

# **GAINING GROUND**

**A Tool for Advancing Reproductive Rights Law Reform**

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# TABLE OF CONTENTS

Acknowledgments.....	5
Foreword.....	7
Glossary.....	10
<b>Chapter I: Using Legal Advocacy to Advance Reproductive Rights.....</b>	<b>1</b>
1. What Are Reproductive Rights?.....	14
2. Why a Reproductive Rights Framework?.....	16
3. How Can International and Regional Human Rights Treaties Advance Reproductive Rights at the National Level?.....	17
4. The Role of National Laws and Policies in Advancing Reproductive Rights.....	18
5. Key Challenges in Advocating for Reproductive Rights.....	20
6. After Law Reform: Another Campaign Begins.....	23
<b>Chapter II: Safe Pregnancy and Childbirth.....</b>	<b>26</b>
<i>Human Rights Framework</i> .....	27
1. Access to Health Services Necessary for Safe Pregnancy and Childbirth.....	28
2. Ensuring Quality of Care .....	31
<b>Chapter III: Contraception.....</b>	<b>34</b>
<i>Human Rights Framework</i> .....	34
1. Measures to Ensure Access to Contraception.....	35
2. Access to the Full Range of Contraceptives.....	37
3. Informed Consent and the Right to Freedom from Coercion in Accepting Contraception.....	40
<b>Chapter IV: Abortion.....</b>	<b>44</b>
<i>Human Rights Framework</i> .....	44
1. Measures to Remove Restrictions on Abortion.....	46
2. Measures to Ensure Access to Abortion.....	49
3. Availability of the Full Range of Abortion Technologies.....	51
<b>Chapter V: Harmful Practices—the Case of Female Genital Mutilation.....</b>	<b>55</b>
<i>Human Rights Framework</i> .....	56
1. Government Outreach to Stop FGM.....	57
2. Protection of Women’s Right to Be Free from FGM.....	58
3. Care for Girls and Women Who Have Undergone FGM.....	62
<b>Chapter VI: HIV/AIDS.....</b>	<b>66</b>
<i>Human Rights Framework</i> .....	67
1. Recognition of the Right to Treatment for HIV/AIDS.....	67
2. Measures to Protect the Rights of People Living with HIV/AIDS.....	68
3. Measures to Protect against HIV Infection.....	70

<b>Chapter VII: Marriage Rights.....</b>	<b>74</b>
<i>Human Rights Framework.....</i>	<i>74</i>
1. Free and Full Consent of Both Parties to Marriage.....	75
2. Measures to Extend the Benefits of Marriage to De Facto Unions.....	77
3. Legal Recognition of Same-Sex Unions.....	77
4. Equal Rights within Marriage, Including Property Ownership and Inheritance.....	79
5. Access to Legal Divorce.....	80
<b>Chapter VIII: Violence against Women.....</b>	<b>84</b>
<i>Human Rights Framework.....</i>	<i>84</i>
1. Recognition of a Governmental Duty to Prevent Violence within the Family.....	85
2. Recognition of All Forms of Violence against Women in the Law.....	86
3. Action against Trafficking of Women and Girls.....	88
<b>Chapter IX: Population Policies.....</b>	<b>92</b>
<i>Human Rights Framework.....</i>	<i>93</i>
1. Legal Recognition of the Right to Determine the Number and Spacing of One’s Children.....	94
2. Population Policies That Take a Human Rights Approach.....	94
3. Population Policies That Promote Women’s Status and Health.....	95
<b>Chapter X: Adolescents’ Reproductive Rights.....</b>	<b>98</b>
<i>Human Rights Framework.....</i>	<i>98</i>
1. Measures to Ensure Access to Reproductive Health Information and Education.....	100
2. Measures to Ensure Access to Reproductive Health Services.....	102
3. Measures to Protect Adolescents from Violence and Discrimination.....	104
<b>Appendix A: Featured Laws and Policies.....</b>	<b>111</b>
By Country.....	111
By Chapter.....	115
<b>Appendix B: Text of International Human Rights Instruments.....</b>	<b>121</b>
Right to Life.....	121
Right to Security of Person.....	122
Right to Health.....	123
Right to Freedom from Discrimination.....	126
Right to Reproductive Self-Determination.....	127
Rights to Information and Education.....	129
Right to Enjoy the Benefits of Scientific Progress.....	131
Marriage Rights.....	131

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Much of the information contained in *Gaining Ground* is drawn from publications produced by the Center from 1997 to 2005. These include several Center reports in a series entitled *Women of the World: Laws and Policies Affecting their Reproductive Lives*, which have covered six regions of the world: Anglophone Africa (1997 and 2001), Latin America and the Caribbean (1997 and 2000), Francophone Africa (1999), East Central Europe (2000), South Asia (2004) and East and Southeast Asia (2005). Information and analysis were also drawn from *Reproductive Rights 2000: Moving Forward* (2000) and the Center's briefing papers *Governments in Action* (2005) and *Rethinking Population Policies: A Reproductive Rights Framework* (2003).



## FOREWORD

Women's equality and status in society are directly linked to their enjoyment of reproductive rights. Without the ability to make basic decisions about their bodies and lives, women cannot enjoy their rights to participate in educational institutions, the workplace, or the political sphere. At the same time, broad discrimination makes women vulnerable to violations of their reproductive rights. For example, many women lack the independence and resources to access health care and protect themselves from abuse at the hands of family and community members.

Legal reform is key to ensuring women's reproductive rights and their equality in society. Even when new laws are not perfectly implemented and enforced, changing the law is a significant step in improving women's status and enabling women to realize their rights. Not only can the reform of discriminatory laws foster societal recognition of women's basic human rights, law can create practical tools and mechanisms that enable women to enforce their rights.

*Gaining Ground* is a resource for advocates advancing law reform at the national level. It explores nine topics in reproductive rights law. Our purpose is to thematically analyze and organize advances in law reform from around the world so that they can be used to stimulate ideas for reform and assist advocates in assessing what can be realistically achieved in their own countries. We can all profit from each other's successes. Using human rights analysis, practical data, historical context, and examples of positive reform, *Gaining Ground* seeks to provide advocates with tools to advance reproductive rights at home.

### How to use *Gaining Ground*

*Gaining Ground* is intended primarily as a tool for advocates involved in legal and policy reform in the area of reproductive rights. In the context of law reform, comparative legal and policy examples can serve a variety of functions. Where governments claim that promoting reproductive rights is not economically, culturally, or politically feasible, examples from other similarly situated countries can be used to counteract those assertions. Similarly, model laws and policies can suggest solutions and indicate trends toward government recognition and promotion of reproductive rights. While few national-level models can be transferred in their entirety to other national legal systems, the laws and policies collected in this publication, taken together, reflect key elements of reform that can be replicated in many legal contexts.

Advocates may also find *Gaining Ground* useful as a tool for human rights education. For example, the legal and policy summaries can help illustrate the content and scope of women's rights and highlight the importance of law as a tool for women's empowerment.

### In Each Chapter

Each chapter of this publication is devoted to a key reproductive rights concern. The chapter's theme is introduced, followed by a summary of the international human rights framework that supports progressive reform on that issue (the full text of supporting human rights treaty provisions appears in Appendix B). The chapter then lists the principal duties of governments arising from their obligations under human rights law. For each duty, legal and policy developments from around the world are offered as examples of how governments have started to fulfill their international legal commitments. The summaries of legal and policy developments highlight their main elements and are based on a reading of the original texts.

## How Examples Were Selected

The examples included in *Gaining Ground* are not comprehensive but were selected to illustrate the possibilities for positive government action regarding reproductive rights in regions throughout the world. Examples were limited to reforms made after 1994, the year of the International Conference on Population and Development (ICPD) held in Cairo. The ICPD was a watershed moment for the reproductive rights movement, representing the first comprehensive, global affirmation of women's reproductive rights and the corresponding duties of governments. The examples in *Gaining Ground* are intended to reflect the progress that has been made in implementing the principles recognized at the ICPD. While many of the featured laws and policies reflect only partial progress toward realization of reproductive rights, they were included in recognition of the fact that progressive law reform is often achieved incrementally.

Most of the examples in *Gaining Ground* are from low- or middle-income countries. The intention was to provide examples that could be persuasive for law reform advocacy in all countries, including those with limited economic resources. Where reforms in high-income countries are cited as examples, those reforms are initiatives that do not necessarily require major governmental financial outlays. Finally, every effort was made to provide examples from at least four major geographic regions: Africa, Asia, Europe, and Latin America and the Caribbean.

## Cross-cutting Issues

A number of considerations have relevance for more than one of the themes addressed in *Gaining Ground*. The report was designed to minimize repetition across chapters. However, readers are advised to look for discussions of the following cross-cutting issues in the chapters indicated below.

### **Informed consent**

Women's right to give informed consent, free of coercion and interference, is first addressed in Chapter III on contraception. In that chapter, the discussion relates to the state's duty to ensure that contraceptive methods are freely chosen following adequate counseling on the contraceptive options available and the risks and benefits associated with each method. It is a concern raised in Chapter VI on HIV/AIDS, which addresses the right to consent to testing. The principle that individuals have the right to decide whether and by what means to limit their fertility is raised again in Chapter IX on population policies. Finally, the issue of consent is also addressed in Chapter X on adolescents, which discusses adolescents' capacity to give their consent to sexual and reproductive health information and services.

### **Adolescents' rights**

Chapter X of *Gaining Ground* is devoted to the reproductive rights of adolescents. However, because adolescents have most of the same sexual and reproductive health concerns as adult women, adolescents are affected by each topic addressed in *Gaining Ground*. This is particularly true of female genital mutilation (FGM), which is addressed in Chapter V, a practice that is often performed on adolescent girls. Adolescents' concerns also come up in Chapters III and IV, which focus on access to contraception and abortion, respectively. Finally, child marriage (see Chapter VII: Marriage Rights) and trafficking and exploitation (see Chapter VIII: Violence against Women) are practices that victimize large numbers of adolescent girls.

### **Access to care for low-income women**

Another important theme of *Gaining Ground* is the sexual and reproductive health needs of low-income women. The women with the fewest resources are the ones most affected by government restrictions on health-care services and failures to ensure universal access to care. The rights of low-income women to health services are addressed in Chapter II on safe pregnancy and childbirth, Chapter III on contraception, Chapter IV on abortion, and Chapter VI on HIV/AIDS. Each chapter highlights government initiatives to make services free of charge in government health facilities.

### **A Note on Sexual Rights**

The phrase “reproductive rights” is used throughout this report to refer to a number of rights relating to reproductive health care and decision-making. There is considerable overlap between these rights and those guarantees and freedoms often referred to as “sexual rights.” It is important to note that a number of issues addressed in this report—including access to contraception, freedom from female genital mutilation and sexual violence, prevention of HIV/AIDS, and rights within marriage—implicate women’s sexual rights, as well as their reproductive rights.

### **Updates and Additional Information**

The Center for Reproductive Rights monitors legal and policy developments from around the world. Periodic updates—as well as the complete text of laws and policies—will be available on the Center’s website, [www.reproductiverights.org](http://www.reproductiverights.org). The Center welcomes information about newly adopted laws and policies affecting reproductive rights. This information can be sent to [info@reprorights.org](mailto:info@reprorights.org).

## TABLE OF ABBREVIATIONS AND GLOSSARY

<b>Abbreviation</b>	<b>Complete Term and Definition</b>
<b>African Child's Rights Charter</b>	African Charter on the Rights and Welfare of the Child: Regional human rights treaty protecting the rights of children in Africa.
<b>African Court of Human Rights</b>	African Court on Human and Peoples' Rights: A newly formed court constituted under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (1998), which entered into force in January 2004 and is intended to complement the African Commission on Human and Peoples' Rights. The court has a mandate to receive individual complaints, as well as to issue advisory opinions in certain circumstances.
<b>American Convention</b>	American Convention on Human Rights: Regional human rights treaty in force in the Americas.
<b>Banjul Charter</b>	African Charter on Human and Peoples' Rights: Regional human rights treaty in force in Africa.
<b>Beijing Conference</b>	1995 United Nations Fourth World Conference on Women: Global conference on women's human rights.
<b>Beijing Platform for Action</b>	Beijing Declaration and Platform for Action, United Nations Fourth World Conference on Women: Consensus document adopted by nations participating in the Beijing Conference.
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women: International treaty codifying states' duties to eliminate discrimination against women.
<b>CEDAW Committee</b>	Committee on the Elimination of Discrimination against Women: UN body charged with monitoring states' implementation of CEDAW.
<b>Children's Rights Convention</b>	Convention on the Rights of the Child: International treaty upholding the human rights of children.
<b>Civil and Political Rights Covenant</b>	International Covenant on Civil and Political Rights: International treaty protecting individuals' civil and political human rights.

<b>Concluding observations</b>	Comments and recommendations issued to the reporting state party by the respective treaty monitoring body.
<b>Council of Europe</b>	European general political organization of 46 European states, which has a strong human rights component. Not to be confused with the European Union (EU), the primarily economic regional body of Europe, which has 25 member states. All members of the EU are members of the Council of Europe.
<b>Economic, Social and Cultural Rights Covenant</b>	International Covenant on Economic, Social and Cultural Rights: International treaty protecting individuals' economic, social, and cultural human rights.
<b>Economic, Social and Cultural Rights Committee</b>	Treaty body that monitors states' compliance with the Economic, Social and Cultural Rights Covenant.
<b>EC</b>	Emergency contraception: Includes emergency contraceptive pills, which may be taken up to 120 hours after unprotected intercourse (although EC pills should be taken as soon as possible to maximize effectiveness), and the copper-T intrauterine device (IUD), which may be inserted up to seven days after unprotected intercourse.
<b>ECHR</b>	European Court of Human Rights: Court with jurisdiction over Council of Europe states to enforce the European Convention on Human Rights.
<b>European Convention</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms: Regional treaty on human rights within the Council of Europe.
<b>FGM</b>	Female genital mutilation: Collective name given to several practices that involve the cutting of female genitals.
<b>HRC</b>	Human Rights Committee: Treaty body that monitors state compliance with the Civil and Political Rights Covenant.
<b>ICPD</b>	The United Nations International Conference on Population and Development (ICPD) was held in 1994, in Cairo, Egypt. At this conference, world leaders, high-ranking officials, representatives of nongovernmental organizations and UN agencies gathered to agree on a Programme of Action.
<b>ICPD Programme of Action</b>	Programme of Action of the United Nations International Conference on Population and Development (ICPD): Consensus document adopted by nations participating in the conference.

<b>ILO</b>	International Labour Organization: UN agency devoted to promoting social justice and internationally recognized human and labor rights.
<b>Inter-American Commission on Human Rights (IACHR)</b>	The IACHR is an autonomous organ of the Organization of American States (OAS). Its mandate is found in the Charter of the OAS and the American Convention on Human Rights and relates to promoting the observance and defense of human rights. In particular, its seven independent members accept individual complaints pursuant to the American Convention on Human Rights; attempt to reach a friendly settlement; and, failing that, may decide to bring a case to the Inter-American Court of Human Rights.
<b>Inter-American Court of Human Rights</b>	The court also operates under the auspices of the OAS and derives its mandate from the American Convention on Human Rights. It began operating in 1979, following entry into force of the convention and has seven independent judges. Among other duties, the court hears complaints against states prosecuted by the IACHR, the commission that acts on behalf of complainants who have brought up violations of the convention.
<b>International law</b>	Body of legal rules and norms that are decided and enforced by nation states at the international level. Based on treaties, customary law, and general principles of law.
<b>NGO</b>	Nongovernmental organization.
<b>Practices that are harmful to women</b>	Cultural practices harmful to women's health and rights, including child marriage and FGM.
<b>Protocol on the Rights of Women in Africa</b>	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: Treaty that guarantees a wide range of women's civil and political rights, as well as general economic, social, and cultural rights. The protocol explicitly guarantees the right to health and the reproductive rights of women.
<b>TMBs</b>	Treaty monitoring bodies: UN committees that monitor governmental compliance with the major UN human rights treaties. The TMBs influence governments by issuing specific observations about states' progress and compliance with human rights obligations and, in some cases, consider individual complaints against governments.
<b>UN agencies</b>	Organizations within the UN system, including the UNDP, UNFPA, UNICEF, and UNHCR, that pursue global development goals within their individual mandates.

<b>UNAIDS</b>	Joint United Nations Programme on HIV/AIDS: UN agency devoted to global action on HIV/AIDS.
<b>UNDP</b>	United Nations Development Programme: UN agency devoted to funding and supporting development initiatives in low-income countries.
<b>UNFPA</b>	United Nations Population Fund: UN agency devoted to funding and supporting population and reproductive health programs in low-income countries.
<b>UNHCR</b>	United Nations High Commission for Refugees: UN agency devoted to helping the world's uprooted peoples by providing them with basic necessities and by seeking long-term solutions to their problems.
<b>UNICEF</b>	United Nations Children's Fund: UN agency devoted to advocating for the protection of children's rights.
<b>Universal Declaration</b>	Universal Declaration of Human Rights: UN human rights instrument at the foundation of modern international human rights law.
<b>USAID</b>	U.S. Agency for International Development: U.S. government body responsible for funding and overseeing U.S. foreign assistance programs worldwide.
<b>WHO</b>	World Health Organization: UN agency devoted to researching and promoting public health worldwide.
<b>World Bank</b>	International lending institution providing financial assistance and technical support to low-income countries around the world.