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# Calling a Spade a Spade: Maternal Mortality as a Human Rights Violation

*by Luisa Cabal and Morgan Stoffregen**

*". . . a deprivation of human dignity so profound that it really is death of a different order."*

—Lynn Freedman

## Introduction

Being pregnant should not be a game of Russian roulette. But for too many women around the world, it is. Globally, over a half a million women die each year due to complications during pregnancy and childbirth, with 99% of these deaths occurring in the global south.[1] For every woman who dies a pregnancy-related death, another thirty suffer injury, infection, and disability. Nearly all of these deaths are preventable because the majority of deaths are caused by hemorrhages, sepsis, hypertensive disorders (particularly eclampsia), prolonged or obstructed labor, and unsafe abortions.[2]

Maternal death exposes a range of disparities and inequities. Of all health indicators, maternal mortality ratios reveal the greatest gap between developed and developing countries. They also point to huge discrepancies between rich and poor women within countries.[3] It unmasks gender disparities as well: no single threat to men aged 15 to 44 approaches the enormity of maternal death and disability.[4]

Despite the attention the international policy community has devoted to reducing maternal mortality in recent decades, the magnitude of the problem remains immense. Over the past twenty years, maternal mortality rates have barely declined.[5] This lack of progress is accentuated by the fact that the World Health Organization's ("WHO") Millennium Development Goal 5, which aims to reduce maternal mortality ratios by three-quarters between 1990 and 2015, is the Millennium Development Goal least likely to be achieved.

This article illustrates how governments' systematic failures to address and prevent maternal mortality constitute human rights violations under international human rights law. It then explains some of the reasons why policymakers and advocates alike have resisted viewing maternal death as a human rights concern. We conclude by suggesting how the human rights community can establish maternal mortality as a recognized and pressing human rights issue.

## Maternal Mortality Is an Established Human Rights Issue

Several of the major international human rights treaties establish that governments have a duty to uphold rights that prevent women from dying needlessly during pregnancy and childbirth. The United Nations ("UN") treaty bodies, which monitor governments' progress and compliance with these treaties, elaborate upon that duty. Governments' systematic failures to protect maternal health can violate a number of women's fundamental human rights, including the rights to life, health, equality, information, education, enjoyment of the benefits of scientific progress, freedom from discrimination, freedom from cruel and inhuman treatment, and to decide the number and spacing of children. These rights do not stand alone but are interdependent and intertwined. In this section, we illustrate the international legal standards for a few of these rights and show how their protection is essential for ensuring maternal health.

*Courtesy of SAHAYOG*

Rural women in Uttar Pradesh, India, advocating for their right to maternal health.

### Right to Life

As established in article 6 of the International Covenant on Civil and Political Rights, "[e]very human being has the inherent right to life" and shall not be arbitrarily deprived of his or her life. Protecting this right means that governments must not only prevent arbitrary killings but also adopt positive measures to ensure the right to life,[6] including taking steps to prevent unnecessary maternal death.[7]

Two treaty bodies, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee") and the Human Rights Committee ("HRC"), have framed maternal mortality as a violation of women's right to life.[8] The following observations from the HRC illustrate the positive measures that states must take to ensure this right:

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> So as to guarantee the right to life, the State party should strengthen its efforts in that regard, in particular in ensuring the accessibility of health services, including emergency obstetric care. The State party should ensure that its health workers receive adequate training. It should help women avoid unwanted pregnancies, including by strengthening its family planning and sex education programmes, and ensure that they are not forced to undergo clandestine abortions, which endanger their lives. In particular, attention should be given to the effect on women's health of the restrictive abortion law.[9]

Women's ability to exercise their right to life hinges upon their ability to exercise other rights, including the rights to health, equality, and non-discrimination.

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### Right to Health

Article 12 of the International Covenant on Economic, Social and Cultural Rights guarantees everyone "the highest attainable standard of physical and mental health." In recent years, international human rights bodies have expanded their views of the right to health, especially as it relates to women's reproductive health. In 2004, the UN Commission on Human Rights stated that "sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[10]

The Committee on Economic, Social and Cultural Rights and the former UN Special Rapporteur on the Right to Health, Paul Hunt, in particular, have positioned preventable maternal death as a violation of the right to health. Their interpretations have also been crucial in establishing government obligations around this right.

Hunt, who served as the UN Special Rapporteur on the Right to Health from 2002 to 2008, used a number of his reports and statements to connect preventable maternal mortality with governments' failures to protect women's right to health. For example, in his 2006 report to the General Assembly, Hunt stated that the right to health "should . . . be understood more broadly as an entitlement to an effective and integrated health system," and, with regard to maternal mortality, "[a]n equitable, well-resourced, accessible and integrated health system is widely accepted as being a vital context for guaranteeing women's access to the interventions that can prevent or treat the causes of maternal deaths."[11]

General Comment 14 of the Committee on Economic, Social and Cultural Rights elaborates on the right to health, stating that it entails "the right to control one's health and body, including sexual and reproductive freedom." It notes that protecting this right also means reproductive health-care services must be widely available, affordable, physically accessible, and of good quality. General Comment 14 elaborates on the requirement that governments provide for "the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child."[12] The Committee on Economic, Social and Cultural Rights interprets this as requiring governments to take "measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information." General Comment 14 also urges governments to prioritize measures promoting maternal health, among others, when allocating limited resources.

### Rights to Equality and Non-discrimination

The magnitude of maternal mortality reflects more than the state of women's health—it highlights the systematic inequality and discrimination women face daily in many different settings. As WHO commented, "[m]aternal mortality is an indicator of disparity and inequity between men and women and its extent a sign of women's place in society and their access to social, health, and nutrition services and to economic opportunities."[13]

UN treaty bodies have established women's inability to access reproductive health services, including emergency obstetric care, as a violation of women's right to equality. According to the HRC, this lack of access "compromises women's ability to participate equally in all aspects of social, economic, and public life."[14] The Committee on Economic, Social and Cultural Rights says women's lack of access to reproductive health services is discriminatory because it prevents women from fully enjoying their economic, social, and cultural rights equally with men.[15]

Rebecca Cook, a respected authority on international human rights law, has commented:

> The general right to non-discrimination requires that we treat the same interests without discrimination, for example, providing equal access of all races to health care. However, the right to non-discrimination also entails treating significantly different interests in ways that adequately respect those differences. The right to sexual non-discrimination requires that societies treat different biological interests, such as pregnancy and childbirth, in ways that reasonably accommodate those differences.[16]

In this regard, the CEDAW Committee's General Recommendation 24 urges governments to ensure their health-care systems "address the health rights of women from the perspective of women's needs and interests." It advises governments to acknowledge the "distinctive features and factors which differ for women in comparison to men," including women's reproductive capacities.

Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women requires governments

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to ensure, "on a basis of equality of men and women," women's access to health-care services, including family planning. In addition, states must guarantee women's access to "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."

In addition to gender discrimination, preventable maternal deaths raise the issue of discrimination against distinct *groups* of women, such as rural, low-income, or indigenous women. Even countries with low maternal mortality rates show marked differences between communities of women, implying *de facto* discrimination against disadvantaged groups.[17]

The examples above point to just a few of the many ways in which international human rights law protects women's rights to safe pregnancy and childbirth. In the words of Mary Robinson, former UN High Commissioner for Human Rights, "[maternal mortality] is a huge human rights issue."[18] Yet, by and large, it has not been treated as one.

## Maternal Mortality Has Not Received the Human Rights Attention It Deserves

Many challenges help explain the reluctance and corresponding lag in recognizing maternal death as a human rights issue. We will illustrate three of these challenges below: first, the historical neglect of maternal mortality by political leaders and the human rights community; second, the perceived complexity of maternal death; and finally, the characterization of maternal mortality as a uniquely health and/or development issue.

### Falling Into Voids

Historically, women's issues have been marginalized and, consequently, neglected by the policy and human rights communities. There is a saying in Mali that "a woman who gives birth opens her own coffin."[19] One of the most evident reasons maternal mortality has not gained traction as a human rights issue is because it concerns women and, as the saying in Mali suggests, is a fact of life inherent in women's destinies. Traditionally, women's rights issues have been pushed aside in favor of more "mainstream" human rights concerns such as disappearances and torture. To paraphrase in the words of Rebecca Cook: "[t]he historic promotion of The Rights of Man has left the rights of women a marginal or subordinate concern."[20] On a global level, maternal mortality has fallen into a void, often being viewed by political leaders as an unavoidable risk of women's reproductive capacities rather than an issue of social justice.[21]

Even the women's rights movement was reluctant to incorporate maternal mortality into its agenda when "safe motherhood" became a development concern twenty years ago. Although women's rights groups appreciated that the safe motherhood agenda examined the root causes of maternal mortality, they were wary of the term "safe motherhood" because it suggested women's values were based primarily on their childbearing roles.[22]

### A Complex Issue

Maternal mortality has also had trouble making it onto the human rights agenda because of perceived complexity in pinpointing both the causes and perpetrators of preventable maternal deaths.

Although some suggest "the biggest safety risk by far is the failure to reach the functioning health care system at all,"[23] finding one precise cause is challenging, if not impossible. Maternal mortality involves a host of dimensions and factors, including: women's and girls' low social status, discriminatory health-care service, malnutrition, lack of education and information, early marriage, and unsafe abortions. Identifying the perpetrator can be difficult, as multiple actors may be responsible, including women's families, health-care providers, and the government.[24] It can be hard to precisely identify where governments have failed in protecting women's right to maternal health. However, as Hunt noted, simply because we cannot identify a single culprit "does not stop it from being a human rights violation—and this violation must be investigated *precisely to determine where responsibility lies*."[25]

### From a Public Health and Development Issue to a Human Rights Imperative

Maternal health has received much attention from the international community over the last twenty years but largely only as a public health and development concern. The 1987 international Safe Motherhood Conference in Nairobi addressed maternal mortality in a series of conferences, making "safe motherhood an accepted and understood term in the public-health realm" and squarely placing safe motherhood "as a core component of reproductive health."[26] By 2000, the Millennium Development Goals reaffirmed maternal health as a key development outcome: Goal 5 calls for a three-quarters reduction in the global maternal mortality ratio between 1990 and 2015.

The incorporation of a human rights approach could greatly enhance these approaches by altering the discourse around

maternal health, ensuring government accountability for policies and practices under human rights law, empowering people to advocate for their rights, and offering civil society a way to constructively engage in dialogue with governments about their responsibility to protect maternal health.

The human rights community has had prior successes in bringing other issues into the realm of human rights which had been previously considered unrelated to human rights law. Human rights advocates have demonstrated their ability, with the adoption of novel issues, to "create normative instruments and standards and mobilize public and state action with respect to them."[27] In the 1990s, they did precisely that with domestic violence, which previously had been considered a "private" issue outside the scope of human rights.

Today, human rights advocates must do the same with maternal mortality.

## A Critical Role for the Human Rights Community

The human rights community has slowly but increasingly recognized maternal mortality as a legitimate issue in recent years, and women's human rights depend on the acceleration of that recognition. What can human rights advocates do? For one, they can raise the issue's visibility and seek accountability at the global, regional, and national levels. They can also influence the discourse at the UN.

### Raise Visibility and Promote Accountability

Advocates have a number of tools available depending on whether they want to focus on the national, regional, or international level. One is documentation and fact-finding, a time-tested strategy for exposing human rights violations and pressuring governments to live up to their human rights commitments. Several organizations (including Amnesty International, Physicians for Human Rights, and the Center for Reproductive Rights) use this strategy in seeking to place maternal health within the human rights framework in specific country contexts.

National and local strategies include encouraging national human rights commissions to embrace the issue, promoting community monitoring of maternal deaths, and seeking government transparency so civil society can monitor resource allocations and spending for maternal health.

At the regional level, organizations including ours—the Center for Reproductive Rights, have started giving the issue visibility through thematic hearings or briefings before regional bodies such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights. Such briefings provide opportunities to present regional bodies with facts about what is happening in a particular country or region and to sensitize them to the issue generally.

At the international level, human rights organizations can partner with other disciplines to address maternal mortality. This approach is especially vital in cases raising economic, social and cultural rights issues which require the specialized expertise of other fields such as public health. The International Initiative on Maternal Mortality and Human Rights, the first global civil society human rights effort aimed at reducing maternal mortality, uses this approach. Launched in 2007, the Initiative brings together organizations from a variety of disciplines—human rights, public health, maternal health—in a concerted effort to encourage governments and donors to see and address maternal mortality through a human rights lens.

*Courtesy of Adrián E. Alvarez*

Mother feeding her child in Kabala District, Sierra Leone.

Finally, at every level, human rights advocates can use litigation to increase the visibility of maternal mortality and to seek government accountability for ensuring women's right to maternal health. In 2007, the Center for Reproductive Rights and ADVOCACI (Advocacia Cidadã pelos Direitos Humanos), a Brazilian organization, filed a case before the CEDAW Committee on behalf of an Afro-Brazilian woman who suffered a preventable maternal death. In *Alyne da Silva Pimentel v. Brazil*, the organizations allege that the government violated the woman's rights to life, health, and redress in Brazilian courts. It is the first individual communication on maternal mortality filed before a UN treaty body. If successful, the case could generate important interpretations from the CEDAW Committee on maternal mortality as a human rights violation.

### Influence Discourse at the UN

Given the UN human rights bodies' influence in setting human rights standards and holding governments accountable under international law, advocates should also try to sensitize the UN to this issue.

The UN has already made significant strides in recognizing avoidable maternal mortality as a human rights violation. For example, in June 2008, the Human Rights Council held its

first thematic panel on maternal mortality. With the assistance of human rights advocates, there is ample room for further mainstreaming. Hunt pointed out repeatedly that, while the UN has a human rights "special procedure" for the issue of disappearances, "there is not a single human rights mechanism with a focus on the immense problem of preventable maternal deaths."[28] Lobbying for the adoption by the Human Rights Council of a resolution on maternal mortality could be a first step towards a UN General Assembly declaration addressing maternal mortality.

Advocates can also raise the UN's awareness of maternal mortality by filing shadow reports to highlight the issue. The UN treaty bodies take into account additional materials, called shadow reports, submitted by nongovernmental organizations. Such supplemental materials can be critical for informing the committees about a certain country's maternal mortality situation. As a result, the committees may be more inclined to make recommendations on the issue in their concluding observations. Advocates can also file shadow letters before the Human Rights Council's Universal Periodic Review mechanism, a mechanism monitoring governments' implementation of human rights norms.

## Conclusion

Half a million maternal deaths each year are more than an unfortunate tragedy—they are a scandalous social injustice. Fortunately, women's right to survive pregnancy and childbirth is firmly protected under international law. The challenge facing the human rights community today is ensuring that governments protect this right. ***HRB***

## ENDNOTES: Calling a Spade a Spade

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