

## Why International Institutions Should Reject “Reproductive Justice”

By Rebecca Oas, Ph.D.

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Major abortion groups and the international feminist establishment, including the governments that support UN agencies, have re-aligned themselves along the contours of this notion of “reproductive justice.”

### INTRODUCTION

For over a quarter of a century, terms such as “reproductive rights” and “sexual and reproductive health” have appeared in dozens—perhaps hundreds—of UN resolutions, despite remaining controversial due to their inextricable linkage to the issue of abortion. In recent years, another term, “reproductive justice,” has started to appear, not in negotiated resolutions, but in reports generated by UN agencies like the United Nations Population Fund (UNFPA). Major abortion groups and the international feminist establishment, including the governments that support UN agencies, have re-aligned themselves along the contours of this notion of “reproductive justice.” The term is not actually new; it emerged decades ago in the United States, coined by black feminists calling attention to what they saw as the shortcomings of the majority-white feminist “pro-choice” movement. This *Definitions* explores the origins of “reproductive justice” in the U.S., how it is being promoted in the international context, how it relates to abortion, and why it ultimately is a fatally flawed framework for international policymaking.

### The origins of “reproductive justice”

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phrase were dismayed at the state of the national abortion debate. As one of the twelve women, Loretta Ross, wrote in the book *Reproductive Justice: An Introduction*, she and the other women “questioned the primacy of abortion, but not its necessity.” To them, abortion was a “crucial resource,” but so were employment, education, and health care, and that the choice to be a mother or not hinged on other issues including “economics, immigration, and incarceration.”<sup>1</sup>

Abortion first entered the UN policy debate in 1994 at the International Conference on Population and Development (ICPD) via the terms “reproductive rights” and “sexual and reproductive health.” These terms were defined as including abortion, but only where legal according to national laws. The term “sexual and reproductive health and rights” (SRHR) has been repeatedly rejected in negotiations because it contains the controversial formulation “sexual rights” and to the extent that it has been defined by activists, it is defined as including abortion as a right.<sup>2</sup> The U.S. pro-abortion conference where “reproductive justice” was first introduced occurred shortly before the ICPD. Many of its attendees, including Ross, participated in the ICPD.

“Reproductive justice” advocates were unsatisfied with the “pro-choice” framing of the abortion issue and its treatment as an individual right to be exercised by women independently. Instead, they wanted to advance a more intersectional approach grounded in group identities and structural oppression as it related to reproduction. The “reproductive justice” movement is based on three main principles: the right to have a child, the right not to have a child, and the right to parent in safe and healthy environments.<sup>3</sup> Twenty years after this definition was framed, they inserted a fourth pillar of “sexual autonomy and gender freedom,” incorporating issues of sexual orientation and gender identity.<sup>4</sup>

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The “reproductive justice” movement has always been pro-abortion, and this will be outlined in greater detail in a later section. However, it also incorporates opposition to coercive practices to reduce fertility. Black and other minority women in the U.S., particularly those who are poor, have historically been targeted by eugenics advocates, through forced sterilizations or, in more recent years, through the aggressive promotion of long-acting reversible contraceptive (LARC) methods, some with serious health risks.<sup>5</sup> The fact that the birth control movement in the U.S. was closely tied to the eugenics movement, and that the founder of Planned Parenthood, Margaret Sanger, was an outspoken advocate for eugenics, has been well documented.<sup>6</sup> In 2020, Planned Parenthood removed

Sanger's name from its Manhattan clinic due to her promotion of eugenics,<sup>7</sup> the same year as United Kingdom-based Marie Stopes International rebranded itself as MSI Reproductive Choices in order to distance itself from its founder's ties to the eugenics movement.<sup>8</sup> While these recent changes were linked to the Black Lives Matter movement and the "racial reckoning" it sparked both in the U.S. and elsewhere, pro-life advocates have been raising awareness of the racist and eugenicist origins of abortion giants Planned Parenthood and Marie Stopes International for decades.

While the eugenics movement was focused on preventing those deemed "unfit" from reproducing, the population control movement was concerned that reproduction more generally would lead to global catastrophe. The "reproductive justice" movement's positioning of the right to have a child on equal footing with the right to not have a child meant rejecting the neo-Malthusian mindset that fertility reduction should be regarded as a worthy end, regardless of the cost—a cost borne chiefly by poor women in the global South when coercive population control policies were enacted. This is distinct from the pro-life position that all human life, including that of the unborn, has equal value and deserves to be protected and valued. The language of the "reproductive justice" movement speaks of "centering" the narratives of those seen as marginalized, whether due to race or socioeconomic or other status. It views marginalization as "intersectional," where multiple identity markers including race, sex, socioeconomic status, as well as sexual orientation and gender identity, combine to create a hierarchy of oppression status. The concept of "intersectionality" was coined by a U.S. black feminist scholar, Kimberlé Crenshaw, in 1989.<sup>9</sup> At the international level, "intersectionality" has recently gained traction in UN debates and negotiations, in line with the commitments of the Sustainable Development Goals to "leave no one behind" and direct the greatest attention to those "furthest behind first."<sup>10</sup> However, due to the "reproductive justice" movement's commitment to abortion as a right, discussions of marginalization and vulnerability do not "center" the unborn child as a person with rights of his or her own, separate from the mother.

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### Criticism of the international family planning movement

Proponents of "reproductive justice" are critical of the ways in which the global family planning movement has positioned the use of contraceptives as a means for achieving goals other than women's own priorities. Family planning has been offered as a solution to climate change,<sup>11</sup> preventable maternal mortality,

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poverty, and other challenges, leading to the setting of targets that rely on increased use, which can in turn fuel coercive practices.

Christine Galavotti, a Senior Program Officer at the Bill and Melinda Gates Foundation, invoked “reproductive justice” in a recent critique of the global family planning movement. “We continue to largely measure the success of family planning programs by increases in modern contraceptive prevalence rates or reductions in contraceptive discontinuation,” she pointed out in a November 2022 episode of the Sexual and Reproductive Health Matters podcast. “We say we care about reproductive rights, agency, and power, but do these measures capture that? They don’t.” Galavotti offered “reproductive justice” as an alternative, “values-based” way of approaching family planning.<sup>12</sup>

### **“Reproductive justice” is inextricably pro-abortion**

“Reproductive justice” advocates accurately point out the abuses and excesses of programs and policies that aim to reduce fertility by coercive means, particularly for those who are poor, ethnic minorities, and who have physical or mental disabilities, and they correctly identify some of the societal problems that increase the burden on those raising children, and which may be driving women to seek abortions who would otherwise want to have their children. Yet while pro-life advocates may share some concerns and priorities with the “reproductive justice” movement, a deep, irreconcilable difference remains: the “reproductive justice” framework has always included abortion as an irreducible part.

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The original framework occurred in the context of a pro-abortion conference, and while its authors took issue with what they saw as an overemphasis on the abortion issue, and its treatment as an independent choice absent societal context, they insisted that it should be regarded as a right. In a 2010 essay, San Diego State University women’s studies professor Kimala Price wrote that “the main goal of the reproductive justice movement is to move beyond the pro-choice movement’s singular focus on abortion.”<sup>13</sup> Even so, Price notes that the “reproductive justice” movement took issue with the “perceived lack of attention” by the broader “pro-choice” movement toward the Hyde Amendment, first passed in 1997, which blocks U.S. federal funding from paying for abortions except in cases of rape and incest or to save the life of the mother. Since recipients of federally funded health care in the U.S. were disproportionately black and poor, “reproductive justice” advocates argued that for such women, the label “pro-choice” was effectively empty if they

could not afford to have abortions.<sup>14</sup>

A frequently-cited moment in the history of the “reproductive justice” movement occurred shortly after its start in 1994, when its leaders took out a full-page ad in the *Washington Post* and other newspapers titled “Black Women on Health Care Reform,” in the context of changes to health care policy under Bill Clinton’s administration. While the ad did not explicitly include the phrase “reproductive justice,” it strongly emphasized that “abortion coverage must be provided for all women under health care reform regardless of ability to pay, with no interference from the government.” It then stated in all capitalized letters: “WE WILL NOT ENDORSE A HEALTH CARE REFORM SYSTEM THAT DOES NOT COVER THE FULL RANGE OF REPRODUCTIVE SERVICES FOR ALL WOMEN – INCLUDING ABORTION.”<sup>15</sup>

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In the United States, the abortion rate for black women is 2-3 times higher than that of white women. Black women are more likely to die of complications of abortion than their white counterparts, as well as having higher maternal mortality rates.<sup>16</sup> In a recent testimony to the U.S. Senate, obstetrician and gynecologist Dr. Monique Wubbenhorst pointed out the sobering fact that since the *Roe v. Wade* Supreme Court decision that legalized abortion across the U.S., “an estimated 17 million unborn African Americans have been aborted in the United States. That’s more than the populations of the countries of Senegal and Cambodia, respectively, and slightly less than the entire population of the Netherlands.”<sup>17</sup> It is difficult to imagine the full scale of the impact of so many lives lost, along with all who would have been their descendants, on the U.S. as a nation, and on majority-black communities in particular.

### **“Reproductive justice” as a two-way bridge between the U.S. and the UN human rights system**

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Ross envisioned “reproductive justice” as “a way of bringing human rights home, back to the United States, and to move beyond the paralyzed abortion debate.”

In a 2020 event hosted by UNFPA, Ross spoke about how “reproductive justice” is based on the international human rights framework. When she attended ICPD, she “found that activists in the global South were using the human rights framework to make the same claims that we were demanding under reproductive justice,” but in the U.S. these claims were “finding no success under the limited U.S. constitutional framework.” Ross envisioned “reproductive justice” as “a way of bringing human rights home, back to the United States, and to move beyond the paralyzed abortion debate.” In recent years, Ross notes that the term “went transnational, and without any effort on our part.”<sup>18</sup>

This transnational attention to “reproductive justice” increased around the 25<sup>th</sup> anniversary of the ICPD, which was commemorated with a summit in Nairobi, Kenya organized by UNFPA in November 2019. The Sexual Rights Initiative had circulated a joint statement on abortion and “reproductive justice” to present at an event during the session of the Human Rights Council in Geneva. The statement commemorated International Safe Abortion Day on September 28 and presented “reproductive justice” as a more intersectional alternative to “an individualistic conception of ‘choice’” and called for the removal of abortion restrictions and any other form of interference with access to abortion.<sup>19</sup>

The Nairobi Summit did not produce a negotiated outcome; rather, it issued a statement that was nonbinding and carries a disclaimer that it does not infringe on national sovereignty. In this way, its authors were free to include language that would not have been adopted by consensus (such as “sexual and reproductive health and rights” and references to sexual orientation and gender identity, and “safe abortion services to the full extent of the law.”)<sup>20</sup> Apart from the statement, the conference was a platform for individual countries and organizations to make their own pledges, which similarly did not require consensus or negotiation.

In 2020, the year after the summit, a High-Level Commission was formed to monitor the fulfillment of commitments and make recommendations. The commission has since issued two reports in 2021 and 2022, both of which have framed “reproductive justice” as the means to deliver the Nairobi Summit commitments and, indeed, the original promises of the ICPD.

It is important to note that not long after the Nairobi Summit concluded, the entire world was grappling with the COVID-19 pandemic. In the midst of that, in May 2020, the killing of U.S. citizen George Floyd at the hands of police sparked a wave of protests and calls for racial reckoning that spread well beyond U.S. borders. This reckoning reverberated in important ways within the global pro-abortion SRHR movement. As mentioned previously, global abortion giants Planned Parenthood and MSI Reproductive Choices took steps to distance themselves from the eugenic and racist legacies of their founders, decisions that were seen as obviously linked to the aftermath of Floyd’s death.<sup>21</sup>

Similar upheavals were going on within other pro-abortion organizations. Women Deliver underwent an investigation following allegations of racism and discrimination within its

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ranks, leading to the resignation of its CEO, Katja Iversen.<sup>22</sup> Françoise Girard, president of the International Women’s Health Coalition (IWHC) also stepped down following allegations of bullying and racism within that organization.<sup>23</sup> The following year, the IWHC and two other organizations merged to form Fòs Feminista, an organization that describes itself as having “a vision to advance sexual and reproductive health, rights, and justice through an intersectional feminist lens and a commitment to the leadership from the Global South.”<sup>24</sup> The addition of “justice” to the end of the SRHR formulation had become a way of signaling intersectionality, racial solidarity, and the rejection of the so-called “white savior” mentality of which many international NGOs advocating for abortion had been accused.

In this context, when the first report of the High-Level Commission on the Nairobi Summit on ICPD25 was released in 2021, its subtitle was “Realizing Sexual and Reproductive Health, Rights and Justice for All.” While the report did not explicitly tie its “SRHRJ” concept to the “reproductive justice” movement that started in the U.S. in the 1990s, the connections were clear especially in the section titled “Justice for Black women means more than choice.”<sup>25</sup>

The second report from the High-Level Commission, titled “Sexual and reproductive justice as the vehicle to deliver the Nairobi Summit commitments,” was more direct, relating the history of how “reproductive justice” originated in the U.S. in 1994, and quoted numerous publications by Ross. This report was published in November 2022, and in the year since the previous commission report, the U.S. Supreme Court overturned the 1973 *Roe v. Wade* decision that made abortion legal throughout the country. The report makes note of the decision, expressing concern that “black and brown people” and those in poverty will be most affected, as well as raising the alarm that it will have an international effect:

The Commission remains concerned about the effects of this decision, as it fears it will only increase the number of unsafe abortions and result in more maternal deaths. It will likely strengthen anti-abortion and conservative movements seeking to restrict progress on sexual and reproductive rights worldwide.<sup>26</sup>

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Like the outcome of the Nairobi Summit, the reports of the High-Level Commission are not binding, but they do have an effect within the UN system, especially in those agencies and bodies that are not governed on the basis of consensus among member states. Just as the Commission saw the utility of “reproductive justice” as it originated in the U.S. as a framework

that would resonate in the midst of twenty-first century identity politics and racial tensions at the international level, it also has the potential to be a two-way street, channeling international ideas about the nature of human rights back to the U.S.

As Ross said at the 2020 UNFPA-sponsored event, “reproductive justice” always had an eye toward international human rights frameworks, especially as it was coined during the lead-up to the ICPD in Cairo.

While the U.S. is famously reluctant to ratify binding international human rights treaties, one treaty the U.S. has ratified is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). When the U.S. faced its periodic review by the Committee on the Elimination of Racial Discrimination (CERD), the committee expressed “deep concern” about the Supreme Court ruling and urged the U.S. to “provide safe, legal and effective access to abortion in accordance with the State party’s international human rights obligations.”<sup>27</sup> Not only does the treaty include no mention of abortion (or even “reproductive health” or other euphemistic terms), it remained until recently one of the very few treaty bodies that had not wildly exceeded its mandate by routinely pressuring countries to liberalize their abortion laws. This seems likely to change; CERD has started the process of drafting a forthcoming general recommendation on racial discrimination and the right to health.

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The committee expressed “deep concern” about the Supreme Court ruling and urged the U.S. to “provide safe, legal and effective access to abortion in accordance with the State party’s international human rights obligations.”

At an August 2022 meeting to discuss the proposed recommendation, numerous pro-abortion organizations were in attendance, and the UN’s official summary of the meeting summarized their position: “Abortion access was an integral component of public health care, and legal barriers to abortion should be removed.”<sup>28</sup> One such organization was called “Partners for Reproductive Justice.” It was, in fact, the organization long known as Ipas, which claims to have had a “singular focus” on “expanding access to high-quality abortion care around the world.” In January 2022, the organization rebranded itself to reflect its “commitment to global reproductive justice.”<sup>29</sup> Unlike the other abortion-promoting organizations that rebranded in the wake of allegations of racism, this appears to have been more of a voluntary, strategic move. Nevertheless, it aligns with the growing transnational uptake of the “reproductive justice” concept, particularly as a way to push the abortion agenda in the global South, which has historically been more resistant to what has been characterized as “ideological colonization” from wealthy Western countries and their allies.



## Conclusion

In the quarter-century since the Cairo conference, there remains no international human right to abortion. Nonetheless, those who claim that such a right does exist have effectively captured those parts of the UN system that operate without governmental oversight. In settings where consensus by the world's governments is needed, including the General Assembly, abortion remains highly controversial, and the same deeply entrenched positions exist today as they did in Cairo in 1994.

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It is important to remember that while the “SRHR” term has become all but ubiquitous in UN agencies, it has not been adopted by the General Assembly or agreed to in any treaty or resolution negotiated at a global level. Similarly, member states should reject any attempts to insert “justice” into any formulation involving sexuality, reproduction, health, or rights.

The uptake of “reproductive justice” by abortion advocates within the UN system and international civil society is the latest attempt to bypass the longstanding gridlock by appealing to language about racial solidarity, “leaving no one behind,” and prioritizing the needs of the most marginalized. However, due to its inexorable ties to abortion as a right, it cannot avoid leaving behind one vulnerable and marginalized class of persons.

She asserted that “there is no way to recognize a separate right to life for eggs, embryos, and fetuses and add them to the community of rights-bearing persons without subtracting pregnant women.”

Perhaps the clearest articulation of this fact comes from Lynn Paltrow, the founder of the U.S.-based pro-abortion organization Pregnancy Justice (formerly National Advocates for Pregnant Women). Paltrow decried “individuals, organizations and countries that attempt to interpret conventions that recognize the right to life as ones that apply to fertilized eggs, embryos, and fetuses as if they are completely separate and independent of the pregnant person’s body.” She asserted that “there is no way to recognize a separate right to life for eggs, embryos, and fetuses and add them to the community of rights-bearing persons without subtracting pregnant women.”<sup>30</sup> For Paltrow and other advocates for “reproductive justice,” such “justice” therefore necessitates subtracting the unborn child, reducing “justice” to a coldly zero-sum proposition.

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DEFINITIONS is published monthly by the Center for Family & Human Rights (C-Fam).

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New York, New York 10017

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