

# Legal Considerations:

## Refugee Rights Related to Reproductive Health

### Reproductive Health Rights Based on International and Human Rights Instruments

Refugees are entitled to the protections outlined in the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol, as well as in other relevant international human rights declarations and treaties, including:

- the Universal Declaration of Human Rights,
- the Covenant on Civil and Political Rights,
- the Covenant on Economic, Social and Cultural Rights, and
- the Convention on the Elimination of All Forms of Discrimination Against Women.

Reproductive rights embrace many of the human rights recognised in these documents. Other, more recent, documents, particularly the 1994 Cairo Programme of Action of the United Nations International Conference on Population and Development (ICPD) and the Beijing Platform for Action of the 1995 World Conference on Women, reflect broad international consensus on the issue of reproductive rights. Reproductive health (RH) care may also be safeguarded by national laws, which extend government responsibility for such care beyond international obligations. The policies of the host country should guide the implementation of RH care in refugee situations and humanitarian actors should familiarise themselves with these policies.

The following is a brief overview of basic principles related to reproductive health that are

contained in international human rights declarations and treaties. These principles apply to all persons, including refugees, without discrimination.

- **The right to the highest attainable standard of physical and mental health**

Sexual and reproductive health are essential elements of the right to health, as they cannot be separated from men and women's overall well-being and their right to the "*enjoyment of the highest attainable standard of physical and mental health*". International human rights law recognises that health represents an important factor in the realisation of the right to an adequate standard of living, including adequate food, clothing, housing, water and sanitation. States parties to the Conventions in which this right is described are obliged to take measures that ensure "the reduction of the stillbirth-rate and of infant mortality and the healthy development of the child", and "the creation of conditions which would assure to all medical service and medical attention in the event of sickness".

- **The right to the survival and development of the child**

States parties to the Conventions are obliged to ensure, to the maximum extent possible, the survival and development of the child. In this context, the threat to women's lives posed by the lack of RH care affects the health and development of children.

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- **Obligation on States to take measures to abolish traditional practices prejudicial to the health of children**

States shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. These include the practices of female genital mutilation and early childhood marriage, which not only harm girls, but may also adversely affect their future offspring.

- **The right of equal access to health care**

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

- **The equal right to reproductive choice**

Men and women have the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

- **The right to education**

Everyone has the right to education. In particular, women have equal rights with men to specific educational information to help ensure the health and well-being of their families, including information and advice on family planning. The best interest of the child shall be the guiding principle of those responsible for his/her education and guidance; that responsibility lies in the first place with the parents. Adequate information and counselling are critical to enabling refugees to make informed choices about their reproductive health.

- **The right of men and women of marriageable age to marry and found a family**

The World Health Organization recommends that the minimum age for girls to marry should be 18 years.

- **The betrothal and the marriage of a child, as defined by national legislation, is specifically prohibited**

Early maternity is often an immediate result of early childhood marriage and can have adverse effects on the physical development of the mother and her child.

- **The rights of the family special protection**

The family, as the natural and fundamental group unit of society, is entitled to the widest possible protection and assistance, particularly for its establishment and while it is responsible for the care and education of dependent children.

- **Special rights in relation to motherhood and childhood**

These are special provisions for pre- and postnatal health care for women and children.

- **The right to enjoy the benefits of scientific progress**

Everyone has the right to enjoy the benefits of scientific progress and its applications, which should also be interpreted to encompass reproductive health.

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## Pregnancy

There are special rights pertaining to pregnant and lactating women articulated in international documents (see above). The issue of termination of pregnancy, however, is highly controversial. In most countries, national laws

and policies regulate the termination of pregnancies. Where the matter is regulated, due regard must be paid to the laws and policies of the host country. In many countries where abortion is normally highly restricted, it is nonetheless permitted under certain conditions when a pregnancy results from rape, incest, or threatens the life of the woman.

(Refer to UNHCR Guidelines on Preventing and Responding to Sexual Violence against Refugees, specifically Chapter 4, “Legal Aspects of Sexual Violence”. These guidelines provide a clear and comprehensive analysis of the legal framework governing the prevention of sexual violence in the refugee context.)

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## Sexual Violence

Sexual violence against refugees is a global problem and constitutes a violation of human rights as enshrined in international declarations and treaties:

- **The right to life, liberty and security of person**
- **The right to freedom from torture and cruel, inhuman or degrading treatment and punishment**
- **Children’s right to freedom from all forms of physical or mental violence**

The Geneva Conventions and their Protocols, which are among the foundations of international humanitarian law, also apply to refugees, returnees and internally displaced persons in times of armed conflict. These laws offer protection to all civilians, particularly women and children, against various forms of sexual violence, including mutilation, forced prostitution, sexual abuse and rape.

Regional human rights laws applicable in Europe, the Americas and Africa similarly protect the rights to personal dignity and integrity and prohibit degrading treatment or punishment and violence against women.

National laws also usually protect against sexual violence. The government on whose territory the sexual attack occurred is responsible for taking diligent remedial measures, including conducting a thorough investigation into the crime, identifying and prosecuting those responsible, and protecting victims from reprisals.

## Cairo Programme of Action of the 1994 United Nations International Conference on Population and Development (ICPD)

Although not legally binding, the Cairo ICPD Programme of Action is an important step in recognising reproductive rights internationally. It represents the political consensus of 184 nations.

The ICPD Programme provides for individuals *to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so*. It also includes *the right of all to make decisions concerning reproduction free of discrimination, coercion and violence*.

Furthermore, it expresses *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*.

## The Beijing Platform for Action of the 1995 World Conference on Women

Also not legally binding, it nonetheless represents international consensus in endorsing many of the commitments made in the ICPD Programme of Action and specifies action to be taken by States, international bodies, donors, non-governmental organisations and others.

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## Further Readings

Cook, Rebecca J. "Human Rights and Reproductive Self-Determination", 44 AM U. L. Rev., 975, 1995.

"Guidelines on Refugee Women" and "Guidelines on Refugee Children", UNHCR, Geneva.

"Promoting Reproductive Rights: A Global Mandate", Center for Reproductive Health Law and Policy (CRLP), New York.

"Rights Awareness Training Programme", UNHCR, Geneva, 1997.

"Sexual Violence against Refugees: Guidelines on Prevention and Response", UNHCR, Geneva, 1996.

"Women of the World: Laws and Policies Affecting Their Reproductive Lives: Anglophone Africa", CRLP and International Federation of Women Lawyers (Kenya Chapter), New York, 1997.