

International, African and country legal obligations on women's equality in relation to sexual and reproductive health including HIV and AIDS

Liesl Gerntholtz and Catherine Grant



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HEARD's Gender Equality and HIV Prevention Project

The Gender Equality and HIV Prevention Project at the Health Economics and HIV/AIDS Research Division (HEARD), is focused on supporting regional thinking and action on gender and HIV and AIDS by mobilising knowledge and evidence. HEARD is based at the University of KwaZulu-Natal, Durban, South Africa.

To work towards this goal, the Gender Equality and HIV Prevention Project has commissioned a number of reports in order to develop an understanding of the state of gender equality and HIV and AIDS in the southern and eastern African region. This is the first of these reports to be released, and is the product of a collaboration between HEARD and the AIDS and Rights Alliance of Southern Africa (ARASA).

The Gender Equality and HIV Prevention Project is overseen by a Project Advisory Committee (PAC), which provides strategic thinking and guidance. The PAC comprises four of the leading thinkers on HIV and gender in the region:

- Sisonke Msimang (Chief Executive Officer, OSISA)
- Rachel Jewkes (Director, Gender and Health, MRC, South Africa)
- Dean Peacock (Co-Founder and Co-Director, Sonke Gender Justice, South Africa)
- Cheryl Potgieter (Dean of Research, University of KwaZulu-Natal, South Africa)

For further information, see: www.heard.org.za/african-leadership/gender

AIDS and Rights Alliance of Southern Africa

ARASA was the primary consultant for this report. ARASA is a regional partnership of non-government organisations working together to promote a human rights-based approach to HIV and AIDS and TB.

For further information see: www.arasa.info

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Executive Summary

In 2010 the international community will come together twice. First to review how countries are progressing towards the attainment of the Millennium Development Goals (MDGs) by 2015 and second to assess whether Universal Access to HIV Prevention, Treatment, Care and Support (Universal Access) have been achieved. Neither meeting will tell a story of success.

Numbers do tell a story

Less than one third of Africans have access to the reproductive health care they need. This failure of African governments to ensure women's reproductive health rights has led to:

- 215 000 women in Africa dying annually of pregnancy-related causes
- Africa having the highest rates of adolescent pregnancy in the world
- Women comprising 60 percent of all people living with HIV in sub-Saharan Africa

The lack of universal access to women's reproductive health services has contributed to the collective failure to be on target to achieve the MDGs by 2015. This is part and parcel of the failure to secure Universal Access by 2010 and is a major factor in the high burden of HIV and AIDS on the African continent.

The international community has three major treaties that clearly set out the obligations and duties of African states in relation to women's reproductive health. Through the ratification and domestication of these three treaties, African states can take major steps towards achieving women's reproductive health rights, rolling back HIV and AIDS on the continent and ensuring the MDGs are reached by 2015. The three treaties are:

1. United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
2. The International Convention on Economic Social and Cultural Rights (ICESCR)
3. The Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).

For countries in Africa, the African Women's Protocol, adopted by the African Union in 2003 and entered into force on 25 November 2005, offers a historic vision, developed by African governments, of what the duties of African states are in relation to women's reproductive health rights. In addition, for the first time HIV and AIDS is mentioned in an international treaty and linked specifically to reproductive health rights.

Articles 14 (1 and 2) of the African Women's Protocol clearly set out three major components of women and girls' reproductive health care:

1. Reproductive and sexual decision making, including the number and spacing of children, contraceptive choice and the right to self-protection from HIV
2. Access to information about HIV and AIDS and reproductive health
3. Access to reproductive health services, including ante-natal services.

Despite the existence of three international treaties that offer a comprehensive vision of women's reproductive health rights, the 18 countries in this study have not lived up to their commitments to the extent that not all of the 18 countries have ratified all three key treaties (Table A).

Table A. Countries that have not ratified the key treaties in relation to women's reproductive health

Treaty	Countries that have failed to ratify the treaty
CEDAW	None
ICESCR	Botswana, Mozambique, South Africa
African Women's Protocol	Angola, Botswana, Democratic Republic of Congo, Kenya, Lesotho, Madagascar, Mauritius, Swaziland, Uganda, Zimbabwe

Furthermore, even where treaties have been ratified there is either limited domestication of treaties or limited information available in the public arena on how treaties have been domesticated. Without domestication and transparent reporting on how countries have domesticated treaties, these treaties may remain relatively ineffectual in leading to significant change in people's experiences.

However, while there is limited information on domestication available, women's rights, including women's reproductive rights, are slowly translating into changes in laws in the eighteen focus countries. Transparent reporting on domestication will help speed up this process.

The report provides a number of clear recommendations on the steps that the 18 focus countries need to take in order to ensure that women's reproductive rights are achieved:

Provision of resources

- Advocate for all countries to meet the 15% commitment contained in the Abuja Declaration (2001).

Reproductive health and HIV

- Undertake training for civil society on the links between reproductive rights and health and HIV and AIDS
- Advocate for better awareness of the links between reproductive rights and HIV and AIDS and how the international treaties can be used to protect the rights of those infected and affected by HIV and AIDS
- Promote laws and policies that support women's reproductive rights and protect them from HIV and AIDS
- Strengthen the capacity of the health sector to address the links between violence against women and reproductive health and rights, including the training of health care workers.

Implementation by duty bearers

- Advocate for the ratification of the African Women's Protocol in countries where this has not yet been done
- Where the African Women's Protocol has been ratified, advocate for a review of all laws to ascertain whether they are consistent with the provisions of the African Women's Protocol. Where laws are inconsistent with the African Women's Protocol, repeal them as soon as possible
- Advocate for ratification of the International Convention on Economic, Social and Cultural Rights in Botswana, Mozambique and South Africa.

Enforcement and accountability

- Advocate for increased transparency and accountability at national level about plans and timetables to ratify conventions, and for the provision of information on progress towards full domestication, including details of the reporting requirements of treaty monitoring bodies
- Advocate for effective enforcement mechanisms nationally and regionally, including strengthening the capacity of police to respond effectively to domestic violence.

Securing women's access to reproductive rights is a major challenge in 2010 and onwards. Through states ratifying, domesticating and transparently reporting on CEDAW, ICESCR and the African Women's Protocol alongside civil society ensuring that this leads to significant changes on the ground, African states can take a major step towards achieving universal access to reproductive rights across Africa. In addition, the Continental Policy on Sexual and Reproductive Health and Rights (2005) and the Maputo Plan of Action (2006) provide further opportunities. They re-affirm the commitment to universal and equal access to reproductive health by 2015, along with a range of other commitments to empower women and advance their human rights, including reproductive rights. The three treaties, alongside other African commitments, offer major routes through which countries can contribute to the rollback of HIV and AIDS and move forward towards ensuring the MDGs are reached by 2015.

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List of Abbreviations and Acronyms

ACHPR.....	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of Children
African Women's Protocol	The Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
ARASA	AIDS and Rights Alliance of Southern Africa
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSW	Commission on the Status of Women
FGM	Female Genital Mutilation
GA	General Assembly
HEARD	Health Economics and HIV/AIDS Research Division
HRC	Human Rights Committee
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR.....	International Convention on Economic Social and Cultural Rights
ICPD.....	International Conference on Population and Development
MDGs	Millennium Development Goals
PMTCT	Prevention of Mother-to-Child Transmission
PoA	Programme of Action
SADC	Southern African Development Corporation
STIs	Sexually transmitted infections
UN	United Nations
UNGASS	United Nations General Assembly Special Session
UNHR	Universal Declaration on Human Rights
WHO	World Health Organisation

1. Introduction

Women's human rights have, at least on paper, always been part of international human rights, with provisions prohibiting discrimination on the grounds of sex and promoting equality between women and men as contained in the Preamble to the Charter of the United Nations; the Universal Declaration of Human Rights (UDHR) and the two covenants that constitute the International Bill of Rights; the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Much of the early work of the United Nations (UN) on women's rights sought to identify and eradicate sex discrimination, but did not actively promote women's substantive equality. It also failed to identify and address gender-based violations of rights.

Many violations of the human rights of women, including violence against women, were initially seen as occurring in the so-called private sphere and therefore not susceptible to state intervention and action. This distinction between the public and private operated in a way that tended to exclude the lived experiences of women and initially failed to allow the development of international human rights in a manner that fully protected and promoted the rights of women.

Following the adoption of the UDHR, the UN General Assembly (GA) adopted a number of other conventions¹ that sought to address discrimination against women. These instruments were developed by the Commission on the Status of Women (CSW), whose mandate included identifying problems requiring urgent attention, and making recommendations that would eliminate discrimination against women and promote equality between men and women. In 1963, following a resolution by the GA, the CSW was invited to develop a single instrument to bring together the international standards on men and women's equality. The result was the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that came into force in 1981, setting out an expansive international agenda to eradicate discrimination against women and promote equal treatment.

The convention was based on three core principles: equality, non-discrimination and the role of the state in promoting women's equality and preventing gender-based discrimination. The convention did not however address gender-based violence or reproductive rights. Despite being one of the most ratified UN conventions, with 186 ratifications, CEDAW initially failed to have an impact on national laws and policies nor did it translate into meaningful gains for women at an international level.



¹ These were: Convention on the Political Rights of Women (1952); Convention on the Nationality of Married Women (1957); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962).

However, the 1990s saw “significant advances”² in international human rights law and how it was applied to women. Feminist and women’s organisations globally mobilised prior to the 1993 World Conference on Human Rights (the Vienna Conference) and were largely successful in ensuring that their key demands were placed on the conference’s agenda. They campaigned for the integration of women’s rights in all aspects of the conference and the international human rights agenda and the recognition of gender-based violence as an international human rights issue.

As a result of these efforts, the Vienna Declaration and Programme of Action (PoA)³ contained a section on the equal status and human rights of women, affirming the centrality of women’s human rights to the international human rights agenda: “The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.”⁴ The conference called on countries to ratify CEDAW and encouraged those countries that had already done so to fully implement its provisions.

The 1994 International Conference on Population and Development (ICPD) further deepened the understanding of the international human rights movement. This was the first time that an international gathering of nations⁵ explicitly recognised reproductive rights, concluding that they formed part of existing human rights and agreeing on a comprehensive and inclusive definition of reproductive health.⁶ The UN GA later adopted the UN Declaration on the Elimination of Violence against Women⁷ and a Special UN Rapporteur on Violence against Women was appointed in 1994.

The Protocol of the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the African Women’s Protocol) which entered into force in November 2005, marked another milestone for the advancement of women’s human rights. It was significant far beyond the African continent. The Protocol was intended to supplement the provisions of the African Charter on Human and People’s Rights, which is largely regarded as weak and ineffective on women’s rights. The African Charter contains only one article that deals specifically with women, namely article 18(3) which obliges states to eliminate discrimination against women and protect their rights. The Charter also prohibits discrimination on the grounds of sex⁸ and provides for equality before the law.⁹ The preamble to the African Women’s Protocol notes that despite the ratification of the African Charter, women in Africa “continue to be victims of discrimination and harmful practices”.¹⁰

The African Women’s Protocol contains a number of “global firsts”¹¹:

- It addresses HIV and AIDS, articulating both the right of women to protect themselves from HIV and AIDS and other sexually transmitted infections (STIs) and to access affordable, adequate and accessible health care
- It calls for the prohibition of harmful practices, including female genital mutilation (FGM)

² Human Rights of Women and the Public/Private Divide in International Human Rights Law, Ivana Radacic, CYELP 3, (2007) 443 – 468, p 447

³ The outcome document of the conference was adopted by 171 nations.

⁴ Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14 – 25 June 1993, UN DOC. A/CONF.157/23 (1993), para 18

⁵ 179 countries attended the conference and later adopted the Programme of Action (there were reservations expressed on various aspects of the Programme by several countries).

⁶ Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity, in all matters relating to the reproductive system and to its functions and processes.

⁷ United Nations General Assembly, Declaration on the Elimination of Violence Against Women, 20 December 1993, UN Doc A/Res/48.104

⁸ Art. 2, African Charter

⁹ Art. 3, African Charter

¹⁰ Preamble, Maputo Protocol

¹¹ The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights, a briefing paper by the Centre for Reproductive Rights, New York, p.1

- It includes a right to abortion where the pregnancy is as a result of rape, incest or sexual assault, the pregnancy endangers the life and health of the pregnant woman or in the case of fatal foetal abnormality.

1.1 Failure of international and regional human rights commitments to achieve greater gains for women's human rights, including their reproductive rights

Since the commitment made by the UDHR to women's rights, a range of international and regional commitments have been developed that further advance women's human rights. These include *inter alia* CEDAW, the ICCPR, the ICESCR, the Convention on the Rights of People with Disabilities, the African Charter on Human and People's Rights and the African Women's Protocol. These documents all, to a greater or lesser extent, contain provisions which prohibit discrimination on the grounds of sex, recognise women's equality and place obligations on state parties to take steps to eliminate discrimination and promote women's equality. In addition to the continued focus on discrimination and equality, the gender mainstreaming championed by the Beijing Platform of Action (1995), has begun to permeate the institutions and procedures of the UN, and many of the treaty monitoring bodies and human rights committees have adopted gender sensitive comments and have urged countries to report on measures taken to secure women's human rights.

Despite these commitments, a cursory glance through the country reports to the Committee on the Elimination of Discrimination against Women (the CEDAW committee)¹² suggests that many countries have failed to fulfill their obligations to women. Many do not submit country reports to the committee timeously or at all, as required by CEDAW¹³, and others have failed to implement the recommendations of the committee¹⁴. In closing comments made at the end of its 40th session in 2008, the committee noted "continuing discrimination against women in relation to many substantive provisions of the Convention".¹⁵ The committee has encouraged civil society to lobby their governments to fulfill their reporting requirements and implement recommendations made by the committee.

Similar problems exist with regard to the African Women's Protocol – very few countries have submitted progress reports, and the few that have done so have failed to consistently implement the recommendations of the committee. Given that the Protocol is the only regional and international document to explicitly promote reproductive rights, the failure of countries that have ratified it is of particular concern. The African Women's Protocol is the subject of a regional civil society campaign that encourages all African countries to ratify it and fully implement its provisions.

The gains made for women in the international human rights system during the 1990s and beyond, are ascribed in part to the "vigorous activism of women's NGOs"¹⁶. In the run up to the Vienna Conference, an international movement of women worked to "bring gender-specific violations of women's human rights to the forefront of international human rights"¹⁷. The Global Campaign for Women collected over half a million signatures in a global petition calling for the integration of women's issues into the conference agenda and the recognition of gender-based violence as a human rights issue. The final conference documents largely addressed these concerns.

¹² The CEDAW committee is the treaty monitoring body for CEDAW and its mandate is to monitor progress made by women in the countries that have ratified CEDAW

¹³ Art. 18, CEDAW

¹⁴ The problems experienced by the CEDAW committee are not unique and are also experienced by other treaty monitoring bodies

¹⁵ Closing remarks by Ms Dubravka Simonovic, 40th session of the Committee on the Elimination of Discrimination against Women, Geneva, Switzerland, 1 February 2008

¹⁶ Ibid. Radacic, p 447

¹⁷ The Global Campaign for Women's Human Rights: Where Next After Vienna? Charlotte Bunch, St John's Review, Vol. 69, Nos. 1&2 (1995), pp 1717 – 178, p 177

It is clear that for international and regional commitments to women's human rights to be translated into meaningful change in the lives of women, civil society has a crucial part to play: pressing governments to ratify key conventions and treaties; pushing for domestication and implementation; and finally holding governments accountable when they fail to implement the provisions of the treaties they have ratified. Without this pressure it seems that many governments are willing to ratify treaties, but much less willing to domesticate their provisions and implement them.

1.2 The role of men and boys

There is "growing international consensus ... on the need to include men and boys in the promotion of equality and human rights"¹⁸ and a number of international instruments include commitments relating to the greater involvement of men and boys.

Both the ICPD and the Beijing Conference recognise the role that men and boys must play in achieving women's human rights, including their reproductive rights. The ICPD states that men must be encouraged "to take responsibility for their sexual and reproductive behaviour".¹⁹

The HIV epidemic has further emphasised the critical need to engage men and boys in promoting women's human rights:

- The Declaration of Commitment on HIV and AIDS²⁰ adopted by the UN General Assembly Special Session (UNGASS) on HIV and AIDS stated that gender stereotypes and gender inequalities in relation to HIV and AIDS must be challenged and the involvement of men actively encouraged in this regard.²¹ Article 59 promotes the shared responsibility of men and women for safer sex.
- The Operational Plan for UNAIDS Action Framework for Women: Addressing Women, Girls, Gender Equality and HIV (2009) includes engaging with men and boys as one of its key principles, stating, "[M]en must work with women for gender equality, question harmful definitions of masculinity and end all forms of violence against women and girls."²²

This report does not explicitly consider the role of men and boys, remaining focused on how international and African legal obligations support women's reproductive rights.

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¹⁸ Beijing Plus 15 progress report for the 2010 UN CSW: A Review of the South African Government Action to Implement Commitments Made to Involve Men and Boys in Achieving Gender Equality, Sonke Gender Justice Network, 2009, p.3 ,

¹⁹ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), para 19

²⁰ Adopted by the General Assembly on 2 August 2001, A/Res-S-26/2

²¹ Art. 47, Declaration of Commitment on HIV/AIDS

²² P.5, Operational Plan

2. Structure and limitations of the report

This report is divided into five sections:

- Section one briefly describes the development of a rights-based approach to reproductive health
- Section two outlines the structure and limitations of the report
- Section three identifies and discusses the key human rights relevant to Africa, reproductive rights, and reflects on the implications for HIV and AIDS. It also contains key documents that have interpreted reproductive rights and set out goals and actions for the achievement of these rights
- Section four examines the extent to which international and regional conventions have been ratified and domesticated by the eighteen focus countries²³
- Section five sets out a number of recommendations to policy makers and civil society, especially in Africa. The report also includes an annexure that contains the full text of the relevant provisions in the key conventions.

No primary research was conducted for this report. Sources of information include: treaties and conventions; country reports to various treaty monitoring bodies; concluding comments, observations and reports by treaty monitoring bodies; media articles; research undertaken by civil society and other secondary sources.

A key limitation of the report relates to the lack of information in the public domain, particularly with regard to measures taken by states to implement ratified covenants, their reasons for not ratifying other conventions, or their failure to fully domesticate the provisions of those they have ratified. Several of the focus countries have failed to meet their reporting requirements to treaty bodies, and even where these reports have been submitted, they often lack relevant and detailed information. Without conducting interviews with stakeholders it was not possible to ensure that all the information provided was fully up to date. Stakeholders are invited to submit additional information that may not have been identified or made available to HEARD to ensure the accuracy of the report.

Further limitations included the unavailability of English documentation for the Francophone and Lusophone countries; the small budget available to conduct the research and the restricted time frame.

The constraints relating to timeframes and budgets also led to a prioritisation of issues, and for this reason the report focuses on the rights and health needs of women. The important role of men in protecting and promoting women's human rights, including their reproductive rights, is briefly discussed in the Introduction, and men's own reproductive health needs and outcomes is acknowledged.

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²³ Angola, Botswana, Democratic Republic of Congo, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

3. The right to health, including reproductive health

The right to health has been part of international human rights since the adoption of the UDHR by the GA on 10 December 1948. Article 25 states that “everyone has the right to a standard of living adequate for the health and well-being of himself (sic) and his family ...” and also acknowledges the reproductive health of women, stating that “[M]otherhood [is] entitled to special care and assistance ...”. The ICESCR, which was adopted by the GA in 1966 and entered into force on 3 January 1976, further developed the right to health, stating that everyone has the “right to the enjoyment of the highest attainable standard of physical and mental health”²⁴. The ICESCR also states that “special protection” should be accorded to mothers before and after childbirth.²⁵ CEDAW places an obligation on states to eliminate discrimination in access to health care, including family planning, and to pay special attention to the needs of rural women, including with regard to their health. States must also provide “appropriate services” to women in connection with pregnancy and childbirth.²⁶

The turning point for the development of reproductive health from a rights perspective came at the landmark ICPD in Cairo in 1994. The Programme of Action (PoA), the outcome document of the conference, committed participating nations to achieving universal and equal access to reproductive health care by 2015. The PoA linked governments’ existing legally binding obligations under various treaties and conventions, to their duty to protect reproductive rights, particularly those of women:

“Reproductive rights embrace certain human rights that are already recognised in national laws, international human rights documents and other relevant UN consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence”²⁷

The PoA also recognised the threat posed by HIV and AIDS and expressed concern about the high numbers of women and girls infected with HIV. It called on governments to mobilise all segments of society to respond to the HIV epidemic²⁸. Since then, the links between HIV and AIDS and reproductive rights and health have been expanded upon in numerous international documents.

The African Women’s Protocol currently contains the most extensive provisions on reproductive rights. The Protocol, which was adopted by the African Union (AU) in 2003 and entered into force on 25 November 2005, contains the first expression of a right to abortion (albeit limited) and the first references to HIV and AIDS in an international treaty. It “identifies protection from HIV and AIDS as a key component of women’s sexual and reproductive rights”.²⁹

²⁴ ICESCR, art. 12

²⁵ ICESCR, art. 10.1

²⁶ CEDAW, art. 12

²⁷ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), para 7.3; (also referred to as the Cairo Consensus Document).

²⁸ Programme of Action, chapter VII

²⁹ The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights, Briefing paper prepared by the Centre for Reproductive Rights, p.1

Art. 14(1)

States parties shall ensure that the right to health of women, including sexual and reproductive health, is respected and promoted. This includes:

- (a) The right to control their fertility
- (b) The right to decide whether to have children, the number of children and the spacing of children
- (c) The right to choose any method of contraception
- (d) The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS
- (e) The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices
- (f) The right to have family planning education.

Art. 14(2)

States parties shall take all appropriate measures to:

- (a) Provide adequate, affordable and accessible health services, including information, education and communication programmes to women, especially those in rural areas
- (b) Establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding
- (c) 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.

The UNAIDS Outcome Framework (2009) reinforces the critical importance of human rights, including and especially reproductive rights, as a key component of an effective response to the epidemic. The report recognises that a significant reduction of HIV infection can only be achieved with a “dramatic increase in community, national and global action for sexual and reproductive health and rights”.³⁰

Reproductive and sexual rights and HIV and AIDS are intimately linked, particularly in Africa where HIV is transmitted largely through heterosexual sex, and also during pregnancy and breastfeeding. Without protection of their human rights, including their reproductive rights, the ability of women to protect themselves from HIV infection is reduced and impaired: they may not have access to adequate and accessible information; prevention measures such as male and female condoms may be unavailable; access to health care to prevent and treat STIs may be limited and they may be subject to practices such as widow cleansing, FGM and early marriage that increase their risk of transmission.

If infected, violations of their reproductive rights may prevent them from seeking out treatment and care: women may be afraid to access HIV testing and treatment because of fears of violence and abandonment if their HIV status becomes known; they may not disclose their HIV status for similar reasons; and their subordinate status in families, communities and society may prevent them from accessing and adhering to antiretroviral therapy and accessing programmes to reduce the risk of mother-to-child transmission.

³⁰ UNAIDS, Joint Action for Results: UNAIDS Outcome Framework, 2009 – 2011, Geneva, November 2009, p 6

Protecting their reproductive rights will enhance HIV prevention, treatment and care efforts and will allow women to enjoy the full range of their human rights.



3.1 Sexual rights

There is no universally recognised definition of “sexual rights” and it has not yet been defined in any international convention. The term was not used at the ICPD and does not appear in the linked PoA. The PoA did refer to the “right to a satisfying and safe sex life”³¹ and the Beijing Platform of Action included reference to women’s rights to “have control over and decide freely and responsibly on matters related to their sexuality”³². This paragraph has frequently been interpreted to define sexual rights “without employing the terminology”³³. To date, no international conference has gone further than this. The World Health Organisation (WHO) has developed a working definition of sexual health and rights which replicates the definition of the right to reproductive health, stating that it is a right to the “highest attainable standard of sexual health, including access to sexual and reproductive health care services”.

Sexual rights are controversial as some commentators interpret them to include issues relating to sexual orientation and abortion. The authors of the report support the further development of the concept of sexual rights as a key part of promoting women’s and men’s reproductive rights and health.

³¹ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), para 7.2

³² Platform of action para 96

³³ Breaking Through p 30

4. International and regional obligations regarding reproductive rights

4.1 International legal foundation for reproductive rights

International and regional treaties and conventions become binding on countries once they have been signed and ratified. Countries that choose to ratify these documents are legally obliged to domesticate and enforce their provisions. Documents such as the Millennium Declaration which sets out the MDGs, and the consensus documents that emerge from international conferences do not have the same legal status as treaties and conventions and are not legally binding on countries, even though they may have endorsed them. However, it is argued that there is a moral obligation on the part of countries to enforce the provisions of these documents if they have chosen to agree to them.

Table 1 provides details of ratification by the eighteen focus countries of the key international and regional treaties. Countries which have signed a treaty, but not ratified it yet, are highlighted in grey.

Table 1 shows that the eighteen focus countries have in fact ratified many of the key covenants, and have therefore a legally binding obligation to implement their provisions at a national level. Reproductive rights, as stated at the ICPD, are grounded in a constellation of existing human rights that are contained in the key international and regional treaties.

Although all human rights are in some way implicated in reproductive rights, there are twelve rights that are most often cited as forming a reproductive rights framework to empower women and advance their reproductive health:

- The right to life
- The rights to liberty and security of the person
- The right to health, including reproductive and sexual health
- The right to decide the number and spacing of children
- The right to consent to marriage and to equality in marriage
- The right to privacy
- The right to equality and non-discrimination
- The right to be free from practices that harm women and girls
- The right not to be subjected to torture and cruel, inhuman and degrading treatment or punishment
- The right to be free from sexual and gender-based violence
- The right to access sexual and reproductive health education and family planning information
- The right to enjoy scientific progress.

These rights are also clearly linked to HIV and AIDS. Protecting these rights will also enhance the human rights of people infected and affected by HIV and AIDS.

Table 1: Ratification of key covenants

Countries	ACHPR	ACRWC	African Women's Protocol	ICCPR	ICESCR	CEDAW	CRC	CAT	ICERD	CRPD ³⁴
Angola	March 1990	April 1992	XX	Jan 1992	Jan 1992	Sept 1986	Dec 1990	XX	XX	XX
Botswana	July 1986	XX	XX	Sept 2000	XX	Aug 1996	March 1995	Sept 2000	Feb 1974	XX
DRC	July 1987	XX	XX	Nov 1976	Nov 1976	Aug 1986	Sept 1990	March 1996	April 1976	XX
Kenya	Jan 1992	Aug 2000	XX	May 1972	May 1972	March 1984	July 1990	Feb 1997	Sept 2001	May 2008
Lesotho	Feb 1992	Oct 1999	Oct 2004	Sept 1992	Sept 1992	Aug 1995	March 1992	Nov 2001	Nov 1971	Dec 2008
Madagascar	March 1992	Feb 1992*	XX	June 1971	Sept 1971	March 1989	March 1991	Dec 2005	Feb 1969	Sept 2007*
Malawi	Nov 1989	Nov 1999	May 2005	Dec 1993	Dec 1993	March 1987	Jan 1991	June 1996	June 1996	Sept 2007*
Mauritius	June 1992	Feb 1992	XX	Dec 1973	Dec 1973	July 1984	July 1990	Dec 1992	May 1972	Sept 2007
Mozambique	Feb 1989	Dec 1998	Dec 2005	July 1993	XX	April 1997	April 1994	Sept 1999	April 1983	March 2007*
Namibia	July 1992	July 1999*	Aug 2004	Nov 1994	Nov 1994	Nov 1992	Sept 1990	Nov 1994	Nov 1982	Dec 2007
Rwanda	July 1993	Oct 1991*	June 2004	April 1975	April 1975	March 1981	Jan 1991	Dec 2008	April 1975	Dec 2008
Seychelles	April 1993	Feb 1992	March 2006	May 1992	May 1992	May 1992	Sept 1990	Dec 1992	March 1978	Oct 2009
South Africa	July 1996	Jan 2000	Dec 2004	Dec 1998	Oct 1994*	Dec 1995	June 1995	Dec 1998	Dec 1998	Nov 2007
Swaziland	Sept 1995	June 1992*	XX	March 2004	March 2004	March 2004	Sept 1995	March 2004	April 1969	Sept 2007*
Tanzania	Feb 1984	Oct 1998*	March 2007	June 1976	June 1976	Aug 1985	June 1991	XX	Oct 1972	March 2007*
Uganda	May 1986	Oct 1994	XX	June 1995	Jan 1978	July 1985	Aug 1990	Nov 1986	Nov 1980	Sept 2008
Zambia	Jan 1984	Feb 1992*	May 2006	April 1984	May 1984	June 1985	Dec 1991	Oct 1998	Feb 1972	May 2008*
Zimbabwe	May 1986	Feb 1995	XX	May 1991	May 1991	May 1991	Sept 1990	XX	May 1991	XX

*Signed only, not ratified.

³⁴ This Convention only came into force on 3 May 2008 and as such, has not yet been ratified by many of the eighteen focus countries. It does however contain important provisions on reproductive rights for people living with disabilities and will be an important advocacy tool.

Table 2 provides an overview of where these rights can be found in international and regional covenants (Annexure A contains the full text of each of these provisions).

4.2 How human rights are linked to reproductive rights

This section discusses briefly how these human rights are linked to reproductive rights, including how they have been interpreted by treaty monitoring bodies.³⁵ Although many of these rights occur in several treaties, there are three key conventions for the protection and advancement of reproductive rights: the ICESCR, CEDAW and the African Women's Protocol. This section focuses on specific provisions in these three treaties.

Reproductive rights “encompass two principles – the right to reproductive health care and the right to reproductive self-determination”.³⁶ The links between these principles and HIV and AIDS are clear, and some of the key issues in this regard are highlighted below.

Reproductive health care

The right to reproductive health care has its foundations in the rights to life and health. The Human Rights Committee (HRC)³⁷ has interpreted the right to life as going beyond the obligation to just protect life, but to include an obligation to “increase life expectancy”.³⁸

The right to health has been included in a number of international and regional treaties and conventions. CEDAW includes specific provisions relating to reproductive health, including health services related to family planning³⁹ on the basis of equality with men and appropriate services for pregnancy, delivery and post-delivery.⁴⁰ CEDAW also states that the special needs of rural women must be taken into account.⁴¹ The African Women's Protocol has thus far offered the broadest protection for reproductive rights, including reproductive health, and “clarifies African states' duties in relation to women's sexual and reproductive health”.⁴² As part of the right to health, the African Women's Protocol explicitly states that governments have an obligation to ensure that women are able to protect themselves from STIs, including HIV and AIDS, and to obtain information about their health status, including their HIV and AIDS status. The Protocol also states that women are entitled to have access to information about the health status of their partner, including about their HIV status “in accordance with internationally recognised standards and best practices”.⁴³

³⁵ These bodies are created by the treaty they monitor and they are made up of experts who are mandated to monitor compliance with the treaty

³⁶ Gaining Ground: A Tool for Advancing Reproductive Rights Law Reform, Centre for Reproductive Rights, New York, p 14

³⁷ The treaty monitoring body responsible for the ICCPR

³⁸ Human Rights Committee, General Comment 6: The right to life, para 5; July 1982

³⁹ CEDAW, art. 12(1)

⁴⁰ CEDAW, art. 12(2)

⁴¹ CEDAW, art. 14

⁴² The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights, a briefing paper by the Centre for Reproductive Rights, New York, p 6

⁴³ Protocol, art. 14

Table 2: International and regional covenants and reproductive rights

	ACHPR ⁴⁴	ACRWC ⁴⁵	African Women's Protocol ⁴⁶	CAT ⁴⁷	CEDAW ⁴⁸	ICERD ⁴⁹	ICCPR ⁵⁰	ICESCR ⁵¹	CRC ⁵²	CRPD ⁵³
The Right to life	Art. 4	Art. 5.1	Art.4(1)				Art. 6.1		Art. 6.1; 6.2	Art. 10
Liberty and security	Art. 6						Art. 9(1)			Art. 14
Health, reproductive health, family planning	Art. 16	Art. 14	Art. 14		Art. 10(h); 12.1; 12.2; 14.2	Art.5		Art. 10.2; 12.1; 12.2	Art. 24.1; 24.2	Art. 25
Number and spacing of children					Art.16.1					Art. 23(1)(a)
Freedom from discrimination	Art. 2; 3; 18(1); 19	Art. 3	Art.2		Art. 1; 3; 11.2		Art. 2.1	Art. 2.2	Art. 1; 2.1; 2.2; 5	Art. 5; 6; 7
Consent to marriage and equality in marriage		Art.21.2	Art. 6		Art. 16.1; 16.2			Art. 10.1; 23.2; 23.3; 23.4		Art. 23(1)(a)
Privacy		Art.10					Art. 17.1; 17.2		Art. 16.1; 16.2	Art. 22
Freedom from cruel, inhuman and degrading treatment	Art.5	Art. 5; 16	Art. 4.1	Art.1			Art. 7		Art. 37(1)	Art. 15
Right to be free from traditions and practices that harm women		Art.21	Art. 4(2)(d); 5		Art. 2(f); 5(a)				Art.24.3	
Sexual violence		Art. 27; 29	Art. 3.4; 4.(2)(a); 11.3		Art. 5(a); 6				Art19(1); 34	Art. 16
Right to enjoy scientific progress and to consent to experimentation							Art. 7	Art.15.1		Art. 15(a)

⁴⁴ Adopted in June 1981 and came into force on 21 October 1986.

⁴⁵ Adopted in June 1990 and came into force on 29 November 1999

⁴⁶ Adopted in July 2003 and came into force on 25 November 2005.

⁴⁷ Adopted 10 December 1984, GA Res. 39/46, UN GAOR, 39th Sess., Supp. No. 51 at 197, UN Doc. A/34/51 (1984), 1465 UNTS 85, entered into force on 26 June 1987

⁴⁸ Adopted 18 December 1976, GA Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46 at 193, UN Doc. A/34/46, 1249 UNTS 13, entered into force on 3 September 1981

⁴⁹ Adopted 21 December 1965, GA 2106 (XX), 660 UNTS 195, entered into force on 4 January 1969

⁵⁰ Adopted 16 December 1966, GA Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16 at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976.

⁵¹ Adopted 16 December 1966, GA Res. 2200A (XXI), UN GAOR 21st Sess., Supp. No. 16 at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force on 3 January 1976.

⁵² Adopted 20 November 1989, GA Res. 44/25, annex, UN GAOR, 44th Sess., Supp. No. 49 at 166, UN Doc. A/44/49 (1989), entered into force on 2 September 1990.

⁵³ Adopted on 13 December 2006, GA Res. A/RES/61/06, entered into force on 3 May 2008

The right to non-discrimination and equality is particularly important to the right to reproductive health. The CEDAW Committee⁵⁴ has examined the right to health in its General Recommendation on Women and Health, and notes that it states “should ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services”.⁵⁵

The right to reproductive health care and the obligation to eliminate discrimination in access to health care has particular implications for women living with HIV and AIDS. Many women living with HIV are unable to access services because they fear stigma and discrimination if their HIV status is disclosed. Violence against women, which has been defined as a form of gender-based discrimination, also creates barriers for women living with HIV who may fear the consequences of accessing HIV testing and medication. They risk violence, abandonment and poverty if their HIV status is discovered by their partners and families.



The African Women’s Protocol again provides the most explicit protection against gender-based violence and countries are obliged to protect women from “unwanted or forced sex”.⁵⁶ States must take appropriate and effective measures to protect women from unwanted sex, including passing and implementing legislation. These provisions, if effectively implemented at a national level, could provide enhanced

54 The treaty body responsible for monitoring CEDAW

55 Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation no. 24, Women and Health, para 29, February 1999

56 Protocol, art. 4

protection against sexual violence and could play a key role in reducing women's vulnerability to HIV infection.

Reproductive self-determination

The right to reproductive self-determination "has support in the right to physical integrity, the right to privacy, the right to plan one's family and the right to be free from all forms of violence and coercion that affect a woman's sexual and reproductive life".⁵⁷

The ICPD PoA emphasised the importance of self-determination and "the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so".⁵⁸

Women living with HIV are frequently unable to exercise reproductive self-determination; the unavailability of safe and legal abortion in many of the focus countries and the continued lack of access to Prevention of Mother-to-Child Treatment (PMTCT) programmes severely limits women's choices in these matters.

4.3 Specific issues

Sexual orientation

Non-heterosexual orientation is a controversial issue, both in the eighteen focus countries and at an international level. Several of the eighteen focus countries have either criminalised homosexuality or are considering legislation that will gravely undermine the human rights of gay, lesbian, transgendered and bisexual people. A notable example of this trend is Uganda, where homosexuality is already criminalised, but where a new draft law now proposes to forbid the "promotion" of homosexuality and impose the death penalty for "aggravated homosexuality".

There is currently no international or regional treaty that directly addresses violations of human rights on the grounds of sexual orientation and gender identity, although the UN has "a long record of [UN] action"⁵⁹ defending the rights of gay, lesbian, transgendered and bisexual people. The UN HRC stated in 1994 that human rights law prohibits discrimination on the grounds of sexual orientation.⁶⁰

On 18 December 2008, a statement initiated by the French government and sponsored by 67 countries, was presented to the GA. The proposed declaration on sexual orientation and gender identity condemned discrimination, killing and executions, torture, arbitrary arrest and detention and the deprivation of social, cultural and economic rights on the grounds of sexual orientation and gender identity⁶¹. The reading of the statement marked the first time that the GA has "formally addressed rights violations based on sexual orientation and gender identity".⁶² Of the eighteen focus countries, only Mauritius was a co-sponsor of the declaration.⁶³

Fifty-seven countries co-sponsored an opposition statement, which stated that the proposed declaration would undermine the international system of human rights. Kenya, Malawi, Rwanda, Swaziland, Tanzania,

⁵⁷ Gaining Ground: A Tool for Advancing Reproductive Rights Law Reform, Centre for Reproductive Rights, New York, p16

⁵⁸ ICPD Programme of Action, para. 7.3

⁵⁹ Amnesty International, Public Statement, 12 December 2008, AI IOR 41/045/2008, available at <http://www.amnestyusa.org/document.php?id=ENGIOR410452008>; last accessed on 19 March 2010

⁶⁰ Toonen v Australia (1994) UN Doc. CCPR/C/50/D/488/1992

⁶¹ For the full text of the declaration, see <http://www.netherlandsmission.org/article.asp?articleref=AR00000530EN>

⁶² Amnesty International, Public Statement, 12 December 2008, AI IOR 41/045/2008, available at <http://www.amnestyusa.org/document.php?id=ENGIOR410452008>; last accessed on 19 March 2010

⁶³ A co-sponsor agrees to the contents of the statement and votes in favour of its adoption by the General Assembly

Uganda and Zimbabwe were among this group⁶⁴. Both statements remain open for signature and neither has been adopted by the UN.

The failure to explicitly protect the human rights of gays, lesbians, transgendered and bisexual people has particularly severe implications for HIV prevention. The fact that certain conduct is illegal in many countries drives vulnerable people away from health services and other support. Many are also unable to obtain access to information that will allow them to protect themselves from HIV infection.

Violence against women

Violence against women is a global emergency and one of the most pervasive violations of human rights. A report to the UN in 2006 indicated that one in three women will experience some form of gender-based violence during her lifetime.⁶⁵ As explained in the introduction to this report, violence against women was not initially seen as an international human rights issue, and CEDAW did not explicitly address it. This failure has hampered efforts to address violence against women at an international level.

The provisions in the African Women's Protocol make reference to "unwanted or forced sex"⁶⁶ and hold the state accountable for preventing and responding to gender-based violence in both the public and private spheres. This is a particularly important provision in the context of HIV and in Africa where many countries have failed to criminalise marital rape. The provisions in the Protocol suggest that states must take more effective measures to deal with domestic violence and ensure that perpetrators are identified and punished.

Gender-based violence provides particular challenges for the provision of reproductive health care: research suggests that the risk of domestic violence, including sexual violence, increases during pregnancy,⁶⁷ and women may not be willing to seek health care or to disclose that they are being abused to a health care worker. Gender-based violence has severe implications for women's ability to protect themselves from HIV infection: their ability to insist on condom use and safer sex practices will be undermined, they will be unable to negotiate whether or not sex takes place and injuries inflicted during sexual violence may increase the risk of transmission. Women living with HIV may be at greater risk of violence if they disclose their HIV status to partners and families, and may also avoid HIV-related services to prevent such disclosure.

Criminalisation of HIV transmission and exposure, which is often touted as a measure to protect women against HIV infection within their relationships, may in fact have the opposite effect. Women are often the first to know their HIV status and are unable to disclose their status to their partner or to insist on safer sex, but will be the ones to face prosecution in terms of these laws for either infecting their partner or exposing their partner to infection.⁶⁸

Practices harmful to women

Several of the international conventions, including CEDAW and the African Women's Protocol, contain provisions relating to cultural and social practices that harm women, including FGM, widow cleansing and early marriage. These practices increase women's vulnerability to HIV, and limit their ability to protect themselves from infection.

⁶⁴ To view the debates on the statement, see <http://www.un.org/webcast/ga2008.html>. General Assembly: 70 and 71st plenary meeting, morning session 02:32:00, 18 December 2008

⁶⁵ General Assembly, In-depth study of all forms of violence against women: report of the Secretary-General, 2006, A/61/122/Add.1. July 2006

⁶⁶ Protocol, art. 4

⁶⁷ General Assembly, In-depth study of all forms of violence against women: report of the Secretary-General, 2006, A/61/122/Add.1. July 2006

⁶⁸ Athena Network (2009) *10 Reasons Why the Criminalization of HIV Exposure or Transmission Harms Women*. Athena Network and AIDS Legal Network: South Africa

CEDAW requires states to take appropriate measures to “modify social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices”⁶⁹ and also to modify or abolish “laws, regulations, customs and practices”⁷⁰ that discriminate against women. The African Women’s Protocol reinforces the provisions in CEDAW, but goes further to advance women’s reproductive rights and health by explicitly requiring states to eradicate female genital mutilation/cutting.⁷¹

Young women and girls

Young women and girls bear the brunt of the twin epidemics of gender-based violence and HIV and AIDS in the region. More than three-quarters of young people living with HIV and AIDS in sub-Saharan Africa are women between the ages of 15 and 24 years.

Access to reproductive health care and the ability to make decisions about reproduction are severely limited for many adolescents, both boys and girls. The PoA of the ICPD recognises the special needs of adolescents and addresses the provision of reproductive health care for them, stating that countries must promote the rights of adolescents to reproductive health, education and care, and ensure that their rights to privacy, confidentiality and informed consent are respected.⁷² Countries were also urged to take effective measures to reduce the high number of teenage pregnancies.

4.4 Key international and regional documents

The documents referred to in this section, with the exception of the Southern African Development Community (SADC) Protocol on Gender and Development,⁷³ are not legally binding on the eighteen focus countries but they have been influential in deepening the understanding of reproductive rights, in the development of national laws and policies and as mechanisms for holding governments accountable.

United Nations International Conference on Population and Development (ICPD), Cairo 1994:

The importance of the conference has already been stressed in the introduction to this report. One of the key actions agreed to by participating nations was universal access to reproductive health care by 2015, but the outcome document, which was adopted by the 179 countries that attended the conference, includes several other important objectives and actions in respect of reproductive rights:

- Violence against women was recognised as an important barrier to women’s reproductive rights⁷⁴
- The PoA mentioned abortion for the first time at an international conference, and urged countries to deal with the health impact of unsafe abortions and to make quality post-abortion care available, even where abortion was not legal. Countries were also urged to expand access to family planning information and services to reduce the need for abortion⁷⁵

⁶⁹ CEDAW, art. 5

⁷⁰ CEDAW, art. 2(g)

⁷¹ Protocol, art. 5

⁷² Programme of Action, chapter VI

⁷³ The SADC Protocol on Gender and Development was adopted by the Heads of States of SADC countries on 17 August 2008 and is legally binding on Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The Protocol is not binding on Kenya, Rwanda and Uganda.

⁷⁴ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), Principle 4

⁷⁵ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), para 8.25

- Although the conference took place at a relatively early stage of the HIV epidemic, the PoA urged states to take a range of actions to reduce the spread and the effects of HIV and AIDS.⁷⁶ The PoA “highlights the fact that women and girls are most vulnerable to STIs, including HIV/AIDS and stresses the importance of meeting their needs”⁷⁷
- The rights of adolescents to education on reproduction and sex, access to contraception and abortion where legal, were emphasised at the conference. Countries were encouraged, “where appropriate, to remove legal, regulatory and social barriers to reproductive health information and care for adolescents”.⁷⁸

Reviews of the progress made towards achieving the conference objectives have taken place at five year intervals - five, 10 and 15 years after the conference. Concerns continue to be expressed about whether these goals will be reached in 2015.

The Fourth World Conference on Women, Beijing 1995

The Beijing Conference further extended the objectives of the ICPD by recognising the links between reproductive and sexual health and women’s ability to participate equally and fully in *all* spheres of life. The Beijing Declaration and Platform for Action, adopted by 189 nations, promoted gender mainstreaming. For the first time, there was international recognition that women’s human rights included “their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health free of coercion, discrimination and violence”.⁷⁹ The Beijing Declaration and Platform of Action also contain key gains in relation to women and HIV and AIDS, recognising women’s vulnerability to infection and the disproportionate impact of the epidemic on women.

Millennium Development Goals⁸⁰

The MDGs, adopted by consensus⁸¹ in 2000, failed to mention the important goal related to reproductive health, namely the achievement of universal access by 2015, although three of the goals are directly related to its achievement. This is seen by many as a crucial gap in the MDGs.

In addition to the eight goals, specific targets have also been set that must be met in order to achieve the goals.⁸² Some of these do directly address reproductive health:

- Goal 5 – improvement of maternal health. The goal is to reduce the maternal mortality ratio by three quarters by 2015. In addition, there are specific targets that reinforce the goal of universal access to reproductive health care by 2015, including improving access to contraception and reducing the number of adolescent pregnancies. Experts have predicted that this is the goal that is currently least likely to be met by 2015
- Goal 6 – halt and begin to reverse the spread of HIV and AIDS. A number of targets have been set to meet this goal, including halving the rate of new infections by 2015 and ensuring universal access to treatment for all who need it by 2010.

⁷⁶ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), para 8.30

⁷⁷ Breaking Through: A Guide to Sexual and Reproductive Health and Rights, Swedish Association for Sexuality Education, 2004, p.13

⁷⁸ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5 – 13 September 1994, UN Doc A/CONF. 171/13 (1994), para 7.45

⁷⁹ Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, UN Doc. A/CONF.177/20, 1995, para 96

⁸⁰ Adopted by the United Nations General Assembly Millennium Summit, September 2000

⁸¹ The MDGs were adopted by all 192 nations at the General Assembly’s Millennium Summit in 2000.

⁸² The targets were adopted in 2001 in the “Roadmap towards Implementation of the United Nations Millennium Declaration”.

Declaration of Commitment on HIV and AIDS⁸³

The Declaration, adopted by consensus in 2001, unequivocally recognised the links between human rights and the prevention and treatment of HIV and AIDS. Although the Declaration did not refer specifically to vulnerable groups, it did recognise the links between gender equality and the ability of women and girls to protect themselves from HIV infection.⁸⁴ Unfortunately the Declaration failed to mention broader reproductive health and rights, including the need to protect women and girls from STIs that increase their vulnerability to HIV.

There are also important regional initiatives that impact on reproductive rights:

Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases, 2001

The Abuja Declaration, adopted in Nigeria in April 2001, recognised the biological vulnerability of women and that their social and economic inequality increases their vulnerability to HIV infection.⁸⁵ Although the Abuja Declaration does not refer directly to reproductive health, it does declare that AIDS is a “state of emergency”⁸⁶ on the continent and importantly, commits states to allocate “15% of their annual budget to the improvement of the health sector”.⁸⁷

To date of the eighteen focus countries, only Botswana, has met this commitment.⁸⁸

Continental Policy on Sexual and Reproductive Health and Rights, 2005 and the Maputo Plan of Action, 2006⁸⁹

This policy statement was adopted by the Ministers of Health of the AU in Botswana, in 2005 and endorsed by the AU Heads of State in January 2006. The policy expressed deep concern about a range of reproductive health issues, including the high rate of maternal mortality, the prevalence of unsafe abortion, the low contraceptive prevalence rate, the high prevalence of HIV and AIDS and the increasing rate of mother-to-child transmission of HIV and AIDS. The policy outlined a framework to address the challenge of meeting the goal of universal access to reproductive health care by 2015.

Key aspects of the framework of the Continental Policy on Sexual and Reproductive Health and Rights

- The framework acknowledges that the existing legislative framework on reproductive health is inadequate and needs to be revised
- Integration of sexual and reproductive health services: a minimum package of services should be developed and inserted at all levels of health services
- Budgeting of Sexual and Reproductive Health Activities: states are urged to meet their commitment in terms of the Abuja Declaration and allocate 15% of their annual budgets to the health sector. They are also urged to provide adequate resources for sexual and reproductive health services
- HIV and AIDS: countries are urged to develop affordable counselling, voluntary testing, and mother-to-child HIV transmission, prevention and treatment programmes. They are urged to pay special attention to the needs of vulnerable groups, including women, children, the elderly and people living with disabilities.

⁸³ Adopted by the United Nations General Assembly Special Session on HIV/AIDS, June 2001

⁸⁴ Declaration of Commitment on HIV/AIDS, GAOR, 26th Special Sess., New York 25 – 27 June 2001, UN Doc. A/Res/S-26/2 (2001), paras 14, 59-61

⁸⁵ Para 7, Abuja Declaration.

⁸⁶ Para. 22, Abuja Declaration.

⁸⁷ Para. 26, Abuja Declaration

⁸⁸ Gambia has also met the 15% commitment

⁸⁹ Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007 - 2010

In 2006, the Maputo Plan was adopted at a Special Session of the AU Conference of Ministers of Health as a roadmap for the implementation of the 2005 Policy on Sexual and Reproductive Health and Rights. The Plan of Action, although a short term plan for the period 2007 – 2010, “seeks to take the continent forward towards the goal of universal access to comprehensive sexual and reproductive health services in Africa by 2015”.⁹⁰

SADC Protocol on Gender and Development

The SADC Protocol on Gender and Development was signed in Johannesburg in August 2008 by all SADC countries. It addresses gender-based violence, health and HIV and AIDS, and includes specific, time-bound commitments that must be fulfilled by all SADC countries:⁹¹

- Countries must work towards the eradication of all forms of gender-based violence and enact legislation to prohibit gender-based violence by 2015⁹²
- Countries are also obliged to enact laws to ensure access to comprehensive services for survivors of gender-based violence, including access to emergency contraception, post-exposure prophylaxis for HIV prevention and treatment for STIs.⁹³ Gender-sensitive policies, programmes and laws must be developed and implemented to address prevention, treatment, care and support for women living with HIV and AIDS.⁹⁴

The SADC Protocol on Gender and Development includes detailed provisions on implementation, monitoring and evaluation.⁹⁵ Once countries have ratified the Protocol, they are obliged to develop national action plans that include timeframes and monitoring and evaluation mechanisms.⁹⁶ They must also submit progress reports to the Executive Secretary of SADC every two years.⁹⁷ This should be a useful mechanism for civil society to hold SADC governments accountable for gender equality.

To date, only Namibia and Zimbabwe have ratified the Protocol.

⁹⁰ Maputo Plan of Action, para 5

⁹¹ The Gender and Development Protocol has been signed by all fifteen SADC countries, Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Kenya, Uganda and Rwanda, of the 18 focus countries of this report, are not members of SADC and therefore not signatories to the Gender and Development Protocol

⁹² SADC Protocol, art. 20

⁹³ Ibid.

⁹⁴ Ibid., art. 27

⁹⁵ Art. 35, SADC Protocol on Gender and Development.

⁹⁶ Ibid., art. 35(2)

⁹⁷ Ibid., art 35(4)

5. Domestication of reproductive rights obligations

Ratification, the process whereby countries signal their intention to be bound by the treaty, is only a first step. Once countries have ratified an international convention they are obliged to implement its provisions domestically. Table 3 below sets out how domestication may occur and which approach has been adopted by the focus countries, where this information was available.

Table 3 Dualist vs. Monist approach to domestication⁹⁸

Dualist	Monist
<p>Treaties and covenants do not form part of the domestic law until national legislation has been enacted incorporating the provisions into domestic law.</p> <ul style="list-style-type: none"> • Angola • Botswana • Kenya • Lesotho • Malawi • South Africa • Swaziland • Tanzania • Uganda • Zambia • Zimbabwe 	<p>Treaties and conventions become directly applicable once ratified and no additional national legislation is required.</p> <ul style="list-style-type: none"> • Namibia • Madagascar • Mozambique • Rwanda

Table 4 shows that the eighteen focus countries have largely ratified two key conventions relating to reproductive rights – CEDAW and ICESCR – with all eighteen having ratified the CEDAW and only three, Botswana, Mozambique and South Africa, having not ratified the ICESCR. Unfortunately however, only half of the focus countries have ratified the African Women's Protocol.

It is also important to note, as Table 4 shows, that all eighteen focus countries have ratified the African Charter on Human and People's Rights, the ICCPR, CRPD and the Convention on the Rights of the Child (CRC), all of which contain provisions relevant to reproductive rights.

Table 4: Non-ratification

Instruments	ACHPR	African Women's Protocol	ICCPR	ICESCR	CEDAW	CRC	CRPD
Countries which have not ratified		Angola Botswana DRC Kenya Madagascar Mauritius Swaziland Uganda Zimbabwe		Botswana Mozambique South Africa*			Angola Botswana DRC Zimbabwe

*Signed, but not ratified

⁹⁸ No information available on the DRC, Mauritius, Mozambique, Seychelles and Uganda

Table 5 below examines whether countries which have ratified the three treaties have domesticated these treaties. One of the obligations of states once they have ratified a convention is to periodically report to the relevant treaty monitoring body on progress towards implementing the treaty and much of the information in this section has been extracted from the country reports of the eighteen focus countries to the Committee on the Elimination of Discrimination against Women and the Committee on the Economic, Social and Cultural Rights. Unfortunately no information from the countries on how they were domesticating the African Women's Protocol could be obtained and many countries had failed to meet their obligations to report regularly to the other treaty monitoring bodies.

Table 5: Domestication of international treaties

Country	Convention	Ratification	Domestication
Angola ⁹⁹	ICESCR CEDAW African Women's Protocol	√ √ x	Not fully domesticated ¹⁰⁰ Not domesticated ¹⁰¹ N/A
Botswana ¹⁰²	ICESCR CEDAW African Women's Protocol	x √ x	N/A No information available ¹⁰³ N/A
Democratic Republic of Congo	ICESCR CEDAW African Women's Protocol	√ √ x	No information available No information available N/A
Kenya	ICESCR CEDAW African Women's Protocol	√ √ x	Not fully domesticated ¹⁰⁴ Not fully domesticated ¹⁰⁵ N/A
Lesotho ¹⁰⁶	ICESCR CEDAW African Women's Protocol	√ √ x	No information available No information available N/A
Madagascar	ICESCR CEDAW African Women's Protocol	√ √ x	Directly applicable to domestic law Directly applicable to domestic law N/A
Malawi ¹⁰⁷	ICESCR CEDAW African Women's Protocol	√ √ √	No information available Not fully domesticated ¹⁰⁸ No information available
Mauritius	ICESCR CEDAW African Women's Protocol	√ √ x	No information available Not fully domesticated ¹⁰⁹ N/A
Mozambique	ICESCR CEDAW African Women's Protocol	x √ √	Directly applicable to domestic law ¹¹⁰
Namibia	ICESCR CEDAW African Women's Protocol	√ √ √	No information available No information available No information available
Rwanda	ICESCR	√	Directly applicable to domestic law ¹¹¹

⁹⁹ Section 21 of the Angolan Constitution states that domestic law should be interpreted in accordance with international human rights

¹⁰⁰ Committee on Economic, Social and Cultural Rights, Concluding Comments, E/C.12/AGO/CO/3/CPR.1, 2008

¹⁰¹ Committee on the Elimination of Discrimination Against Women, Concluding Comments/Observations, A/59/38(supp) paras 133, 171

¹⁰² Human Rights Committee, Concluding Observations, CCPR/C/BWA/CO/1, 2008 – the report notes that court judgements have stated that domestic law must be interpreted in accordance with international human rights

¹⁰³ Botswana has not submitted a report as required by the provisions of CEDAW

¹⁰⁴ Committee on Economic, Social and Cultural Rights, E/C.12.KEN/CO.1, 2008

¹⁰⁵ Committee on the Elimination of Discrimination Against Women, Concluding Comments, C/KEN/CO/6

¹⁰⁶ Lesotho has failed to submit reports to the treaty monitoring bodies. Its most recent report was in 2001 to the Committee on the Rights of the Child

¹⁰⁷ S211 of the Malawi Constitution states that any international agreement will form part of the law of Malawi if "so provided by or under any act of Parliament".

¹⁰⁸ Committee on the Elimination of Discrimination Against Women, Concluding Comments, C/MWI/CO5, 2006

¹⁰⁹ Committee on the Elimination of Discrimination Against Women, Concluding Comments, C/MAR/CO/5, 2006

¹¹⁰ Committee on the Elimination of Discrimination Against Women, Concluding Comments, C/MOZ/CO/2, 2007

	CEDAW	√	
	African Women's Protocol	√	
Seychelles	ICESCR	√	No information available
	CEDAW	√	No information available
	African Women's Protocol	√	No information available
South Africa	ICESCR	×	N/A
	CEDAW	√	No information available
	African Women's Protocol	√	No information available
Swaziland	ICESCR	√	No information available
	CEDAW	√	No information available
	African Women's Protocol	×	N/A
Tanzania	ICESCR	√	No information available
	CEDAW	√	Not domesticated ¹¹²
	African Women's Protocol	√	No information available
Uganda	ICESCR	√	No information available
	CEDAW	√	Not domesticated ¹¹³
	African Women's Protocol	×	N/A
Zambia	ICESCR	√	Not fully domesticated ¹¹⁴
	CEDAW	√	No information available
	African Women's Protocol	√	No information available
Zimbabwe	ICESCR	√	No information available
	CEDAW	√	No information available
	African Women's Protocol	×	N/A

Table 6 seeks to identify domestic developments which empower women and enhance their reproductive rights. Some of this information was extracted from the country reports to the treaty monitoring bodies, but given the failure to report regularly, additional research was conducted to identify legislative and policy developments.

While Table 6 does suggest that the eighteen focus countries have taken significant steps to address women's reproductive rights, it is important to note that many legislative and policy gaps remain, including a failure to enact legislation to criminalise marital rape, the continued criminalisation of abortion and a lack of legal provisions to empower women to protect themselves from HIV and AIDS.

The Continental Policy Framework for the Promotion of Sexual and Reproductive Health and Rights in Africa acknowledges that much still needs to be done to protect women's reproductive rights and improve their reproductive health status, and identifies the failure to amend "many policies and laws ... in order to match the commitments made...". The policy recommends that steps be taken to ensure that amendments to laws and policies take place.

In addition to ensuring that an adequate policy and legal framework exists to promote reproductive rights, governments are obligated to implement the framework and ensure that women are able to enforce their rights. This is a key area for action, with many women unaware of their rights and few having access to enforcement structures such as courts and tribunals.

¹¹¹ Committee on the Elimination of Discrimination Against Women, Concluding Comments, C/RWA/CO/6, 2009

¹¹² Committee on the Elimination of Discrimination Against Women, Concluding Comments, A/63/88, 2008

¹¹³ Committee on the Elimination of Discrimination Against Women, Concluding Comments, A/57/38, paras 113 – 162, 2002

¹¹⁴ Committee on Economic, Cultural and Social Rights, E/C.12/1/Add.106, 2002

Table 6: National laws and policies that promote reproductive rights

Countries	Ratified conventions	Health, including reproductive health and HIV and AIDS	Gender-based violence	Gender equality
Angola	ICESCR CEDAW	Constitution 1992 ¹¹⁵ states that all citizens should have access to health and medical care, including maternity care ¹¹⁶ Law 8/04 on HIV/AIDS	National Action Plan against Domestic Violence 2008	Constitution 1992 provides for equality before the law and prohibits discrimination on the grounds of sex ¹¹⁷
Botswana	CEDAW	Penal Code allows for abortion where the pregnancy is the result of rape, defilement or incest; where there is a risk to the physical or mental health of the woman or in cases of fetal abnormality Strategy and Programme of Action for Male Involvement in Sexual and Reproductive Health and Rights 2007 – 2012 includes prevention of gender-based violence HIV/AIDS Law 08/11	Penal Code 1964 criminalises rape ¹¹⁸ , Domestic Violence Act 2007	
Democratic Republic of Congo	ICESCR CEDAW		Constitution states that sexual violence is a crime against humanity and must be eradicated ¹¹⁹ Law on Sexual Violence 2006 Child Protection Code 2009	
Kenya	ICESCR CEDAW	Family Planning Guidelines for Service Providers (revised 2005) National Reproductive Health Strategy 1997 – 2010 National Guidelines: Medical Management of Rape and Sexual Violence 2004 HIV Prevention and Control Act 2006	Children's Act 2002 criminalises trafficking, forced marriages, FGM Public Officers and Ethics Act 2003 prohibits sexual harassment in the public sector Sexual Offences Act 2006	Constitution 2008 ¹²⁰ prohibits discrimination on the grounds of sex

¹¹⁵ The National Assembly of Angola passed a new constitution on 21 January 2010. The new constitution must be ratified by the Constitutional Court and promulgated by the President before it becomes law. It will replace the 1992 constitution. The references in this report are to the 1992 constitution, which remains law until the new constitution is passed into law.

¹¹⁶ Art. 47, Constitution of Angola

¹¹⁷ Ibid. art. 18

¹¹⁸ Section 141, Penal Code

¹¹⁹ Section 15, Constitution of the Democratic Republic of Congo

¹²⁰ Section 70, Constitution of Kenya

Lesotho	ICESCR CEDAW African Women's Protocol	National AIDS Policy and Strategic Plan 2006 – 2011 makes provision for PEP for survivors of sexual violence	Labour Code 1992 prohibits sexual harassment in the workplace Sexual Offences Act 2003 criminalises marital rape in certain circumstances, including where the accused is suspected of having an STI; provides for mandatory HIV testing for an accused charged with a sexual offence	Constitution 1966 prohibits discrimination on the grounds of sex ¹²¹ Gender and Development Policy 2003 Married Persons' Equality Act 2006
Madagascar	ICESCR CEDAW	Constitution recognises the right to protection of health ¹²² Law 2005-040 on the fight against HIV/AIDS National Policy on Reproductive Health	Law no. 2007 – 38 prohibits trafficking and sex tourism Law no. 2002 – 21 amends the Penal Code to include domestic violence National Poverty Reduction Strategy 2007 – 2012 includes provision to address gender-based violence and eliminate harmful traditional practices	Constitution prohibits discrimination on the grounds of sex ¹²³
Malawi	ICESCR CEDAW African Women's Protocol	Sexual Assault and Rape Guidelines 2005 Penal Code permits abortion where the life of the woman is in danger, with spousal approval	Protection against (Prevention against) Domestic Violence Act 2006 Penal Code prohibits trafficking	Constitution prohibits discrimination on the grounds of sex ¹²⁴
Mauritius	ICESCR CEDAW	National Strategic Framework 2007 – 2011 HIV and AIDS Preventative Measures Act 2006	Protocol for Assistance of Victims of Violence 2006 National Action Plan to Combat Domestic Violence 2007 Protection from Domestic Violence (Amendment) Act 2007 Equal Opportunities Act 2008 prohibits sexual harassment	Sex Discrimination Act 2002
Mozambique	CEDAW African Women's Protocol	Constitution provides that all citizens have a right to medical and health care ¹²⁵ and everyone has a duty to defend and promote health ¹²⁶	Law on Trafficking 2008 National Action Plan for the Prevention and Combating of Domestic Violence 2008 - 2012	Constitution prohibits discrimination of the grounds of sex ¹²⁸

¹²¹ Art. 18, Constitution of Lesotho; the Lesotho Constitution however also includes a claw-back provision that permits gender-based discrimination under customary law

¹²² Art. 19, Constitution of Madagascar

¹²³ Ibid. art. 8

¹²⁴ Section 20, Constitution of Malawi

¹²⁵ Constitution of Mozambique, art. 89

¹²⁶ Ibid. art 45(e)

Namibia	ICESCR CEDAW African Women's Protocol	Law permits abortion to save the life of a woman and where her physical health is at risk ¹²⁷ National Policy for Reproductive Rights 2001 National AIDS Policy makes provision for PEP Abortion and Sterilization Act 1975 permits abortion after rape and incest, to save the life of a woman, where her physical and mental health is endangered and in cases of fetal abnormality Penal Code permits abortion to save the life of a woman and to preserve her health	Labour Act 1992 prohibits sexual harassment in the workplace Combating of Rape Act 2000 Combating of Domestic Violence Act 2000 includes marital rape Law 59/2008 on the Prevention and Punishment of Gender Based Violence	Constitution prohibits discrimination on the grounds of sex ¹²⁸ The Communal Land Reform Act 2002 Married Persons Act 1996
Rwanda	ICESCR CEDAW African Women's Protocol			
Seychelles	ICESCR CEDAW Maputo Protocol	Law permits abortion to save the life of a woman, where there is a risk to her physical and mental health, where the pregnancy is a result of rape or incest and in case of fetal abnormality ¹³⁰	Family Violence (Protection of Victims) 2000	
South Africa	CEDAW African Women's Protocol	Constitution includes the right to health care services, including reproductive health care Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 makes provision for PEP (with some limitations) Choice on Termination of Pregnancy Act 1996 Policy Guidelines for the Management of HIV and Sexually Transmitted Infections in Sexual Assault 2003 National Health Act 2004 National Strategic Plan on HIV/AIDS 2007 - 2011	Code of Good Practice on Sexual Harassment 1998 Domestic Violence Act 1998 includes marital rape Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007	Constitution prohibits discrimination on the grounds of sex, gender, sexual orientation, pregnancy ¹³¹ Promotion of Equality and Prevention of Unfair Discrimination Act 2000 National Health Act 2004
Swaziland	ICESCR CEDAW	Constitution permits abortion to save the life of a woman, to preserve her physical and mental health, where the pregnancy is as a result of rape or incest, and in cases of fetal abnormality ¹³²		Constitution includes the prohibition of discrimination on the grounds of gender ¹³³
Tanzania	ICESCR CEDAW	National Policy on PMTCT 2002 Penal Code permits abortion to protect the life of the	National Plan of Action to Combat FGM 2001 – 2015	

¹²⁸ Art. 66, Constitution of Mozambique

¹²⁷ Unable to find English version of legislation

¹²⁹ Art. 10, Constitution of the Republic of Namibia

¹³⁰ Unable to find English version of legislation

¹³¹ Section 9, Constitution of South Africa

¹³² Unable to find electronic version of legislation

¹³³ Section 20, Constitution of the Kingdom of Swaziland

	African Women's Protocol	woman and her physical and mental health National Multi-sectoral Framework on HIV/AIDS 2008 – 2010 HIV and AIDS (Prevention and Control) Act 2008	National Plan of Action to Prevent and Eradicate Violence Against Women and Children 2001 - 2015 Sexual Offences (Special Provisions) Act criminalises marital rape where the couple is separated	
Uganda	ICESCR CEDAW	Penal Code permits abortion to save the life of a woman	Employment Act 2006 prohibits sexual harassment National Action Plan on Women 2006 – 2010 Prevention of Trafficking of Persons Act 2008	Constitution includes the prohibition of discrimination on the grounds of gender ¹³⁴
Zambia	ICESCR CEDAW African Women's Protocol	Termination of Pregnancy Act 1972 allows for abortion in limited circumstances National HIV/AIDS Strategic Framework 2006 - 2010	Fifth National Development Plan 2006 – 2010 includes gender based violence Penal Code Amendment 2005 prohibits trafficking in persons, FGM and sexual harassment Anti Human Trafficking Act 2008	Constitution includes the prohibition of discrimination on the grounds of gender ¹³⁵ National Gender Policy 2009
Zimbabwe	ICESCR CEDAW	National Policy on HIV/AIDS for Zimbabwe 1999 Zimbabwe National HIV/AIDS Strategic Plan 2006 – 2010 includes a focus on vulnerable groups including women Termination of Pregnancy Act permits abortion to save the life of a woman, preserve her health, where the pregnancy is a result of unlawful sexual intercourse and in case of fetal abnormality	Sexual Offences Act 2001 Domestic Violence Act 2007 Criminal Law (Codification and Reform) Act criminalises marital rape but a prosecution may only be instituted with the permission of the Attorney-General	National Policy on HIV/AIDS for Zimbabwe 1999 calls for gender equality

¹³⁴ Art. 21, Constitution of Uganda
¹³⁵ Art. 11, Zambia Constitution

The African Women's Protocol, the SADC Parliamentary Forum Model Law on HIV and AIDS in Southern Africa and reproductive health and rights

The African Women's Protocol significantly advances the rights of women, including their reproductive rights. However, as this report illustrates, even those countries that have ratified the Protocol have not yet fully domesticated its far-reaching provisions.

In 2008, the SADC Parliamentary Forum adopted a model law on HIV and AIDS to guide SADC countries in the development of appropriate national legislation related to HIV and AIDS. The model law explicitly recognises the need to adopt a "human rights-based and gender-sensitive approach"¹³⁶ to HIV and AIDS and contains a number of key provisions that, if adopted nationally, will significantly advance the implementation of the African Women's Protocol. The SADC Parliamentary Forum has urged SADC countries to review all national legislation to ensure that it complies with the spirit and the provisions of the model law.

Reproductive rights and health

The African Women's Protocol gives women the right to protect themselves from HIV and AIDS and to obtain information about their HIV status and that of their partner (in accordance with international norms and standards).¹³⁷ The model law states that all people living with HIV and AIDS are entitled to their sexual and reproductive rights.¹³⁸ It further states that women living with HIV and AIDS have the right to become mothers and to benefit from the measures in the national reproductive health framework.¹³⁹ It also sets out a rights-based approach to third party disclosure of HIV status.¹⁴⁰

Violence against women

The African Women's Protocol obliges states to protect women from all forms of violence, including unwanted and forced sex. States must enact and enforce laws to prohibit violence against women.¹⁴¹ The model law contains far-reaching provisions¹⁴² on violence against women, placing obligations on states to:

- Protect women from all forms of sexual violence
- Enact laws that criminalise marital rape
- Ensure that women are able to protect themselves from HIV and AIDS by emphasising their right to refuse to have sex.

¹³⁶ Preamble, SADC Parliamentary Forum Model Law on HIV/AIDS in Southern Africa, 2008

¹³⁷ Art. 14, Maputo Protocol

¹³⁸ Section 19, Model Law

¹³⁹ Ibid.

¹⁴⁰ Ibid, section 15(4)

¹⁴¹ Art. 4, Maputo Protocol

¹⁴² Section 27, Model Law

6. Conclusions and recommendations

It is difficult to ascertain, using only desktop research, why full domestication has not yet taken place, and also the extent to which ratified conventions have been domesticated and enforced. However, a scan of country reports to the treaty monitoring bodies and their responses provide some insight:

- The costs of implementing these rights. For many, if not all, of the eighteen focus countries extreme levels of poverty and under-development are key challenges. There is undoubtedly a reluctance to enact laws that will require the allocation of significant resources to implement eg, the provision of reproductive health care
- The clash between human rights and customary laws. Some of the focus countries have dual legal systems, in which recognition is given to customary laws. Many of these laws perpetuate discrimination against women and even where treaties and conventions have been ratified, governments have failed to remove discriminatory customary laws and practices
- Lack of knowledge on the part of actors in the judicial system, including judges, magistrates, prosecutors and lawyers, about the provisions of the conventions and their interpretations. Civil society is frequently weak, with little access to resources that allow it to advocate for the ratification of key instruments and for their implementation at a local level once they have been ratified
- The impact of long and/or on-going conflict.



While several of the focus countries may not have ratified the key covenants, they have made “ground-breaking commitments to reproductive health and rights”¹⁴³ at the various international conferences referred to in this report. The Continental Policy and the Maputo Plan of Action are particularly important in this regard. They re-affirmed the commitment to universal and equal access to reproductive health by 2015, along with a range of other commitments to empower women and advance their human rights, including reproductive rights. These documents, along with the three treaties, provide key advocacy opportunities for civil society to hold government accountable, and provide a road map for policy makers seeking to promote and protect reproductive rights.

¹⁴³ Breaking Through: A Guide to Sexual and Reproductive Health and Rights, ICPR the Millennium Development Goals Foundation, Sweden, 2004, p 54.

6.1 Recommendations

Provision of resources

- Advocate for all countries to meet the 15% commitment contained in the Abuja Declaration. Without adequate investment in the health sector, realising the right to reproductive health will be impossible.

Reproductive health and HIV

- Undertake training for civil society on the links between reproductive rights and health and HIV and AIDS in order to assist them to better engage in advocacy to promote reproductive rights
- Advocate for better awareness of the links between reproductive rights and HIV and AIDS and how the international treaties can be used to protect the rights of those infected and affected by HIV and AIDS
- Promote laws and policies that support women's reproductive rights and protect them from HIV and AIDS
- Strengthen the capacity of the health sector to address the links between violence against women and reproductive health and rights, including by training health care workers to respond effectively to physical and mental health needs of survivors of violence.

Implementation by duty bearers

- Advocate for the ratification of the African Women's Protocol in countries where this has not yet been done. This Protocol contains the most explicit articulation of women's reproductive rights, including a right to abortion in specified circumstances and provisions protecting women from HIV and AIDS
- Where the African Women's Protocol has been ratified, advocate for a review of all laws to ascertain whether they are consistent with the provisions of the Protocol. Where laws are inconsistent with the Protocol, repeal them as soon as possible
- Advocate for ratification of the International Convention on Economic, Social and Cultural Rights in Botswana, Mozambique and South Africa.

Enforcement and accountability

- Advocate for increased transparency and accountability at national level about plans and timetables to ratify conventions and for the provision of information on progress towards full domestication, including details of the reporting requirements to treaty monitoring bodies
- Advocate for effective enforcement mechanisms nationally and regionally, including strengthening the capacity of police to respond effectively to domestic violence.

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Annexure A

This Annexure details where in key international treaties references can be found that support women's reproductive health rights. This is more detailed and comprehensive than Table 2 in the main report and extends the scope of women's reproductive rights considerably.

The Right to Life: protection includes the positive obligation on the part of states to preserve life, including reducing maternal and infant mortality and increasing life expectancy.	
UDHR	Art.3: Everyone has the right to life.
ICCPR	Art. 6(1): Every human being has the inherent right to life. This right shall be protected by law.
CRC	Art. 6(1): State Parties recognise that every child has an inherent right to life. Art 6(2): State Parties shall ensure to the maximum extent possible the survival and development of the child.
African Charter	Art. 4: Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.
African Women's Protocol	Art 4(1): Every woman shall be entitled to respect for her life.
African Charter - Children	Art. 5: Every child has an inherent right to life. This right shall be protected by law.
Disability Convention	Art. 10: State Parties reaffirm that every human being has the inherent right to life and shall take all the necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

The right to liberty and security: denying women the options of avoiding pregnancy and birth interferes with their right to liberty and security.	
UDHR	Art. 3: Everyone has the right to liberty and security of the person.
ICCPR	Art. 9(1): Everyone has the right to liberty and security of the person.
African Charter	Art. 6: Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law.
Disability Convention	Art. 14: State Parties shall ensure that persons with disabilities, on an equal basis with others: (1) enjoy the right to liberty and security of the person; (2) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

The right to health, including reproductive and sexual health, is protected in many conventions and encompasses a duty to ensure the availability of health care. The right to health is also relevant in the context of HIV and AIDS where women may need access to services related to pregnancy, contraception and the prevention of HIV transmission to their children.	
UDHR	Art. 25(1): Everyone has the right to a standard of living adequate for the health and well-being of himself and his family
ICESCR	Art. 10(2): Special protection should be accorded to mothers during a reasonable period before and after childbirth. Art. 12(1): The State Parties to the present Convention recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Art. 12(2): The steps to be taken by State Parties to ... achieve the full realization of this right shall include those necessary for (a) the provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child; ... (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.
ICERD	Art. 5: State Parties undertake to prohibit and 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.
CEDAW	Art. 12(1): State 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 care services, including those related to family planning. Art. 12(2): State 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. Art. 14(2): State Parties shall take all adequate measures to eliminate discrimination against women in rural areas [and] to ensure to such women the right ... (b) to have access to adequate health care facilities, including information, counselling and services in family planning.
CRC	Art. 24(1): States Parties recognise 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 ... [N]o child ... [shall be] deprived of his or her access to such health care services. Art. 24(2): States Parties shall pursue full implementation of ... [the] right [to health] 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.
Convention on	Art. 25: States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health

Disability	without discrimination on the basis of disability ... In particular, State Parties shall: Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons including in the area of sexual and reproductive and population-based public health programmes.
African Charter	<p>Art. 16(1): Every individual has the right to enjoy the best state of physical and mental health.</p> <p>Art. 16(2): States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p>
African Women's Protocol	<p>Art. 14(1): States Parties shall ensure that right to health of women including sexual and reproductive health is respected and promoted. This includes:</p> <ul style="list-style-type: none"> (a) the right to control their fertility; (b) the right to decide whether to have children, the number of children and the spacing of children; (c) the right to choose any method of contraception; (d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; (e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices; (f) the right to have family planning education. <p>Art. 14(2): States Parties shall take all appropriate measures to:</p> <ul style="list-style-type: none"> (a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women, especially those in rural areas; (b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; (c) 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 fetus.

The right to decide on the number and spacing of children includes the right to plan one's family and to have the information and means to do so.	
CEDAW	<p>Art. 16.1: States Parties shall ... ensure, on a basis of equality of men and women ...</p> <p>(e) 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</p>
Convention on Disability	Art. 23(1): States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure ... [t]he rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised and the means necessary to enable them to exercise those rights are provided;
African Women's Protocol	<p>Art. 14(1): States Parties shall ensure that right to health of women including sexual and reproductive health is respected and promoted. This includes:</p> <ul style="list-style-type: none"> (a) the right to control their fertility;

	<p>(b) the right to decide whether to have children, the number of children and the spacing of children;</p> <p>(c) the right to choose any method of contraception; ...</p> <p>(f) the right to have family planning education.</p>
<p>The right to consent to marriage and equality in marriage is particularly important in respect of adolescent reproductive health because of the health impact of early marriage. Lack of equality in marriage may impact on women's ability to make decisions about sex and contraception, and may expose her to HIV/AIDS.</p>	
UDHR	<p>Art. 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during the marriage and at its dissolution.</p>
ICCPR	<p>Art. 16(2): Marriage shall be entered into only with the free and full consent of the intending spouses.</p>
	<p>Art. 23(2): The right of men and women of marriageable age to marry and found a family shall be recognised.</p>
CEDAW	<p>Art. 23(3): No marriage shall be entered into without the free and full consent of the intending spouses.</p>
	<p>Art. 16(1): States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.</p>
Convention on Disability	<p>Art. 16(2): The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official register compulsory.</p>
	<p>Art. 23(1): States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure ... [t]he right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised.</p>
African Women's Protocol	<p>Art. 6: States Parties shall ensure that men and women enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:</p>
	<p>(a) no marriage shall take place without the free and full consent of both parties;</p>
	<p>(b) the minimum age of marriage for women shall be 18 years;</p>
	<p>(c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;</p>
	<p>(d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally binding;</p>
	<p>(e) the husband and wife shall, by mutual agreement, choose their marital regime and place of residence;</p>
	<p>(f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly and separately with her husband's</p>

	<p>surname;</p> <p>(g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;</p> <p>(h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;</p> <p>(i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;</p> <p>(j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.</p>
The right to privacy: decisions about reproduction and those relating to matters concerning HIV status that fall within the sphere of private decision making and which are protected by the right to privacy.	
ICCPR	Art. 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation.
CRC	Art. 17(2): Everyone has the right to protection of the law against such interference or attacks.
	Art. 16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation.
Convention on Disability	Art. 16(2): The child has the right to protection of the law against such interference or attacks.
	Art. 22(1): No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other types of communication or to unlawful attacks on his or her honour or reputation. Persons with disabilities have the right to protection of the law against such interference and attacks.
The rights to equality and non-discrimination: these rights place an obligation to protect vulnerable groups, including women and people living with HIV/AIDS, from discrimination and also to provide access to health care in a non-discriminatory manner. Governments are obliged to remove all legal barriers to health care.	
UDHR	Art. 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
ICCPR	Art. 12(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals ... the rights recognised in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
ICESCR	Art. 2(2): The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
CEDAW	Art. 1: [T]he term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex, which has the effect 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.

	<p>Art. 3: States Parties shall take in all fields ... all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.</p> <p>Art. 11(2): In order to prevent discrimination against women on the grounds of ... maternity, States Parties shall take appropriate measures:</p> <p>(a) to prohibit, subject to the imposition of sanctions, dismissals on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; ...</p> <p>(d) to provide special protection to women during pregnancy in types of work proved harmful to them.</p>
CRC	<p>Art 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, colour, sex, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status.</p> <p>Art. 2(2): States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinion or beliefs of the child's parents, legal guardians or family members.</p> <p>Art. 5: State Parties shall respect the responsibilities, rights and duties of parents or where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.</p>
Convention on Disability	Art. 6(1): States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
African Charter	Art. 18(3): The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions.
African Women's Protocol	<p>Art. 28: Every individual shall have the duty to respect and consider his fellow beings without discrimination.</p> <p>Art. 2(1): States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.</p>
The right to be free from practices that harm women and girls: these include practices that have an impact on reproductive health, such as female genital mutilation.	
CEDAW	<p>Art. 2(f): [States Parties shall undertake] to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.</p> <p>Art 5(a): [States Parties shall undertake] to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.</p>

CRC	Art. 24(3): State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
African Women's Protocol	<p>Art. 2(1): States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard, they shall: ...</p> <p>(b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women.</p> <p>Art. 2(2): States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority and the superiority of either of the sexes, or on stereotyped roles for women and men.</p> <p>Art. 5: States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:</p> <p>(a) Creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;</p> <p>(b) Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;</p> <p>(c) Provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;</p> <p>(d) Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.</p>

The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment has been invoked to protect women from coerced sterilization and forced abortion.	
UDHR	Art.5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
ICCPR	Art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
CAT	Art. 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 of 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 ...
CRC	Art. 37(a): [States Parties shall ensure that] no child shall be subjected to torture or cruel, inhuman, degrading torture or punishment.
Convention on Disability	Art. 15(1): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...
	Art. 15(2) : State Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.
African Charter	Art. 5: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading treatment and punishment shall be prohibited.

The right to be free from sexual and gender-based violence: violence has an impact on women's ability to make decisions about reproduction. Women living with HIV have been subjected to violence when they have disclosed their HIV status.	
CEDAW	<p>Art. 5(a): [States Parties shall undertake] to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.</p> <p>Art. 6: State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.</p>
CRC	<p>Art. 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 care of the child.</p> <p>Art. 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:</p> <ul style="list-style-type: none"> (a) the inducement or coercion of a child to engage in any unlawful sexual act; (b) the exploitative use of children in prostitution or any other unlawful sex practices; (c) the exploitative use of children in pornographic performances and materials.
Convention on Disability	<p>Art. 16(1): States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.</p>
African Women's Protocol	<p>Art. 3(4): States Parties shall adopt and implement appropriate measures to ensure the protection of every women's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.</p> <p>Art. 4(2): States Parties shall take appropriate and effective measures to:</p> <ul style="list-style-type: none"> (a) enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex whether the violence takes place in private or public; (b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women; (c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence; (d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women; (e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims; (f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women; (g) prevent and condemn trafficking in women, prosecute the perpetrators and protect women most at risk; ...

	(i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women.
The right to access sexual and reproductive health education and family planning information is important to enable people to exercise their reproductive rights and for them to protect their health.	
CEDAW	<p>Art. 10: States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:</p> <p>(c) the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of text books and school programmes and the adaption of teaching methods; ...</p> <p>(h) States Parties ... shall ... ensure access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.</p>
Convention on Disability	Art. 23(1): States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure ... the rights of persons with disabilities ... to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights ...
African Charter	Art. 19(1): Every individual shall have the right to receive information.
African Women's Protocol	<p>Art. 14(1): States Parties shall ensure that right to health of women including sexual and reproductive health is respected and promoted. This includes:</p> <p>(c) the right to choose any method of contraception;</p> <p>(d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;</p> <p>(e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;</p> <p>(f) the right to have family planning education.</p>
The right to enjoy scientific progress and not to be subject to experimentation without consent protects women from coercive health practices, such as forced sterilization of women living with HIV.	
UDHR	Art. 27(1): Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
ICCPR	Art. 7: No one...shall be subjected without his free consent to medical or scientific experimentation.
ICESCR	<p>Art. 15(1): The States Parties to the present Convention recognise the rights of everyone ...</p> <p>(b) to enjoy the benefits of scientific progress and its application.</p>

Notes

This image shows a full page of a document template designed for handwriting practice or general note-taking. It consists of approximately 28 evenly spaced horizontal dotted lines across the entire width of the page. The background is plain white, and there are no margins, headers, footers, or other markings present.

