol. I), 29 March 2000.[14,15]

In order to overcome women's historical underrepresentation in legislative bodies and political leadership, the Committee on the Elimination of Discrimination against Women recommends the use of temporary strategies such as financial assistance and training, recruitment, and gender equality campaigns to overcome the existing deficits. CEDAW Committee, General Recommendation No. 23, Political and Public Life, 1997, para. 15. The Human Rights Committee has similarly emphasized that States parties to the ICCPR must "take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action." UN Human Rights Committee, General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), 29 March 2000, para. 29. See also African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012), art. 29.

Marriage & Family

All persons of legal age have the right to marriage and a family. See, e.g., CEDAW, art. 16; International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force on 3 January 1976), 993 UNTS 3 (ICESCR) art. 10; Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953), 213 UNTS 221 (European Convention on Human Rights, as amended) (ECHR) arts 9, 12. Women, therefore, have the right to enter into a marriage or start a family, but cannot be compelled to do either. Choosing to exercise either of these rights should not have a detrimental effect on women's exercise of other human rights, such as is the case when national laws restrict women's political participation or property ownership based on their marital or family status.

Marriage

Under international human rights law, a woman has the right to choose whether, when and whom to marry. See, e.g., CEDAW, art. 16. Marriage may only be undertaken with the woman's consent or it constitutes a violation of her human rights. Although not prohibited by international human rights law, arranged marriages and other traditional practices should not interfere with a woman's ability to legally enforce her right to choose. CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, UN Doc. A/49/38, 1994, paras. 15 and 16.

Child marriage not only violates CEDAW but also the protections set forth in the Convention on the Rights of the Child. CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, 1994, paras. 36-37; UNFPA, *Marrying too Young: End Child Marriage* (2012). States may prevent the practice of child marriage by setting a minimum age for marriage. The Maputo Protocol, for example, requires African States to enact legislation that sets the minimum age for marriage at 18. See Maputo Protocol, art. 6.[15,16]

During a marriage and at its termination, women have the same rights as their male spouses under international human rights law. See CEDAW, arts. 9(1), 11(2), 16. See also American Convention on Human Rights (adopted 21 November 1969, entered into force 18 July 1978) 1141 UNTS 123, art. 17(4); European Convention on Human Rights, art. 5. This means that both partners in a marriage must have equal legal rights and that a woman cannot lose any fundamental rights by marrying or divorcing. See, e.g., Maputo Protocol, arts. 6, 7. Marital status alone cannot be used to determine

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a woman's privileges and responsibilities, such as her own nationality, parental rights, access to public benefits, and authority to own or transfer property. See, e.g., CEDAW, art. 16; Maputo Protocol, arts. 6, 20, 21.

For example, in *Airey v. Ireland*, the European Court of Human Rights ruled that the applicant's inability to obtain a legal separation from her husband due to the prohibitive cost of the proceedings constituted a violation of her right to respect for her family and private life under Article 8 of the European Convention on Human Rights and contravened Article 6 (right to access the courts). ECtHR, *Airey v. Ireland*, Series A no. 41, Judgment of 6 February 1981.

Similarly, the Inter-American Commission on Human Rights found parts of Guatemala's Civil Code to be incompatible with the American Convention on Human Rights. The provisions at issue gave the husband representational powers in a marital union including the exclusive right to administer marital property, conferred upon the wife the special "right and obligation" to care for minor children and the home, and conditioned a married woman's employment upon the permission of her husband and upon such employment not jeopardizing her role as a mother and homemaker. IACHR, Report No. 4/01, Case 11.625, *Maria Eugenia Morales de Sierra (Guatemala)*, 19 January 2001. The Inter-American Commission found these provisions in violation of articles 1(1) (obligation to respect rights without discrimination), 2 (adopt measures to give domestic effect to the Convention), 11(2) (respect for private life), 17(4) (rights of the family) "read with reference to the requirements of Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women," and 24 (equal protection) of the American Convention. *Id.* at paras. 45, 83.

The UN Human Rights Committee found The Netherlands' social security laws to contravene the ICCPR because they required women seeking unemployment benefits to meet conditions that did not apply to men. See UN Human Rights Committee, *S.W.M. Broeks v. The Netherlands*, Communication No. 172/1984, Views of 9 April 1987; UN Human Rights Committee, *F.H. Zwaan-de Vries v. The Netherlands*, Communication No. 182/1984, Views of 9 April 1987. The laws were found to violate women's right to equality. The Human Rights Committee also found violations in *Graciela Ato del Avellanal v. Peru*, where under Peruvian law only the husband, and not the wife, could take action to pursue matrimonial property claims against third parties. The Human Rights Committee found that the law denied women equality before the courts, in violation of Article 14(1) of the ICCPR. See Human Rights Committee, *Graciela Ato del Avellanal v. Peru*, Communication No. 202/1986, Views of 28 October 1988.[16,17]

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