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### **Sexual and Reproductive Health and Rights: The Pushback and Its Implications**

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\* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

## I. Overview: Sexual and reproductive rights and women’s citizenship.

Drawing on the International Conference on Population and Development Programme of Action, which preceded it by a year, the Beijing Platform for Action defined sexual and reproductive health in expansive terms. Reproductive health, it stated, is “not merely the absence of disease and infirmity” but “a state of complete physical, mental and social well-being ... in all matters relating to the reproductive system and to its functions and processes.” This entailed that “people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.”<sup>1</sup> Sexual and reproductive health (SRH) therefore implied that sex could but need not be finalized to reproduction.<sup>2</sup> Rather, women—and men—should be able to control their own fertility, including by accessing health services, so long as the means deployed were not “against the law.”<sup>3</sup> It further required that their decisions be made “free of discrimination, coercion and violence.”<sup>4</sup>

SRH was not only a sectoral objective, an aspect of health policy; to the contrary, it was situated in the broader context of human rights, which specifically included, with regard to the human rights of women, “full respect for the integrity of the person.”<sup>5</sup> Sexual and reproductive health, understood as the capacity to control one’s sexual engagements and reproductive capabilities, was therefore a necessary factor in the realization of what one might call women’s right to habeas corpus—the right to be secure in one’s own body.<sup>6</sup> In turn, such security factored into the general realization of women’s equal personhood so that SRH rights could be seen as on par with equality before the law or equal access to public life.<sup>7</sup> Anchored in international human rights, and reflective of years of international feminist struggles regarding abortion, contraception, gender-based violence and family hierarchies, amongst others, SRH simultaneously constituted an objective per se and a critical step towards the attainment of the general goal of women’s equality and empowerment—or, to state the goal somewhat differently, women’s equal citizenship as embodied human beings.

Today, the framing of reproductive rights as a key element of women’s equal citizenship is under stress. Focusing primarily on reproductive rights (rather than on the broader category of SRH), the following paragraphs discuss some of the stress factors related to the current backlash against women’s rights and gender equality that has accelerated with the rise of populist, neo-sovereigntist movements and governments. As multiple studies have now shown, this backlash is internally differentiated; “backlash”

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<sup>1</sup> Beijing Platform for Action, (BP4A) para. 94

<sup>2</sup> “[r]eproductive health care ... includes **sexual health, the purpose of which is the enhancement of life and personal relations**, and not merely counselling and care related to reproduction and sexually transmitted diseases.” BP4A, para. 94 (Emphasis added.)

<sup>3</sup> BP4A, para. 97

<sup>4</sup> BP4A, para. 95

<sup>5</sup> BP4A, para. 96

<sup>6</sup> On contraception and women’s *habeas corpus*, see Genevieve Fraisse, “The Habeas Corpus of Women: A double revolution,” in Brigitte Feuillet-Liger, Kristina Orfali and Therese Callus (eds.), *The Female Body: A Journey Through Law, Culture and Medicine*, Brussels: Editions Bruylant, 2013.

<sup>7</sup> Sexual rights have been defined as “protect[ing] all people’s rights to fulfill and express their sexuality and enjoy sexual health with due regard to the rights of others, within a framework of protection against discrimination.” WHO, *Developing sexual health programmes: a framework for action*. WHO, 2010, p. 4. On sexual rights and their grounding in international human rights, see, Alice M. Miller, Eszter Kismodi, Jane Cottingham and Sofia Gruskin, *Sexual Rights as Human Rights: a guide to authoritative sources and principles for applying human rights to sexuality and sexual health*, *Reproductive Health Matters*, 23:46 (2015).

here is used as a generic term to refer to the movements that have animated the recent, largely right-wing, populist surge in support of “illiberal democracy” for whom “antagonism to feminism is both a sentiment at heart of the Right’s value system and a political strategy, a platform for organizing and for recruiting massive support.”<sup>8</sup> Despite its variability, it is often allied to religious organizations that advance conservative views in relation to sexual and reproductive rights and shares with them a central concern with “gender,” both as a sociological fact (i.e., as a structural feature of social organization) and as a theoretical construct.<sup>9</sup>

Criticism of what is often referred to as “gender ideology” has been mobilized to undermine the notion that systematic differences in relations among people perceived as male or female (or not comprehended by this dichotomous scheme) are historically mutable and hence politically contestable. Such criticism tends towards a re-naturalization of sex-differences and their hardening into fixed identities, and is often accompanied by a strong focus on “the family.” Like the “right to life” with which it is at times associated, the focus on the family can be legitimated by reference to the fundamental treaties of international human rights so that the lexicon of rights may be mobilized in opposition to liberal, feminist-inflected (or other) claims that also draw upon the lexicon of human rights.<sup>10</sup> The International Covenant on Civil and Political Rights, to cite just one example, describes the family as “the natural and foundational group unit of society” and assures its protection by both society and the state.<sup>11</sup> In counter-position to the reading of rights that largely permeates the BP4A and the policies associated with it (the “Beijing Settlement”<sup>12</sup>), reproductive and sexual rights may be cast in a subordinate position to the rights of the family, and women’s capacity for equal (and autonomous) decision-making subjected to the family’s hierarchical structure. As a result, the current backlash calls into question the interpretation of reproductive rights—in particular with respect to the ability to obtain contraception and to determine whether or not to carry

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<sup>8</sup> Agnieszka Graff, Ratna Kapur, Suzanna Danuta Walters, Introduction: Gender and the Rise of the Global Right, *Signs*, 44-3 (2019), p. 541. See, e.g., Mieke Verloo, ed., *Varieties of Opposition to Gender Equality in Europe* (London: Taylor & Francis, 2018); Sonia Correa, David Paternotte, and Roman Kuhar, “The Globalisation of Anti-Gender Campaigns,” *International Politics and Society*, 31 May 2018, [www.ips-journal.eu/topics/humanrights/article/show/the-globalisation-of-anti-gender-campaigns-2761/](http://www.ips-journal.eu/topics/humanrights/article/show/the-globalisation-of-anti-gender-campaigns-2761/). See also, Andrea Kriszan and Connie Roggeband, Towards a Conceptual Framework for Struggles over Democracy in Backsliding States: Gender Equality Policy in Central Eastern Europe, *Politics and Governance* 6-3 (2018)

<sup>9</sup> Indeed, criticism of sexual and reproductive rights is sometimes legitimated by reference to religious liberty and freedom of speech, thought and practice. Inter alia, see, Elena Zacherenko, Study for Policy makers on opposition to sexual and reproductive health and rights in Europe: Perspectives on anti-choice lobbying in Europe. The Greens/EFA in the European Parliament (2016); Weronika Grzebalska, Eszter Kovats, and Andrea Peto, “Gender as Symbolic Glue: How ‘Gender’ Became an Umbrella Term for the Rejection of the (Neo)liberal Order,” [politicalcritique.org](http://politicalcritique.org), 2017, [politicalcritique.org/long-read/2017/gender-as-symbolic-glue-how-gender-became-an-umbrella-termfor-the-rejection-of-the-neoliberal-order/](http://politicalcritique.org/long-read/2017/gender-as-symbolic-glue-how-gender-became-an-umbrella-termfor-the-rejection-of-the-neoliberal-order/)

<sup>10</sup> The Trump Administration may be preparing its brief against liberal understandings of human rights with the institution, by Secretary of State Pompeo, of a Commission on Unalienable Rights. (See, <https://www.federalregister.gov/documents/2019/05/30/2019-11300/departament-of-state-commission-on-unalienable-rights>).

<sup>11</sup> International Covenant on Civil and Political Rights, art. 23(1).

<sup>12</sup> See, Yasmine Ergas, “Take Back the Future: Global Feminisms and the Coming Crisis of the Beijing Settlement,” *Journal of International Affairs*, 72-2 (2019)

a pregnancy to term—as foundational to women’s equal citizenship, and counter-poses a different societal vision: one in which the family constitutes the principal organizing unit. (See II. below).

This vision is some times allied to an ethnicized ideal of the nation. Rather than realizing their individual—and private—preferences by having children, women are held to perform an essential public function: the reproduction of the nation.<sup>13</sup> Several U.S. elected representatives have stated as much recently, suggesting that the solution to some economic and even environmental problems can be solved by an increased birth rate among married American women.<sup>14</sup> The notion of childbearing (and childrearing) as a patriotic duty may recite familiar tropes but it acquires renewed salience in the context of the twinned moral panics by which many states of the global north are now seized: de-population and “de-nationalization.” Reproduction by the women of the nation is, then, the predicate for the exclusion of those who do not share the nation’s fundamental traits (however defined). Matteo Salvini, Italy’s former Deputy Prime Minister and the leader of the Northern League, assured his voters in 2017 that his party’s victory would bring “full cradles and armored borders.”<sup>15</sup> Hungarian Prime Minister Viktor Orbán has reportedly offered Hungarian women a comprehensive agreement that includes debt-free education but only if they have three or more children.<sup>16</sup> And President Trump in the United States has presided over a policy that strips asylum-seekers and undocumented immigrants of their children, and even excoriated undocumented immigrants for having children at all,<sup>17</sup> while extolling the right to life and policies that prevent abortion.<sup>18</sup>

It is important to stress that, as noted above, the neo-sovereignist, populist movements and governments do not share a fully articulated view of women’s reproductive rights, and that their rise has at times been accompanied by that of nationalist-feminist currents that conjugate feminism in a xenophobic key, and invoke women’s rights to oppose immigration, often from Muslim countries.<sup>19</sup> These movements may introduce an element of tension when the broader movements with which they are associated seek to

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<sup>13</sup> See, e.g., Alexandros Sakellariou, “Country Case Study 4.3: Greece,” in Elisa Gutsche (ed.), Triumph of the Women? The Female Face of the Populist & Far Right in Europe, Friedrich Ebert Stiftung (2018).

<sup>14</sup> Wong, Scott. “Ryan: Americans need to have more babies. *The Hill*. 2017, at <https://thehill.com/homenews/house/364920-ryan-americans-need-to-have-more-babies> and Herreria, Carla. “‘American Babies’ Will Solve Climate Change.” *Huffington Post*. 2019, at [https://www.huffpost.com/entry/gop-senator-babies-climate-change-op-ed\\_n\\_5c9e7548e4b00ba6327cf8c6?gucounter=1](https://www.huffpost.com/entry/gop-senator-babies-climate-change-op-ed_n_5c9e7548e4b00ba6327cf8c6?gucounter=1)

<sup>15</sup> In that same speech, Salvini also excoriated “Brussels” policies of “ethnic substitution.” “Salvini: con la Lega al governo, confini blindati e culle piene,” *Il Nord Quotidiano*, June 13, 2017 at: [http://www.ilnord.it/index.php?fl\\_limit=10&o=b&j=10274\\_SALVINI\\_CON\\_LA\\_LEGA\\_AL\\_GOVERNO\\_CONFINI\\_BLINDATI\\_E\\_CULLE\\_PIENE](http://www.ilnord.it/index.php?fl_limit=10&o=b&j=10274_SALVINI_CON_LA_LEGA_AL_GOVERNO_CONFINI_BLINDATI_E_CULLE_PIENE)

<sup>16</sup> Beinart, Peter. “The New Authoritarians Are Waging War on Women: Donald Trump's ideological cousins around the world want to reverse the feminist gains of recent decades.” *The Atlantic*. January/February 2019 At: <https://www.theatlantic.com/magazine/archive/2019/01/authoritarian-sexism-trump-duterte/576382/>. Many governments are attempting to persuade women to increase their reproduction, not only governments that espouse authoritarian or neo-sovereignist policies.

<sup>17</sup> Trump, Donald (@realdonaldtrump). October 22, 2018 12:52:46 PM. “Shock report: US paying more for illegal immigrant births than Trump’s wall’ <https://t.co/FX3IjN7kPS>.

<sup>18</sup> Trump, Donald (@realdonaldtrump). May 13, 2019 10:37:09 PM.. “...Federal Judges (many more to come), two great new Supreme Court Justices, the Mexico City Policy, and a whole new & positive attitude about the Right to Life.. The Radical Left, with late term abortion (and worse), is imploding on this issue. We must stick together and Win...”

<sup>19</sup> See, Sara Farris, In the Name of Women’s Rights: The Rise of Femonationalism (Duke University Press, 2017).

implement regressive measures regarding women's rights. Nonetheless, if an ideal type were to be drawn, the vision of women's reproductive rights that would emerge would directly call into question that, briefly delineated above, which is largely embedded in the BP4A and the policies to which it has given rise.<sup>20</sup> Oversimplifying to identify some basic features, the neo-sovereignist, populist view appears, first, to posit an essential identity of women with motherhood, and of motherhood as functional to, constitutive of, and legitimated within "the family," (largely conceptualized as heterosexual and institutionally formalized).<sup>21</sup> Second, it assumes that women's control over their bodies may be at least potentially subordinated to the normative and demographic objectives of the nation state. Third, it casts reproduction in a nationalist framework that legitimates ethno-nationalist distinctions between those who may and those who may not bear (or keep) children. And, finally, it is imbued with a sense that these positions are under threat from non-governmental, feminist organizations and their governmental allies, acting through international institutions. International institutions are seen, therefore, as actors, as well as sites, in a contest over rights whose stakes are the (re)definition of women's reproductive rights and the (re)visioning of women's citizenship. The following paragraphs, focusing primarily on abortion, illustrate some of these positions.

## II. Reproductive health: maternal mortality, abortion and the conflict over rights.

### 1. Maternal mortality, abortion and women's equal citizenship

It is difficult to envisage a greater violation of women's reproductive rights than preventable maternal mortality. Its significance extends beyond reproductive rights narrowly construed as a segment of health rights. Preventable maternal mortality indexes the cost women pay for the simple fact of being female human beings, assigned, in most social orders, the function of reproducing the species. In this perspective, it is linked with the price women who do not bear children—whether voluntarily or not—are often made to bear, and, more generally, with the cost of what has been termed "repro-normativity."<sup>22</sup> The elimination of preventable maternal deaths is, therefore, a central component in the establishment of women's equal citizenship as embodied human beings.<sup>23</sup> Today, legalizing abortion, and preventing its de-legalization (or de-facto abolition) where it is permitted, are essential steps towards the realization of this goal.

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<sup>20</sup> This is not to suggest that the BP4A is entirely coherent. Nonetheless, inconsistencies and encoded conflicts have coexisted within a general framework that elsewhere I have termed the "Beijing Settlement." See, "Take Back the Future: Global Feminisms and the Coming Crisis of the Beijing Settlement," *Journal of International Affairs*, 72-2 (2019).

<sup>21</sup> "Welcome heroes of the family!" ("Benvenuti eroi della famiglia") read the sign greeting participants at the World Congress of Families in Verona, Italy in March 2019, where abortion as a crime was a major theme. Maternalism is not an exclusive characteristic of the current backlash; rather, it has long been, and continues to be, a mainstay of arguments regarding women's rights advanced by a broad spectrum of movements and policy-makers, including feminists.

<sup>22</sup> Katherine Franke, "Theorizing Yes: An Essay on Feminism, Law and Desire," *Columbia Law Review* 101 (2001).

<sup>23</sup> See, United Nations Office of the High Commissioner for Human Rights. "Preventable Maternal Mortality and Morbidity and Human Rights."

2008, at <https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/ReportMaternalMortality.pdf>

As a policy matter, the international community has repeatedly acknowledged the importance of reducing deaths related to childbearing. Despite the Millennium Development Goals' paucity of attention to women's rights generally, MDG 5 called for a reduction of maternal mortality by 75% between 1990 and 2015. The reduction actually achieved was a mere 44%.<sup>24</sup> In a global panorama marked by insufficient but clearly discernible progress, the United States constitutes a notable example of retrogression: here, maternal mortality increased by 16% between 1990 and 2015.<sup>25</sup> And maternal mortality remains highly skewed, both between countries and within them, in particular in relation to intersectional factors relating to class, geographical location, race and ethnicity. In Sub-Saharan Africa, the burden of maternal mortality is twice that of the global average, nearly three times that of South and South East Asia, and 46 times that of developed regions.<sup>26</sup> And, within the United States, such mortality is 42.8 deaths per 100,000 live births for African-Americans, 13 for non-Hispanic white women, and 11.4 for Hispanic women.<sup>27</sup>

Maternal mortality relates, inter alia, to unwanted pregnancy and, thus at least in part, to unmet contraceptive need. Globally, unmet contraceptive need has remained generally stable at 10%. According to one study, in 2019, "190 million women of reproductive age worldwide who want to avoid pregnancy do not use any contraceptive method, up from 156 million in 2000."<sup>28</sup> Globally, on an annual basis, "42 million women with unintended pregnancies choose abortion, and nearly half of these procedures, 20 million, are unsafe. Some 68,000 women die of unsafe abortion annually, making it one of the leading causes of maternal mortality (13%)."<sup>29</sup> Like maternal mortality generally, the incidence of unsafe abortions is also skewed. 55% of abortions are unsafe in developing countries—especially in Latin America, Africa and Southeast Asia—as compared to 3% of abortions in western states.<sup>30</sup> Moreover, the legal status of abortion appears to correlate with maternal mortality. In 2013, three times more maternal deaths per 100,000 live births occurred in countries with restrictive abortion laws than in countries with liberal laws.<sup>31</sup> Further, the "average unsafe abortion rate was more than four times greater in countries

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<sup>24</sup> See, Maternal Health Task Force at the Harvard Chan School, at <https://www.mhtf.org/topics/the-sustainable-development-goals-and-maternal-mortality/>). The reduction of maternal mortality constitutes the first target under Sustainable Development Goal 3, Ensure healthy lives and promote wellbeing for all at all ages.

<sup>25</sup> World Health Organization. "Global Health Observatory data repository." 2015. WHO website. Retrieved from <http://apps.who.int/gho/data/view.main.GSWCAH01v>

<sup>26</sup>Sources: UNAIDS & WHO, AIDS Epidemic Update 2004 (2004); WHO et al, Maternal Mortality in 2000 (2004); UNICEF, State of the World's Children 2005 (2004). Retrieved from [https://reproductiverights.org/sites/default/files/documents/pub\\_bp\\_africa.pdf](https://reproductiverights.org/sites/default/files/documents/pub_bp_africa.pdf)

<sup>27</sup> Petersen EE, Davil NL, Goodman D, et al. *Vital Signs: Pregnancy-Related Deaths, United States, 2011-2015, and Strategies for Prevention, 13 States, 2013-2017*. MMWR Morb Mortal Wkly Rep 2019;68:423-429. DOI: <http://dx.doi.org/10.15585/mmwr.mm6818e1>

<sup>28</sup> United Nations Department of Economic and Social Affairs. Family Planning and the 2030 Agenda for Sustainable Development. 2019. Retrieved from [https://www.un.org/en/development/desa/population/publications/pdf/family/familyPlanning\\_DataBooklet\\_2019.pdf](https://www.un.org/en/development/desa/population/publications/pdf/family/familyPlanning_DataBooklet_2019.pdf)

<sup>29</sup> Lisa Haddad and Nawal Nour. Unsafe abortion: unnecessary maternal mortality. *Obstetrics & Gynecology*, 2009; 2(2): 122-126.

<sup>30</sup> Ganatra B et al. Global, regional, and subregional classification of abortions by safety, 2010-14: estimates from a Bayesian hierarchical model. *The Lancet*, 2017; 390: 2372-2381.

<sup>31</sup> United Nations Department of Economic and Social Affairs Population Division. "Abortion Policies and Reproductive Health Around the World." United Nations Publication, 2014. Retrieved from <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf> :

with restrictive abortion policies in 2011 (26.7 unsafe abortions per 1,000 women aged 15 to 44 years) than in countries with liberal abortion policies (6.1 unsafe abortions per 1,000 women aged 15 to 44 years).”<sup>32</sup>

## 2. Abortion in the context of human rights: establishing international jurisdiction

The legal framework—specifically, the right to obtain a safe abortion—is therefore critical to addressing maternal mortality. Notable progress has been made in recent decades with respect to national policies regarding abortion. Indeed, abortion has been legalized in most of the world—only five states now prohibit it altogether—although it is often subject to significant restrictions.<sup>33</sup> At the same time, the grounds on which abortion is permitted have also expanded.<sup>34</sup> And, despite long-standing acknowledgements of the primacy of national jurisdiction over abortion regulation, international treaty bodies and courts have increasingly tempered state autonomy and explicitly set more stringent standards, at times interpreting abortion rights through the prism of women’s claims to equality.<sup>35</sup> It is not possible here to recount the complex legislative and jurisprudential history through which this evolution has taken place<sup>36</sup> but two examples may serve to illustrate the current view of treaty bodies. In 2017, the Committee on the Elimination of All Forms of Discrimination against Women (the CEDAW Committee) drew on the findings of the Committee against Torture to conclude that:

“Violations of women’s sexual and reproductive health rights, such as ... criminalization of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy ... are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”<sup>37</sup>

And a year later the Human Rights Committee explicitly delimited states’ jurisdictional autonomy in its new General Comment on the right to life: “States parties may adopt measures designed to regulate voluntary terminations of pregnancy, [but] such measures must not result in violation of the right to life

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<sup>32</sup> United Nations Department of Economic and Social Affairs Population Division. “Abortion Policies and Reproductive Health Around the World.” United Nations Publication, 2014. Retrieved from <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>

<sup>33</sup> United Nations Department of Economic and Social Affairs. “Population Policies Database.” UNDESA website. Retrieved from [https://esa.un.org/poppolicy/dataquery\\_report.aspx?Summary=0](https://esa.un.org/poppolicy/dataquery_report.aspx?Summary=0)

<sup>34</sup> Economic and Social Affairs, United Nations, Abortion Policies and Reproductive Health around the World, at: <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>

<sup>35</sup> See, Human Rights Committee, *Mellet v. Ireland*, Human Rights . Comm. 2324/2013 (2016) and Human Rights Committee, *Whelan v. Ireland*, Comm. 2425/2014 (2017). But for critical discussions of the Committee’s analysis see, Joanna N. Erdman, “The gender injustice of abortion laws,” Reproductive Health Matters, 27-1 (2019); Katarzyna Kozłowska, “A Tough job: recognizing access to abortion as a matter of equality. A commentary on the views of the UN Human Rights Committee in the cases *Mellet v. Ireland*, Human Rights Committee (2016) and *Whelan v. Ireland*,” Reproductive Health Matters, 26-54 (2018).

<sup>36</sup> For a synthetic account of the international human rights framework as applied to sexual and reproductive rights, see Ludovic Anedda, Lucy Aurora, Luca Favero, Sophie Morel, Martha Schofield, Sexual and reproductive health rights and the implication of conscientious objection, Study requested by the FEMM Committee, European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs (2018), pp. 18-30.

<sup>37</sup> CEDAW, General Recommendation no. 35, on gender-based violence, updating General Recommendation 19, 2017, para. 18.

of a pregnant woman or girl, or her other rights under the Covenant.”<sup>38</sup> The Committee further specified: “[States parties] should not take measures such as criminalizing pregnancies by unmarried women or apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion. States parties should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion....”<sup>39</sup> Moreover, the recognition of legal abortion as a necessity for the safeguarding of women’s rights—and lives—has been expanded to include situations of conflict through the adoption of UN Security Council Resolution 2106, which urged that women be ensured access to “non-discriminatory and comprehensive health services, including sexual and reproductive health.”<sup>40</sup>

### 3. Opposing abortion rights: foreign and domestic policy

Even as international bodies have ever more clearly articulated a liberal view of international human rights law pertaining to abortion, opposition to that view has grown increasingly strong. Such opposition is not new. But the rise of neo-sovereignist governments has amplified the voices of critics of legal abortion and multiplied their impact, including in international institutions. Championing these views, the United States recently threatened to veto a German-led resolution on women, peace and security if it contained the term “sexual and reproductive health:” the term itself, the US contended, implied legalized abortion.<sup>41</sup> In taking this stance, the US broke with its own precedent of supporting the women, peace and security agenda, including Resolution 2106 that had called for abortion to be available to survivors of rape in conflict. The German-led resolution (UNSCR 2467) was eventually approved with only two references to health, neither linked to reproduction.

But if it contradicted its stance on the Women, Peace and Security agenda, the US position on UNSCR 2467 actually mirrored the approach to foreign assistance taken by previous Republican U.S. administrations, whose presidents—beginning with Ronald Reagan—have systematically emanated executive orders barring assistance to NGOs that either performed or “promoted” abortion. Known as the “Mexico City” policy and referred to by its critics as the Global Gag Rule, this policy has been equally systematically repealed by Democratic Presidents. Upon ascending to office, President Trump quickly reinstated—and significantly expanded—the Global Gag, thereby reversing President Obama’s rescission of his predecessor’s directive. The consequences of the Global Gag rule in its current iteration include a decrease in global access to SRH information and services, since most of the organizations that provide SRH information and services also provide abortions. Such a decrease will have a more dramatic effect in

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<sup>38</sup> Human Rights Committee, General Comment 36 on article 6 of the International Covenant on Civil and Political Rights, 30 October 2018, *available at*:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf) (Emphasis added).

<sup>39</sup> Id. On the Human Rights Committee’s approach to abortion, discrimination and equality, see, inter alia, Katarzyna Sekowska-Kozłowska, A Tough job: recognizing access to abortion as a matter of equality. A commentary on the views of the UN Human Rights Committee in the cases *Mellet v. Ireland*, Human Rights Committee (2016) and *Whelan v. Ireland*,” Reproductive Health Matters, 26-54 (2018);

<sup>40</sup> UNSCR 2106 (2013)

<sup>41</sup> The draft resolution had urged “All Member States to ensure that survivors of sexual violence ... received the care required by their specific needs ... including comprehensive sexual and reproductive health care such as access to emergency contraception [and] safe termination of pregnancy.” Zero Draft, OP 15. For a fuller discussion of the vicissitudes surrounding UNSCR 2467, see Yasmine Ergas, “Take Back the Future,” cit. at n. 23.



developing countries, where women's health outcomes are poorer overall; including an inevitable increase in maternal mortality as the result of unsafe abortion practices (97% of unsafe abortions occur in the developing world).<sup>42</sup> Moreover, as access to family planning and contraception is impeded across these regions, a commensurate spike in infectious diseases such as HIV/AIDS and Zika should be expected, as well.

The policies instantiated in the Global Gag rule, however, are not only outwardly directed. Rather, they appear to cohere with the current U.S. administration's selection of Supreme Court justices and the supportive position it has taken as US states have curtailed the availability of legal abortion, and are generally aligned with the long-standing campaign against abortion rights that has been led by "Right to Life" activists.<sup>43</sup> In supporting efforts to limit access to legal abortion, the positions of the Trump Administration resonate with the positions taken, for example, by the governments of Hungary and Poland. While Prime Minister Orbán appears to have decided, after numerous attempts to rollback abortion rights, to pay hospitals not to perform them,<sup>44</sup> Poland's ruling Law and Justice party has also repeatedly sought to limit abortion rights (prompting forceful counter mobilizations). President Rodrigo Duterte has reportedly publicly expressed his moral opposition to abortion,<sup>45</sup> and has rebuked other nations for their more lenient abortion policies.<sup>46</sup> President Jair Bolsonaro of Brazil has expressed similar views. Shortly before taking office, he declared his intent to adopt a Brazilian Global Gag Rule: "I repeat: As far as I am concerned, proposals to liberate abortion in Brazil will have my veto and Brazilian money will not fund NGOs that promote this practice."<sup>47</sup> And in Russia, several measures adopted in the last decade have restricted abortion rights.<sup>48</sup>

#### 4. The abortion- VAW nexus: whither women's habeas corpus?

Restrictive postures towards abortion that, inter alia, seek its (re)criminalization and emphasize fetal rights, subordinate women's rights to self-determination as embodied human beings to their maternal—

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<sup>42</sup> See, UNDESA, cit.

<sup>43</sup> Inter alia, see Adam Sonfield, "Trump Administration Rules Prioritize Refusal of Care and Conservative Ideology Over Protecting Patients Against Discrimination," *Guttmacher Review*, 22 (2019), at: [https://www.guttmacher.org/sites/default/files/article\\_files/gpr2204919.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr2204919.pdf). See, also, Pam Bullock, "Trump Administration Blocks Funds for Planned Parenthood and Others over Abortion Referrals," *New York Times*, 22 February 2019, at: <https://www.nytimes.com/2019/02/22/health/trump-defunds-planned-parenthood.html>

<sup>44</sup> Max Boot, "Why President Trump and Hungary's authoritarian leader are soulmates," *Washington Post*, 16 May 2019.

<sup>45</sup> Ramirez, Robertzon. "Duterte supports gays, but won't push same-sex marriage." *The Philippine Star*. January 20, 2016. Web. Retrieved from <https://www.philstar.com/headlines/2016/01/20/1544780/duterte-supports-gays-wont-push-same-sex-marriage>

<sup>46</sup> Sigurðsson, Logan. "Still Angered, Duterte Slams Icelandic Abortion Law." *The Reykjavík Grapevine*. August 28, 2019. Web. Retrieved from <https://grapevine.is/news/2019/08/28/still-angered-duterte-slams-icelandic-abortion-law/>

<sup>47</sup> Cruz, Caitlin. "Brazil's Abortion Rights Push Could Come to a Screeching Halt After Jair Bolsonaro's Election." *Bustle*. October 29, 2018. Web. Retrieved from <https://www.bustle.com/p/brazils-abortion-rights-push-could-come-to-a-screaching-halt-after-jair-bolsonaros-election-13026022>

<sup>48</sup> Viktoria Sakevich and Maria Lipman, "Abortion in Russia: How has the situation changed since the Soviet era?" *Ponars Eurasia*, 12 February 2019, at: <http://www.ponarseurasia.org/point-counter/article/abortion-russia-how-has-situation-changed-soviet-era>. On the significance of campaigns regarding abortion in Russia, see generally Sonia Luehrman, "'Everything New That Life Gives Birth To:' Family Values and Kinship Practices in Russian Orthodox Antiabortion Activism," *Signs*, 44-3 (2019).

and familial—functions.<sup>49</sup> Such postures resonate with approaches to violence against women that also tend to undermine women’s security in their own bodies. Russia, for example, has reduced penalties associated with domestic violence; and in 2018, the Italian government, then led by a coalition in which the Lega Nord and Deputy Prime Minister Salvini played a central role, proposed a decree that would require divorcing couples mandatorily to seek mediation, including in cases of spousal or child abuse.<sup>50</sup>

The significance of such measures is underscored by the critiques that the Istanbul Convention on preventing and combating violence against women and domestic violence has attracted. The Bulgarian constitutional court ruled that ratification of the convention would be unconstitutional; the Slovakian government noted that the Convention could undermine the traditional definition of marriage; and Latvia has said that it is destructive to traditional gender roles.<sup>51</sup> In the recent spate of criticisms, the Convention’s repeated references to “gender” have been invoked to raise fears regarding LGBTQI rights, and to fan the flames of homophobic moral panics. As worrying as such instrumentalizations – and the discrimination they legitimate -- are, their potential reach is far broader: at issue is the transformative agenda embedded in the Convention. The scope of that agenda is signaled by the very references to “gender” that have attracted such hostility. Conceptually, “gender” denotes the idea that the unequal life-chances associated with socially constituted identities related to the perception of individuals as being either male or female, both or neither, are the products of social organization. And central to the organization of society on gendered lines is reproduction, and the hitherto generally unequal rights and obligations it entails. Women’s reproductive (and sexual) rights, then, like rights to be free of gender-based violence, speak fundamentally to women’s rights to self-possession as a foundational element of their equal citizenship. They are now at issue.

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<sup>49</sup> On the significance of abortion in relation to women’s rights, in particular with reference to the United States, see Carol Sanger, *About Abortion; Terminating Pregnancy in Twenty-First Century America* (Harvard University Press, 2017).

<sup>50</sup> Norme in materia di affido condiviso, mantenimento diretto e garanzia di bigenitorialità, Decreto di Legge 735 (2018). See, Marilisa D’Amico and Costanza Nardocci, *Riflessioni a prima lettura sul DDL n. 735 Norme in materia di affido condiviso, mantenimento diretto e garanzia di bigenitorialità*, n.d.

<sup>51</sup>Ebeturk, Irem. "Norms of gender equality and the backlash against Istanbul Convention" *Orders Beyond Borders*. June 6, 2018. Web. Retrieved from <https://ordersbeyondborders.blog.wzb.eu/2018/06/06/norms-of-gender-equality-and-the-backlash-against-istanbul-convention/> )