

International Family Planning and Reproductive Health Programs: When Will the U.S. Government Fulfill Its Commitments?

Executive Summary

International family planning and reproductive health programs funded by the United States provide health care choices that improve women's health and lives. These programs assist women in realizing their human right to health, particularly reproductive health, and their right to decide freely and responsibly the number and spacing of their children. For example, the U.S. Agency for International Development (USAID) population program provides assistance for voluntary family planning and reproductive health care, including support for essential health services for youth, maternal and child survival, and prevention of sexually transmissible infections (STIs), including HIV/AIDS. However, U.S. support for these desperately needed programs has been inconsistent, insufficient, and mired with burdensome, offensive restrictions. Since 1995, Congress has significantly reduced funds for international family planning and reproductive health programs. Even the high-water mark of funding for family planning and reproductive health in fiscal year 1995 was appallingly deficient relative to both the tremendous need for such services and the size of the U.S. budget as a whole.

The Center for Reproductive Rights urges the U.S. government to cease its continued attempts to cut and restrict funding for international family planning assistance, which provides indisputable benefits to women and children. The United States must support a dramatic increase in family planning assistance funding to:

- promote women's and children's health around the globe;
- maintain the role of the United States in the development and promotion of human rights;
- comply with U.S. law governing human rights and foreign aid; and
- abide by the United States' international commitments.

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I. Reproductive Rights Are Human Rights

Reproductive rights are well established under international law. As articulated in various international human rights treaties, reproductive rights include the right to health, the right to family planning, the right to reproductive self-determination, and the principle of non-discrimination, which ensures that reproductive health-care services are equally provided to all women. Therefore, lack of access to family planning and reproductive health services and information constitutes a violation of human rights.

Although the U.S. has historically been a leader in promoting international human rights treaties, including those that encompass reproductive rights, the U.S. government's current lack of commitment to assistance for international family planning programs undermines progress in making these rights a reality for women around the world. Even though international human rights law does not legally obligate governments to ensure that citizens of other countries have access to family planning and reproductive health services, donor governments continually have acknowledged the moral imperative to do so, and have incorporated this commitment into domestic laws and policies.¹

A. HUMAN RIGHTS TREATIES SUPPORTING REPRODUCTIVE RIGHTS

International human rights treaties adopted and widely ratified by nations around the world have contributed to the development of reproductive rights as basic human rights. The most pertinent categories of human rights, as protected in the instruments discussed below, are: (1) the right to health, including reproductive health;² (2) the right to reproductive self-determination,³ including the right freely and responsibly to determine the number and spacing of one's children;⁴ and (3) the right to be free from gender discrimination in all spheres of life.⁵

The right to family planning and health was first articulated in the Universal Declaration of Human Rights (Universal Declaration), which was adopted by the United Nations General Assembly, with strong support from the U.S., shortly after World War II.⁶ The right to health, including the right to family planning, was refined in subsequent human rights treaties that have been adopted by the international community. The four treaties most broadly relevant are: the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant),⁷ the International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant),⁸ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention),⁹ and the Convention on the Rights of the Child (Children's Rights Convention).¹⁰ The Civil and Political Rights Covenant was ratified by the United States in 1992. The others have been held up in the U.S. Senate by the same anti-family planning forces that seek to limit U.S. support for international family planning, yet these treaties have been ratified by the vast majority of nations and are important because they create binding legal obligations to aid in making reproductive rights a reality for women and men.¹¹

Reproductive rights, as outlined by these treaties, require governments to refrain from interfering with the individual's reproductive autonomy (for example, through either coercive pro-natalist or anti-natalist policies), and seek to ensure against others' interference with it. A government's refusal to enact a legislative and policy framework to facilitate access to reproductive health information and services also constitutes a governmental violation of this right, specifically against those who lack the information and economic means to exercise their rights.

1. United Nations Charter

The UN Charter lays the conceptual foundation for the development of international human rights law. Articles 55 and 56 of the Charter establish the basic obligations to which UN member nations have agreed, including the promotion and "universal respect for, and observance of ... human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."¹² By adhering to this multilateral treaty, the U.S. government has undertaken the obligation to take action in cooperation with the UN to promote "solutions of international economic, social, health, and related problems."¹³

2. Universal Declaration of Human Rights

The Universal Declaration¹⁴ is regarded as the primary human rights instrument from which later human rights treaties are derived, and it is binding on all nations.¹⁵ The Universal Declaration recognizes the right of each individual to health, as well as women's right to special protection and care in connection with their roles as mothers.¹⁶ In addition, several other provisions are implicated when access to family planning services and information is lacking, including the individual's right to privacy,¹⁷ the right to marry and to found a family on a basis of equality,¹⁸ and the right to freedom from discrimination on the basis of sex.¹⁹ These provisions all underpin later conceptualizations of reproductive rights.²⁰

The Universal Declaration contains a non-discrimination provision which provides that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²¹ Thus, the Universal Declaration establishes for women the same rights to health, to found a family, and to privacy in making decisions concerning their lives free of government intrusion as those enjoyed by men. The Universal Declaration provides that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized," which commits the U.S. government to do its part internationally to ensure these rights and freedoms.²²

3. International Human Rights Covenants

The Economic, Social and Cultural Rights Covenant and the Civil and Political Rights Covenant,²³ both adopted in 1966, further secure the rights articulated in the Universal Declaration. The covenants enumerate the rights to health and family planning ser-

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vices and information, as well as the rights to liberty, autonomy, and privacy.²⁴ In addition, the covenants recognize the right to be free from discrimination on the basis of sex and race.²⁵

A) ECONOMIC, SOCIAL AND CULTURAL RIGHTS COVENANT

Under the Economic, Social and Cultural Rights Covenant, nations recognize the right of all people to enjoy the highest attainable standard of physical and mental health.²⁶ The same article also states that in working for the achievement of the right to health, nations must take steps to reduce the rates of stillbirth and infant mortality for the healthy development of the child.²⁷ In addition, the Economic, Social and Cultural Rights Covenant commits governments to “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race ... and sex.”²⁸ Thus, the covenant’s provisions encompass the right of women to health services and information to prevent unintended pregnancies that could jeopardize their physical or psychological well-being.

The Economic, Social and Cultural Rights Covenant also articulates the obligation of national governments to take steps “to the maximum of ... available resources, with a view to achieving progressively the full realization of the rights recognized.”²⁹

B) CIVIL AND POLITICAL RIGHTS COVENANT

The Civil and Political Rights Covenant, ratified by the U.S. in 1992,³⁰ protects the rights to individual liberty,³¹ privacy,³² and the right to marry and to found a family,³³ as well as the right to life.³⁴ It also provides that all of the rights recognized in the covenant are to be accorded without distinction on the basis of race, sex, social origin, or other status.³⁵ The individual’s right to reproductive self-determination has been explicitly linked to the Civil and Political Rights Covenant’s enumeration of these rights.³⁶

4. CEDAW Convention

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) obligates nations to ensure equality of rights of women and men, to eliminate discrimination against women, and to “take ... all appropriate measures ... to ensure the full development and advancement of women.”³⁷ Nations that are parties to the Convention are obligated to take steps to ensure that as many women as possible have access to information and services on family planning.

Among other provisions, the CEDAW Convention provides:

Article 10

States Parties shall... ensure... [a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 16.1

States Parties shall... ensure, on a basis of equality of men and women... [t]he same rights to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights.

The CEDAW Convention recognizes the threat that unintended pregnancies pose to women's health and lives, as well as to their equal status in other spheres of life. It also recognizes that pervasive cultural and social norms often deny women's equality within marriage and in family relations, and subject women to severe pressure to produce large numbers of children—often preferably male children. The Convention addresses many aspects of inequality in marriage and family relations, and specifically endorses women's equality in family planning and reproductive health matters.³⁸

Since the adoption of the CEDAW Convention in 1979, the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee), which monitors implementation of the CEDAW Convention, has issued a number of general recommendations on measures that governments should take to fulfill their obligation to fully implement this treaty. In 1994, the CEDAW Committee issued its General Recommendation No. 21 on Equality in Marriage and Family Relations,³⁹ which provides the following guidance regarding nations' obligations under Article 16(1)(e), pertaining to decision-making about the number and spacing of children:

Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services.⁴⁰

In 1999, CEDAW adopted its General Recommendation No. 24 on Women and Health.⁴¹ This recommendation focuses on women's "access to health services,

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throughout the life cycle, particularly in the areas of family planning [and] pregnancy,” and it discusses governments’ obligations under the CEDAW Convention to fulfill these rights by taking “appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources” related to women’s right to health.⁴² It emphasizes that “[s]tudies such as those which emphasize ... the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for nations of possible breaches of their duties to ensure women’s access to health care.”⁴³

5. Convention on the Rights of the Child

The Convention on the Rights of the Child (Children’s Rights Convention) obliges nations to respect and ensure the human rights of children and adolescents under age eighteen.⁴⁴ The Children’s Rights Convention also states that its provisions are to be applied without discrimination on the basis of sex, race, social origin, or other status.⁴⁵

When individuals lack access to services and information that could enable them to prevent early or unintended pregnancies, their existing children can suffer. Such a lack of access can severely strain individuals’ ability to provide adequately for their children; early or unintended pregnancies also increase the risk of women dying or suffering health consequences. Recognizing these realities, the Children’s Rights

Convention provides that nations shall take appropriate measures “to develop preventive health care, guidance for parents and family planning education and services.”⁴⁶

The Children’s Rights Convention also obligates national governments to “recognize the right of the child to the enjoyment of the highest attainable standard of health,” and to “strive to ensure that no child is deprived of his or her right of access to ... health care services.”⁴⁷ Therefore, adolescent girls have a right to access family planning services, because such services are part of comprehensive reproductive health care.

Without family planning, adolescent girls who are sexually active—regardless of marital status and whether under coercive or abusive circumstances or not—are at risk for early pregnancy. In addition, the Children’s Rights Convention provides that “[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.”⁴⁸

The right to privacy has been linked to decisions concerning whether or not to bear children.⁴⁹ When a girl under age 18 is at risk for pregnancy, the Children’s Rights Convention provision on privacy⁵⁰ should protect her right to access confidential family planning services and information.⁵¹ Furthermore, the Children’s Rights Convention also addresses governments’ obligation to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.”⁵²

B. OTHER HUMAN RIGHTS INSTRUMENTS SUPPORTING REPRODUCTIVE RIGHTS

Over the past 30 years, the world community has convened several conferences under UN auspices to discuss numerous social issues such as development, population, and women's human rights. At the culmination of each conference, the participating nations issued a document reflecting their consensus and setting forth an agenda and a set of goals that nations, individually and together, could strive to achieve. While such documents are not technically binding sources of international law, they reflect evolving international consensus on concrete measures to meet human rights obligations and provide benchmarks for the standards articulated.

During the 1990s, a series of conferences—on issues including human rights, population and development, and women's rights⁵³—recognized and reaffirmed reproductive rights, including the right to family planning information and services, as critical both for advancing women's human rights and for promoting development.⁵⁴ Among the participating nations linking reproductive rights to a broader notion of human rights was the United States, which made commitments of political will and resources toward realizing and securing reproductive rights. While these conferences recognize these rights as human rights, they have expressly articulated the need for international cooperation, including technical assistance for reproductive health care and family planning to assist low-income countries in improving citizens' lives. The U.S. has played a critical role in advancing reproductive rights through these conferences, and has repeatedly expressed its commitment to contributing resources to ensure realization of these rights in low- and middle-income countries.

These conferences built on principles delineated at earlier conferences—dating back to the Teheran Conference on Human Rights in 1968,⁵⁵—affirming the right of individuals to determine the number, spacing, and timing of their children. Such principles reflect the championing by women's advocates of women's ability to control their fertility as a fundamental component of the expansion of women's equality and participation in society.⁵⁶ In 1993, the UN Second World Conference on Human Rights, held in Vienna, reaffirmed a woman's right to accessible and adequate health care and the widest range of family planning services on the basis of equality between women and men; the Vienna Declaration also called for equal access to education at all levels.⁵⁷ The U.S. joined the international community in its support of the principles articulated at this conference.

The 1994 International Conference on Population and Development held in Cairo, Egypt (ICPD or Cairo Conference), and the 1995 Fourth World Conference on Women held in Beijing, China (Beijing Conference) dealt in greatest depth with the pressing need for governments to address the reproductive rights of women. At both of these conferences, and at their five-year reviews, the international community and the U.S. unequivocally endorsed reproductive rights as human rights.

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1. International Conference on Population and Development

At ICPD in 1994, the U.S. and most of the other 179 participating governments endorsed reproductive rights as integral to human rights.⁵⁸ This commitment was stated in the ICPD Programme of Action (the Cairo Programme) that emerged from the conference.

The Cairo Programme was revolutionary in its repudiation of the traditional “family planning” assistance model, which focused on the provision of inexpensive contraception; instead the Cairo Programme embraced a “reproductive health” model centered on the provision of comprehensive reproductive health care to all and the empowerment of women to ensure their basic human right to reproductive self-determination. An entire chapter of the Cairo Programme is devoted solely to reproductive rights—including the right to reproductive health care—which are defined as follows:

[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.⁵⁹

Paragraph 7.2 of the Cairo Programme provides that individuals’ right to reproductive health care includes the right of access to:

safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for the regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.⁶⁰

Paragraph 7.3 states that the principles set forth above “should be the fundamental basis for government and community-supported policies and programmes in the area of reproductive health, including family planning.”⁶¹

The Cairo Programme closely examines the implications of reproductive rights and the consequences of governments’ failure to provide women with the means to exercise the right to space their children and plan the size of their families.⁶² In particular, it concludes that maternal health as well as child health and survival are imperiled by the inability of women to space their children and their inability to obtain health services, particularly reproductive health care.⁶³

The ambitious agenda set by the Cairo Programme led to an unprecedented agreement among participants that spending on family planning assistance, reproductive health care, and related social sector initiatives needed to increase. The U.S. government was a key leader in orienting international population assistance toward an emphasis on providing quality affordable reproductive health services within the framework of women's human rights. Moreover, USAID has begun to incorporate the Cairo Programme's principles in its own programs and initiatives, and has assisted low-income countries in implementing the Cairo Programme.⁶⁴

2. UN Fourth World Conference on Women

The Beijing Conference in 1995 echoed, and in some cases built upon, the ICPD's resounding affirmation of the urgent need to address women's right to reproductive and sexual health.⁶⁵ The 189 governments attending the Beijing Conference generally endorsed and extended the Cairo Programme's principles regarding reproductive health⁶⁶ and reproductive rights⁶⁷ in the Beijing Declaration and the Platform for Action (jointly, the Beijing Platform). In this document, governments expressed their conviction that "[t]he explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment."⁶⁸ The right to reproductive and sexual health for women, according to the Beijing Platform, includes:

*their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.*⁶⁹

The Beijing Platform links reproductive rights to women's overall status: "In most countries, the neglect of women's reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic and political empowerment. The ability of women to control their own fertility forms an important basis for the enjoyment of other rights."⁷⁰ Thus, the Beijing document recognizes women's health, including reproductive health and family planning, as one of a number of intersecting and complementary human rights that determine whether women's equality, equity, and empowerment exist in a given society. The Beijing Platform also directs governments to enable women to make decisions concerning their health and lives, thus encouraging less paternalistic and patriarchal models for providing health care.

The U.S. played a leadership role at the Beijing Conference and has since articulated its commitment to incorporate the Beijing Platform principles into U.S. foreign policy.⁷¹

3. Cairo Plus Five

In 1999, the international community undertook a five-year review and affirmation of the reproductive rights principles articulated at the 1994 Cairo Conference (a meeting known as Cairo+5). The UN General Assembly adopted by consensus an ambitious 106-paragraph document entitled "Key actions for the further implementation of the Programme of Action of the

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International Conference on Population and Development" (Cairo+5 Key Actions Document).⁷² During the Cairo+5 review process, governments, UN agencies, and NGOs articulated the view that while important progress had been made in the five years since Cairo regarding reproductive health and rights, much remained to be done. The international community showed unprecedented support for coalescing the Cairo principles into concrete advances in women's lives.

The Cairo+5 Key Actions Document contains important provisions identifying strategies that address the sexual and reproductive health needs of adolescents.⁷³ It incorporates crucial steps to reduce maternal mortality and morbidity, particularly by increasing women's access to essential obstetric care and by ensuring that health providers are trained and equipped to provide safe abortion services where abortion is legal.⁷⁴ It also builds on Cairo's focus on voluntarism and non-coercion in the implementation of family planning services.⁷⁵ In sum, the document obligates governments to enhance efforts to address the human rights of women and girls as expressed in Cairo, and it incorporates a human rights approach in addressing many reproductive health issues.⁷⁶ The implementation strategies included in the document were designed to promote the efforts of the international community to advance the reproductive health and rights of women and girls.

Underscoring this renewed commitment to the advancement of reproductive rights, then Undersecretary of State Frank E. Loy made the following statement to the UN General Assembly on the five-year review:

The population and development challenge will not be solved until women are afforded equal opportunity to education, jobs, health care, legal rights and political participation. When women can make the decisions that affect their lives, they tend to have smaller, healthier and better-educated families. In turn, access to family planning and reproductive rights is an important component of women's self-determination. Without the ability to plan and space her children, a woman may find it difficult, if not impossible, to finish her education or plan for her future.⁷⁷

4. Beijing Plus Five

In June 2000, delegates from more than 180 countries gathered in New York for a Special Session of the UN General Assembly to review implementation of the 1995 Beijing Platform (a meeting known as Beijing+5). Beijing+5 was characterized by progressive positions on women's human rights, including reproductive rights, as governments reaffirmed their commitment to the Beijing Platform and pledged to undertake additional strategies and actions to speed implementation.⁷⁸ The Beijing+5 session produced a pledge by the world's governments to expedite and broaden the implementation of the Beijing Platform, which was enshrined in an official Review Document.⁷⁹

The Review Document focused on a number of fundamental reproductive rights issues, in some cases echoing or building on agreements reached during Cairo+5, and directed governments to "[r]eview and revise national policies, programmes and legislation to imple-

ment” the document, particularly “the specific benchmarks” related to maternal mortality, provision of the widest achievable range of safe and effective contraception, and reduction of young people’s risk of HIV/AIDS.⁸⁰

The call to reduce maternal mortality that characterized Cairo+5 was echoed in the Review Document, directing governments to “[e]nsure that the reduction of maternal morbidity and mortality is a health sector priority and that women have ready access to essential obstetric care, well-equipped and adequately staffed maternal health-care services, skilled attendance at delivery, [and] effective referral and transport to higher levels of care. . . .”⁸¹

The Review Document reaffirms governments’ commitment to design and implement programs with the full involvement of adolescents to ensure their access to sexual and reproductive health services, education, and information. The provision makes reference to “their right to privacy, confidentiality, respect and informed consent”⁸² and affirms parents’ responsibilities, rights, and duties to provide direction and guidance in the child’s exercise of the rights recognized in the Children’s Rights Convention and the CEDAW Convention, therefore “ensuring that in all actions concerning children, the best interests of the child are a primary consideration.”⁸³

The consensus of the community of nations has affirmed that reproductive rights are human rights. The United States’ inadequate foreign aid for family planning and reproductive health, and the existing restrictions on such aid, undermine the leadership role the U.S. assumed at these international conferences. Inadequate funding has grave implications for the lives and health of women and children and further damages the credibility of the U.S. in its international commitments.

II. The Promotion of Human Rights is a Central Tenet of U.S. Foreign Policy

*And repressed people around the world must know this about the United States ... we will always be the world’s leader in support of human rights.*⁸⁴

— President George W. Bush

President George W. Bush has reaffirmed the longstanding U.S. commitment to human rights through foreign policy. In the aftermath of World War II, the U.S. led the movement, through the United Nations, to establish a regime of rights that would extend to every human being.⁸⁵ Article 1 of the UN Charter declared that one of the purposes of the UN is to achieve international cooperation in “promoting and encouraging respect for human rights and for fundamental freedoms for all.”⁸⁶ As described above, the international community—with the United States at the helm—has definitively integrated reproductive rights into various human rights treaties and into the final consensus documents of numerous UN-sponsored international conferences.

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The current deficiencies and limitations of funding for international family planning programs violate principal tenets of U.S. law governing human rights and foreign aid. Although Congress and the President have broad discretion to determine whether to provide foreign assistance and to whom, this discretion must be consistent with Section 2304(a)(1) of the Foreign Assistance Act, which provides that the U.S.:

*shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world.... Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.*⁸⁷

Congress also has recognized that population policies are an aspect of a nation's human rights record. For example, each year, pursuant to Section 2304(b) of the Foreign Assistance Act, the Secretary of State is required to prepare a report evaluating the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance.⁸⁸ These reports are required to “include information on practices regarding coercion in population control, including coerced abortion and involuntary sterilization.”⁸⁹ Although this provision of the Foreign Assistance Act does not go far enough in recognizing the range of human rights issues implicated by a government's provision of reproductive health services, the mandate it articulates is premised on the view that government actions in this arena dramatically affect human rights throughout the world.⁹⁰

*I think [human rights] derives from our values. It derives from the God-given rights that all of us have. And you can see it in our own founding documents. So—the rights of men and women to live in peace, to live in freedom, the rights they enjoy to pursue their own destiny I think have to be part of the essential value system that we use within our own nation and that we take to other nations as an example of the way one should behave and how one should treat one's citizens.*⁹¹

— Secretary of State Colin Powell, confirming the dedication of the U.S. government to the protection of human rights

The United States' insufficient funding and restrictions on foreign aid for family planning not only contravene a “principal goal of the foreign policy of the United States,”⁹² these actions also severely curtail the ability of low-income nations around the world to comply with international human rights obligations. These legal obligations promote and protect their citizens' rights to health, family planning, and reproductive self-determination. By inhibiting the ability of these nations to protect human rights, the United States government directly contradicts the spirit of Section 2304(a)(1) of the Foreign Assistance Act, which seeks to promote increased observance of internationally recognized human rights by other nations. On the other hand, an increase in foreign aid for family planning and reproductive

health care would enable the U.S. to fulfill its role—as stated by President George W. Bush—“one of the great bastions of human rights.”⁹³

III. The U.S. Has Made International Commitments to Reproductive Rights

*[F]amily planning is a vital international health issue. In developing countries, among women of reproductive age, maternity-related complications are the leading cause of death. As many as one in every four of these deaths could be prevented through family planning. Some say this is not our problem, and that others will meet the need if we walk away. But—when we are at our best—Americans don’t walk away from those who are in urgent need. And we certainly should not walk away from the millions of women around the world who would benefit from greater access to family planning.... Because when women have the knowledge and power to make their own decisions, whole societies benefit.*⁹⁴

— Former Secretary of State Madeleine Albright,
World Health Day 2000, affirming the United States’
dedication to international family planning programs.

The U.S. began its family planning assistance program over 30 years ago, recognizing “the interrelationship between... population growth, and... development and overall improvement in living standards in developing countries.”⁹⁵ In a bipartisan effort, Congress expanded the Foreign Assistance Act to authorize the President to provide financial assistance for voluntary family planning and health programs.⁹⁶ The U.S. family planning assistance program has contributed significantly to increasing the use of modern contraceptive methods from under 10 percent in the 1960s to 50 percent today, helping to reduce the number of high-risk pregnancies and abortions and saving the lives of hundreds of thousands of women.⁹⁷

In supporting the Cairo and Cairo+5 Conferences, the U.S. and other participants recognized the critical role that international assistance, particularly substantial financial and technical support, plays in achieving the population and development goals of the Cairo Programme.⁹⁸ In particular, Paragraph 14.11 provides that:

*The international community should strive for the fulfillment of the agreed target of 0.7 per cent of the gross national product for overall official development assistance and endeavour to increase the share of funding for population and development programmes commensurate with the scope and scale of activities required to achieve the objective and goals of the present Programme of Action. A crucially urgent challenge to the international donor community is therefore the translation of their commitment to the objective and quantitative goals of the present Programme of Action into commensurate financial contributions to population programmes in developing countries and countries with economies in transition.*⁹⁹

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The Cairo Programme estimated that approximately \$17 billion would be required in the year 2000 to meet the need for international family planning and reproductive health services, including \$5.7 billion from donor countries.¹⁰⁰ The necessary funding levels increase to \$18.5 billion in 2005, \$20.5 billion in 2010 and \$21.7 billion in 2015.¹⁰¹ Compared to the estimated cost of the V-22 Osprey military airplanes purchased by the U.S. government, expected to cost approximately \$40 billion,¹⁰² these funding levels should be readily attainable. However, aggregate donor-country contributions have stagnated at around \$2 billion per year, significantly below the donor target of \$5.7 billion needed to provide sufficient resources to low- and middle-income countries in the year 2000.¹⁰³

As in Cairo, the international community attending the Beijing and Beijing+5 Conferences recognized the need for foreign assistance for low-income nations and urged governments to pledge their financial and technical resources to low-income countries, particularly in Africa, to implement the Beijing Platform.¹⁰⁴ Also as in Cairo, the Beijing Platform specifically urges industrialized nations to commit 0.7 % of their gross national product (GNP) for official development assistance.¹⁰⁵

Consistent with these provisions, at each conference the United States pledged its continued financial support for reproductive health care, including voluntary family planning. In 1994, then Undersecretary of State for Global Affairs Timothy Wirth stated:

*[A] determined cooperative effort must be launched to make good quality voluntary family planning and the full range of reproductive health services universally available early in the next century.... In the North, a commitment is necessary to help provide financial wherewithal to realize an integrated global population strategy.... In the South, a corresponding commitment is needed to make family planning, health care and women's empowerment among the highest national priorities. Everywhere we must have and we must generate the political will at the highest levels of government to live up to these responsibilities.*¹⁰⁶

Former Secretary of State Madeleine Albright, then U.S. Permanent Representative to the United Nations, reiterated the need for cooperation and commitment at the 1995 Beijing Conference:

*We think women and men should be able to make informed judgments as they plan their families.... We have come to Beijing to make further progress toward [this goal]. But real progress will depend not on what we say here, but on what we do after we leave here. The Fourth World Conference is not about conversations; it is about commitments.*¹⁰⁷

In a 1999 statement to the United Nations General Assembly during Cairo+5, then Undersecretary of State Frank E. Loy stated:

*The U.S. will continue to work to expand access to, and quality of, family planning and other reproductive health services. Vital to this objective is insuring that women and men have the widest possible choice of modern contraceptive methods available to them. We will also work to improve further the quality of care in reproductive health services and to strengthen the linkages between reproductive health and child survival programs.*¹⁰⁸

After Beijing+5, the U.S. government again gave its pledge to fulfill the objectives of the Beijing Conference through USAID:

*In September 1995, the United States was one of 189 countries to participate in the UN Fourth Conference on Women, held in Beijing, China, and to adopt, unanimously, the Beijing Declaration and Platform for Action.... Like many of the signatories to the Platform for Action, the United States undertook dual responsibilities. All countries pledged to pursue to the best of their abilities the Platform's goals in their national laws and public policies. As a major donor country with substantial resources to assist the development of poorer countries, the United States also committed to integrating the objectives of the Beijing consensus into its foreign assistance programs.*¹⁰⁹

IV. The U.S. Has Failed in its Commitments to Reproductive Rights

A. INSUFFICIENT FUNDING

In recent years, the U.S. government has faltered in its commitment to the principles of reproductive rights by failing to provide sufficient resources for official development assistance and the international population assistance program. Although the U.S. has been a leader in family planning assistance since the 1960s, it is currently failing to provide its share of needed funding. Because of its size and wealth, the U.S. remains one of the largest bilateral donors to international family planning programs;¹¹⁰ however, the U.S. ranks last out of 22 major donors in its contribution relative to gross national product.¹¹¹

The amount of the U.S.'s official development assistance falls far short of the 0.7 % of GNP endorsed by the international community. In fiscal year 1999, the U.S. provided a mere 0.1 % of its GNP for official development assistance,¹¹² a figure that has actually declined since then despite the aforementioned international pledges to meet higher goals. Despite commitments made by the U.S. at the major international fora, the U.S. Congress imposed harsh limits and decreased the availability of funds for the U.S. international family planning assistance program. Not only has the U.S. failed to meet international standards regarding the amount it contributes in official development assistance, but it has violated its pledge to increase funding for family planning and development.

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The United States has seriously wavered in its commitments to voluntary family planning and reproductive health since 1994. Appropriations for USAID family planning assistance plummeted from a high of \$541.6 million in fiscal year (FY) 1995 to \$356 million in FY 1996. Five leading U.S. research organizations conservatively estimated that this 35% reduction in funding alone resulted in 4 million unplanned pregnancies, 1.6 million abortions, 8,000 maternal deaths, and 134,000 infant deaths due to increased high-risk births.¹¹³ The funding levels for fiscal years 1997-1999 increased slightly to \$385 million and again fell to \$372.5 million in FY 2000. The level rose to \$425 million for FY 2001, but there are currently indications that high-level personnel within the Administration would like to cut funding once again. In the face of tremendous poverty throughout the world, the U.S. foreign assistance expenditures as a whole encompass less than one half of one percent of the total U.S. budget; family planning and reproductive health programs comprise only a small fraction of that amount. Congress must take the lead in increasing funding levels.

B. UNDEMOCRATIC RESTRICTIONS

Both Congress and the Administration have introduced harsh and burdensome rules governing the distribution of family planning assistance funds since the 1970s. In 1973, the Foreign Assistance Act was amended by a provision, known as the Helms Amendment, which prohibits the use of federal money “for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.”¹¹⁴ This provision has been interpreted to prohibit U.S. funding for all abortions overseas except those to save the life of a woman or in cases of rape or incest; however, according to USAID officials, the U.S. has not provided any funding for abortions, even under those exceptions.¹¹⁵

In 1984, the Reagan Administration imposed the so-called “Mexico City Policy,” also known as the “global gag rule,” which prohibited overseas non-governmental organizations from receiving U.S. funds if, with their own funds and in accordance with the laws of their own countries, they “perform[ed]” or “actively promote[d] abortion as a method of family planning.”¹¹⁶ Further, the Reagan Administration issued extremely restrictive regulations that interpreted the phrase “abortion as a method of family planning” to mean all abortions, except when performed in cases of rape, incest, or when the life (but not health) of the woman would be endangered if the fetus was carried to term.¹¹⁷

The Clinton Administration ended the global gag rule in 1993 by executive order.¹¹⁸ However, U.S. congressional foes of family planning and abortion rights continued to seek ways to create obstacles for U.S. family planning and reproductive health programs. As noted above, in FY 1996, Congress cut funds for family planning assistance by 35 % and imposed complex spending restrictions, permitting the release of funds only in small monthly installments (known as “metering”).

In FY 1997, Congress enacted unprecedented and cumbersome rules governing the release of USAID family planning and reproductive health funds. Before such funds could be released, the president was required to make a finding, and Congress to approve it, that delaying a metered release of funds until July 1997, rather than releasing funds in March 1997, would have a negative impact on the proper functioning of the family planning program.¹¹⁹ President Clinton made such a finding and issued an accompanying report.¹²⁰ By a narrow margin, Congress approved of the President's finding, and funds were released in March rather than July 1997. In FY 1998 and FY 1999, Congress again delayed release of funds through metering, this time without provisions for considering presidential findings.¹²¹

These ultra-conservative members of Congress inappropriately held payment of U.S. arrears on its United Nations dues hostage to versions of the global gag rule by attaching riders to bills authorizing the dues payment. In 1999, through a "one-year deal," they temporarily re-imposed a modified version of the restriction, to which President Clinton agreed in order to avoid loss of the U.S. vote in the UN General Assembly. In 2000, Congress and the Clinton Administration eliminated the global gag rule from the FY 2001 appropriations legislation, but withheld the release of international family planning funding until February 15, 2001, allowing the new president to decide whether to re-impose the policy.

On January 22, 2001, President George W. Bush re-imposed the global gag rule on the USAID population program. Like the "Mexico City Policy," this gag rule restricts non-governmental organizations that receive USAID family planning funds from using their own, non-U.S. funds to provide legal abortion services, lobby their own governments for abortion law reform, or even provide accurate medical counseling or referrals regarding abortion. Additionally, USAID and reproductive health organizations must now expend resources in overseeing the requirements under the global gag rule, thus even further diverting resources away from the provision of family planning and reproductive health services.

Opponents of international family planning and related health programs continue to work for cuts and restrictions on funding. The cuts and restrictions imposed during recent years, and the threats to extend such measures into the future, continue to cause a significant increase in unplanned pregnancies, abortions, maternal and infant deaths, transmissions of HIV and other sexually transmitted infections.¹²²

V. Conclusion

The U.S. has played a dual role in the fortunes of reproductive rights worldwide. That irony was articulated by Andrew Natsios, President Bush's Administrator for USAID:

Because of our nation's efforts, we have ... made great progress in addressing fam-

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*ily health, reducing maternal deaths last year and abortions. More than fifty million couples in the developing world make more educated and informed decisions about having children and taking care of them as a direct result of USAID-supported programs. But again, our work is far from complete.*¹²³

One can look at the words of officials such as Mr. Natsios, Secretary of State Colin Powell, and President Bush, on the one hand, and the policies their administration espouses on the other, and be struck by the disparity. The U.S. has played a key role in the acceptance of reproductive rights as part of the rubric of basic human rights. Now the Bush Administration and Congress must move from hypocritical rhetoric to concerted action in fully supporting and expanding the U.S. international family planning and reproductive health programs by eliminating burdensome restrictions on those programs. To promote and protect the international human rights, including the rights to health, family planning, and reproductive self-determination of millions of women around the world, we urge Congress to revitalize U.S. leadership in international reproductive rights through a significant increase in funding—without burdensome restrictions—for family planning and reproductive health assistance.

Endnotes

¹ This moral imperative is reflected in the United Nations Charter, which provides:

Article 55. With a view to the creation of conditions of stability and well-being that are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56. All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Charter of the United Nations, 59 Stat. 1031 (U.S.); T.S. 993; 3 Bevans 1153 (1945) (signed at San Francisco on June 26, 1945; *entry into force* on Oct. 24, 1945), art. 55, 56 [hereinafter UN Charter] (emphasis added). Furthermore, the Universal Declaration of Human Rights pro-

vides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family, including... medical care and necessary social services...”; and that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” See Universal Declaration of Human Rights, G.A. Res. 217A (III), UN GAOR, 3rd Sess., Pt. 1, at 71, U.N. Doc. A/810 (1948) (*adopted* Dec. 10, 1948), art. 25, 28 [hereinafter Universal Declaration].

² See Universal Declaration, *supra* note 1, art. 25. The Economic, Social and Cultural Rights Covenant provides that “the States Parties... recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” See International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3, art. 12 (*entry into force* Jan. 3, 1976) [hereinafter Economic, Social and Cultural Rights Covenant]. See also Article 12 of the CEDAW Convention, which specifically refers to access to family planning and services related to pregnancy, confinement and the postnatal period and Article 24 of the Children’s Rights Convention. Convention on the Elimination of all Forms of Discrimination Against Women, *adopted* March 1, 1980, 1248 U.N.T.S. 13 (*entry into force* Sept. 3, 1981) [hereinafter CEDAW Convention]. See also

Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 24(3), G.A. Res. 44/25, 44 U.N.GAOR Supp. (No. 49), U.N. Doc. A/Res/44/49, 30 I.L.M. 1448 (1989) (*entry into force* Sept. 2, 1990) [hereinafter Children's Rights Convention].

³ See Rebecca J. Cook, Human Rights and Reproductive Self-Determination, 44 AM. UNIV. L. REV. 101, 123, 134-135 (1995).

⁴ This right was first articulated at the Teheran Conference in 1968. *Proclamation of Teheran, adopted by the International Conference on Human Rights*, Teheran, Iran 22 Apr. – 13 May 1968, Res. IX, U.N. Doc. A/CONF.32/41 (1968) [hereinafter Teheran Proclamation]. The CEDAW Convention provides that women have “[t]he same rights to decide freely and responsibly on the number and spacing of their children and means to enable them to exercise these rights.” CEDAW Convention, *supra* note 2, art. 16. This right implicitly includes the rights to education and information so as to be able to decide responsibly and freely. See Sandra Coliver, *The Right to Information Necessary for Reproductive Health and Choice Under International Law*, 44 AM. UNIV. L. REV. 1279, 1280 (1995).

⁵ This principle is reflected in an entire convention – the CEDAW Convention – whose preamble provides that “discrimination against women violates the principles of equality or rights and respect for human dignity.” CEDAW Convention, *supra* note 2, seventh clause.

⁶ Universal Declaration, *supra* note 1. This document affirms that “[m]en and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family,” *id.* at art. 16.1; that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family... including medical care... [and that] [m]otherhood and childhood are entitled to special care and assistance.” *Id.* at art. 25(1-2). Although not technically a legally binding treaty obligation, the Universal Declaration has attained a unique status and is regarded as “an obligation for the members of the international community.” *Introduction to the Annual Report of the Secretary-General on the Work of the Organization*, Sept. 1968, 23 GAOR, Supp. No. 1A (A/7201/Add.1), at 13, cited in Louis Henkin, et al., *INTERNATIONAL LAW* 607 (3d ed. 1993).

⁷ The International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, UN

GAOR, Supp. No. 16, at 52, U.N. Doc A/6316, 999 U.N.T.S. 171 (*entry into force* January 3, 1976) (U.S. deposit of instrument of ratification June 8, 1992) [hereinafter Civil and Political Rights Covenant].

⁸ Economic, Social and Cultural Rights Covenant, *supra* note 2, art. 12, which provides:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties...to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and infant mortality...; (d) The creation of conditions which would assure to all medical services and medical attention in the event of sickness.

⁹ CEDAW Convention, *supra* note 2, arts. 12, 16.

¹⁰ Children's Rights Convention, *supra* note 2. Article 24 states:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... (d) To ensure appropriate pre-natal and post-natal health care for mothers...

¹¹ Although the U.S. Senate has held up ratification of these treaties, they have received widespread support from both the United States government and from the international community. For example, the United States was active in drafting and is a signatory to the CEDAW Convention; and the Children's Rights Convention was *adopted* by unanimous consent in the UN General Assembly. American Bar Association, *INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE*, p. 269, 333(1998).

¹² UN Charter, *supra* note 1, art. 55(c).

¹³ *Id.* at art. 55(b). Article 56 of the UN Charter states: “All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

¹⁴ Universal Declaration, *supra* note 1.

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- ¹⁵ Thomas Buergenthal, *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* 29-30 (1988). Although not a binding treaty, some see the Universal Declaration as having given content to the UN Charter provisions on human rights to which all states are bound, therefore conferring on the Universal Declaration a binding character under international law. Others see the Charter and the Declaration as contributing to the development of a customary law of human rights, which is also binding on all states. See Louis Henkin, *THE AGE OF RIGHTS* 19 (1990).
- ¹⁶ Universal Declaration, *supra* note 1, art. 25.
- ¹⁷ *Id.* Article 12 provides that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...” *Id.* Numerous commentators have connected the right to privacy with the individual’s right to control his or her reproductive capacity. See e.g., Reed Boland, *Civil and Political Rights and the Right to Non-discrimination: Population Policies, Human Rights and Legal Change*, 44 *AM. UNIV. L. REV.* 1257, 1260-61 (1995).
- ¹⁸ Universal Declaration, *supra* note 1, art. 16.1.
- ¹⁹ *Id.* at art. 2.
- ²⁰ See the Center for Reproductive Rights, *REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS* 21, 33 (1999).
- ²¹ Universal Declaration, *supra* note 1, art. 2.
- ²² *Id.* at art. 28.
- ²³ United Nations High Commissioner for Human Rights, Treaty Bodies Database (visited March 15, 2000) <<http://www.unhchr.ch/tbs/doc.nsf/>>.
- ²⁴ Rebecca J. Cook, *International Protection of Women’s Reproductive Rights*, 24 *INT’L L. & POLITICS* 645, 653-54 (1992).
- ²⁵ Economic, Social and Cultural Rights Covenant, *supra* note 2, art. 2(2); see also Civil and Political Rights Covenant, *supra* note 7, art. 2(1).
- ²⁶ Economic, Social and Cultural Rights Covenant, *supra* note 2, art. 12(1).
- ²⁷ *Id.* at art. 12(2)(a).
- ²⁸ *Id.* at art. 2(2).
- ²⁹ *Id.* at art. 2(1).
- ³⁰ Civil and Political Rights Covenant, *supra* note 7.
- ³¹ *Id.* at art. 9(1).
- ³² *Id.* at art. 17(1).
- ³³ *Id.* at art. 23(2).
- ³⁴ *Id.* at art. 6(1). Other rights that have been linked to reproductive rights include the right to be free from torture and inhuman or degrading treatment and from medical or scientific experimentation without consent (art. 7) which can result in damage to health due to uninformed use of unsafe contraception. See Boland, *supra* note 17.
- ³⁵ See Civil and Political Rights Covenant, *supra* note 7, art. 2.
- ³⁶ HRC, General Comment 28, 2000, UN Doc. No. CCPR/C/32/Rev.1/Add.10. See also Cook, *supra* note 24, at 645.
- ³⁷ CEDAW Convention, *supra* note 2, art. 3.
- ³⁸ *Id.* at art. 5, 16(1)(e).
- ³⁹ CEDAW General Recommendation No. 21, Equality in Marriage and Family Relations, 13th Sess., ¶ 22 (visited March 15, 2000) <<http://www.unhchr.ch/tbs/doc.nsf/>>.
- ⁴⁰ *Id.* at ¶ 22.
- ⁴¹ CEDAW General Recommendation on Article 12: Women and Health, 20th Sess., 2 February 1999, U.N. Doc. C/1999/1/WG.II/WP.2/Rev.1 (visited March 15, 2000) <<http://www.unhchr.ch/tbs/doc.nsf/>>.
- ⁴² *Id.* at ¶¶ 2, 17.
- ⁴³ *Id.* at ¶ 17.
- ⁴⁴ Children’s Rights Convention, *supra* note 2, arts. 1, 2. Article 1 defines “child” as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. *Id.* at art. 1.
- ⁴⁵ *Id.* at art. 2(1).
- ⁴⁶ *Id.* at art. 24(2)(f).
- ⁴⁷ *Id.* at art. 24(1).
- ⁴⁸ *Id.* at art. 16(1).
- ⁴⁹ Sonia Correa and Rosalind Petchesky, *Reproductive and Sexual Rights: A Feminist Perspective in POPULATION POLICIES RECONSIDERED* 107-123 (Gita Sen, Adrienne Germaine, and Lincoln Chen, eds. 1994).
- ⁵⁰ Children’s Rights Convention, *supra* note 2, art. 16.
- ⁵¹ Center for Reproductive Rights, *IMPLEMENTING ADOLESCENT REPRODUCTIVE RIGHTS THROUGH THE CONVENTION ON THE RIGHTS OF THE CHILD* 3 (1999).
- ⁵² *Id.* art. 12(1).

- ⁵³ The conferences include the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992; the World Conference on Human Rights, held in Vienna in 1993; the International Conference on Population and Development, held in Cairo in 1994; the World Summit for Social Development, held in Copenhagen in 1995; and the Fourth World Conference on Women, held in Beijing in 1995.
- ⁵⁴ See Center for Reproductive Rights, *PROMOTING REPRODUCTIVE RIGHTS: A GLOBAL MANDATE* (1996).
- ⁵⁵ Tehran Proclamation, *supra* note 4, at 3. Paragraph 16 of the document states: “Parents have a basic human right to determine freely and responsibly the number and spacing of their children.”
- ⁵⁶ Lynn P. Freeman and Stephen Isaccs, *Human Rights and Reproductive Choice* in 24 *STUDIES IN FAMILY PLANNING* 18 (1993).
- ⁵⁷ *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Vienna, Austria, 14-25 June 1993, § II ¶ 41, U.N. Doc. A/CONF.157/23(1993).
- ⁵⁸ *Programme of Action of the International Conference on Population And Development*, Cairo, Egypt, 5-13 Sept. 1994, Principle 8, in *REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT*, U.N. Doc. A/CONF. 171/13/Rev.1, U.N. Sales No. 95, XIII.18 (1995) [hereinafter *Cairo Programme*]. Twenty-three participants, including the Holy See and a number of Latin American and Muslim countries, entered oral or written reservations to the Cairo Programme, many of which objected to provisions related to family planning.
- ⁵⁹ *Id.* at ¶ 7.3.
- ⁶⁰ *Id.* at ¶ 7.2.
- ⁶¹ *Id.* at ¶ 7.3.
- ⁶² See *id.* at Chapter VIII. In Chapter IV, the Cairo Programme also addresses issues of gender, equity and empowerment of women, stating that “[t]he empowerment and autonomy of women and the improvement of their political, social, economic and health status is a highly important end in itself.” *Id.* at ¶ 4.1.
- ⁶³ See *id.* at ¶¶ 8.2, 8.14 and 8.19.
- ⁶⁴ USAID, *REPRODUCTIVE HEALTH PROGRAMS SUPPORTED BY USAID: A PROGRESS REPORT ON IMPLEMENTING THE CAIRO PROGRAM OF ACTION*, 1, 17 (May 1996).
- ⁶⁵ *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, Beijing, China, 4-15 September 1995, Annex II, ¶¶ 94-97, 106-110, 223, 1 U.N. Doc. DPI/1766/Wom (1996); U.N. Doc. A/CONF.177/20 (1995). [hereinafter *Beijing Platform*].
- ⁶⁶ *Id.* at ¶ 94.
- ⁶⁷ *Id.* at ¶ 95.
- ⁶⁸ *Id.*, Annex I, ¶ 17.
- ⁶⁹ *Beijing Platform, supra* note 65, at ¶ 96.
- ⁷⁰ *Id.* at ¶ 17.
- ⁷¹ PRESIDENT’S INTER-AGENCY COUNCIL ON WOMEN, *AMERICA’S COMMITMENT: FEDERAL PROGRAMS AND NEW INITIATIVES AS FOLLOW-UP TO THE U.N. FOURTH WORLD CONFERENCE ON WOMEN*, at i (1997).
- ⁷² *Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development*, report of the Ad Hoc Committee of the Whole of the Twenty-First Special Session of the General Assembly, New York, 1 July 1999 (UN Doc A/S-21/5/Add.1) (visited May 24, 2001) <<http://www.unfpa.org/icpd/icpdmain.htm>> [hereinafter *Cairo+5 Key Actions Document*].
- ⁷³ *Id.* at ¶¶ 73, 74 and 75.
- ⁷⁴ *Id.* at ¶¶ 52, 53 and 63.
- ⁷⁵ *Id.* at ¶¶ 52, 56, and 57.
- ⁷⁶ *Id.* at ¶¶ 39, 40, 41, and 42.
- ⁷⁷ Statement of the U.S. to the 21st Special Session of the General Assembly, Overall Review and Appraisal of the Implementation of the Programme of Action of the International Conference on Population and Development, presented by Undersecretary of State Frank E. Loy (July 2, 1999) (visited May 24, 2001) <<http://www.undp.org/popin/unpopcom/32ndses/s/gass/state/us.pdf>>.
- ⁷⁸ The Special Session, entitled “Women 2000: Gender equality, development and peace for the 21st century,” was the culmination of negotiations related to the “Review and appraisal of progress made in the implementation of the 12 critical areas of concern in the Beijing Platform for Action.”
- ⁷⁹ Further actions and initiatives to implement the *Beijing Declaration and the Platform for Action (Annex, Draft Resolution II)*, Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly,

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- New York, 5-9 June 2000, UN Doc A/S-23/10/Rev.1, at 1 (visited May 24, 2001) <<http://www.un.org/womenwatch/daw/lowup/beijing+5.htm>> [hereinafter Beijing+5 Review Document].
- ⁸⁰ *Id.* at 79 (c). See also Cairo+5 Key Actions Document, *supra* note 72.
- ⁸¹ *Id.* at 72 (b).
- ⁸² *Id.* at 79 (f).
- ⁸³ *Id.*
- ⁸⁴ President George W. Bush, Remarks at Reception Honoring Cuban Independence Day (May 18, 2001).
- ⁸⁵ Henkin, *supra* note 15, at 74.
- ⁸⁶ UN Charter, *supra* note 1, art. 1.3.
- ⁸⁷ 22 U.S.C. § 2304(a)(1) (1994) (emphasis added). Section 2304(a)(1) is found in the subchapter of the Foreign Assistance Act dealing with military assistance and sales. However, the directive to make the protection of human rights an objective throughout U.S. foreign assistance programs is clear. As Professor David Weissbrodt states, “[T]he general human rights mandate of [this provision] requires that human rights be considered as a principal factor in all foreign policy decisions, including economic assistance. Accordingly, there is considerable justification for considering the human rights implications of foreign aid.” David Weissbrodt, *Human Rights Legislation and U.S. Foreign Policy*, 7 GA. J. INT’L & COMP. L. 231, 253 (1977) (emphasis added).
- ⁸⁸ See 22 U.S.C. § 2304(b).
- ⁸⁹ 22 U.S.C. § 2304(b).
- ⁹⁰ A definition of “coercion” with respect to population policies should include not only forced abortion, sterilization, and contraceptive use, but also the denial of safe reproductive health services, including denial of safe abortion, and more subtle activities, such as the imposition of psychological pressure or incentives such as money or social benefits or the denial thereof to encourage or discourage childbearing. See Reed Boland, et al., *Honoring Human Rights in Population Policies: From Declaration to Action*, in POPULATION POLICIES RECONSIDERED: HEALTH, EMPOWERMENT AND RIGHTS 100 (Gita Sen, et al., eds. 1994).
- ⁹¹ Confirmation Hearing of General Colin Powell to be Secretary of State before the Senate Foreign Relations Committee, 107th Cong. (2001).
- ⁹² 22 U.S.C. § 2304(a)(1) (1994).
- ⁹³ President George W. Bush, Press Conference (May 11, 2001).
- ⁹⁴ Secretary of State Madeleine K. Albright, Remarks On World Health Day at the White House (Apr. 7, 2000) (viewed on May 24, 2001) <<http://secretary.state.gov/www/statements/2000/000407a.html>>.
- ⁹⁵ 22 U.S.C. § 2151b(b)-(d) (1994).
- ⁹⁶ 22 U.S.C. § 2151b(a). Funding for abortion services is specifically restricted. Congress amended the Foreign Assistance Act in 1973 to prohibit the use of funds “for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.” 22 U.S.C. § 2151b(f)(1). This provision also prohibits the use of funds “for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations” and “for any biomedical research which relates . . . to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning.” 22 U.S.C. § 2151b(f)(2)&(3). In addition, a 1974 U.S. Agency for International Development Policy Determination was codified as a regulation barring funding for, inter alia, “information, education, training, or communication programs that seek to promote abortion as a method of family planning.” 48 C.F.R. 752.7016(b) (1996).
- ⁹⁷ UNITED NATIONS POPULATION FUND (UNFPA), MONITORING ICPD GOALS: SELECTED INDICATORS (viewed on May 24, 2001) <<http://www.unfpa.org/SWP/1999/pdf/indicators.pdf>>.
- ⁹⁸ See, e.g., Cairo Programme, *supra* note 58, ¶¶ 7.15, 8.16, 8.22, 8.23, 14.10, and 14.18. For example, Paragraph 8.22 states: “All countries, with the support of all sections of the international community, must expand the provision of maternal health services in the context of primary health care.”
- ⁹⁹ *Id.* at ¶ 14.11.
- ¹⁰⁰ *Id.* at ¶ 13.15.
- ¹⁰¹ *Id.*
- ¹⁰² John Flicker, *Global Family Planning can Help Save the Planet*, THE ORLANDO SENTINEL, June 16, 2001, pg. A21.
- ¹⁰³ UNITED NATIONS POPULATION FUND (UNFPA), GLOBAL POPULATION ASSISTANCE

- REPORT 1996, E/3000/1998, at 1 (1998).
- 104 Beijing Platform, *supra* note 65, ¶ 353.
- 105 *Id.* at ¶ 353.
- 106 Statement of the Honorable Timothy E. Wirth on behalf of the United States of America, International Conference on Population and Development, Third Plenary Meeting, Press Release USUN #39-(94), at 3-4 (April 5, 1994).
- 107 Madeleine K. Albright, United States Commitments, Remarks, 6 September 1995 in WOMEN'S STUDIES Q. 123, 125-26 (1996).
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- 110 UNITED NATIONS POPULATION FUND (UNFPA), GLOBAL POPULATION ASSISTANCE REPORT 1996, E/3000/1998, at 14 (1998).
- 111 ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT (OECD) CHART, "Net ODA [Overseas Development Assistance] in 1999 – as a percentage of GNP," (visited May 25, 2001) <<http://www.oecd.org/dac/images/ODA99per.jpg>>.
- 112 OECD, DEVELOPMENT CO-OPERATION: 2001 REPORT (2001). Comparative OECD-member country figures are as follows: Denmark 1.01 percent of GNP; Norway 0.91 percent of GNP; The Netherlands 0.79 percent of GNP; France 0.39 percent of GNP; Japan 0.35 percent of GNP; Canada 0.29 percent of GNP; United Kingdom 0.23 percent of GNP.
- 113 THE ROCKEFELLER FOUNDATION, HIGH STAKES: THE UNITED STATES, GLOBAL POPULATION AND OUR FUTURE 25 (1997).
- 114 22 U.S.C.A. § 2151b(f)(1).
- 115 See, e.g., Statement to the Washington Foreign Press Center by Julia Taft, Assistant Secretary of State for Population, Refugees and Migration, January 21, 1999.
- 116 Policy Statement of the United States of America at the United Nations International Conference on Population, 2d Sess., Mexico City (Aug 6-13, 1984) (on file with the Center for Reproductive Rights). The phrase "actively promote abortion" was defined to mean a "substantial or continuing effort to increase the availability or use of abortion as a method of family planning," including "providing advice and information regarding the benefits and availability of abortion as a method of family planning" and "[p]roviding advice that abortion is an available option" to a woman in a clinical context if she is not pregnant or has not already decided to have an abortion and stated her intention to do so. John Blane & Matthew Friedman, MEXICO CITY POLICY IMPLEMENTATION STUDY, app., at A-4, A-6 (Population Technical Assistance Project Occasional Paper No. 5, 1990) [hereinafter MEXICO CITY POLICY IMPLEMENTATION STUDY]; but see Alan Guttmacher Institute v. McPherson, 616 F.Supp. 195, 206 (S.D.N.Y. 1985), *aff'd* as modified, 805 F.2d 1088 (2d Cir. 1986) (interpreting similarly-worded USAID regulations as permitting "neutral, informational" articles about abortion).
- 117 MEXICO CITY POLICY IMPLEMENTATION STUDY, *supra* note 16, at A-4.
- 118 Memorandum on the Mexico City Policy, 29 WEEKLY COMP. PRES. DOC. 88 (Jan 22, 1993).
- 119 See Authorization for Population Planning of 1997, Pub. L. No. 104-208, § 518A(b), 110 Stat. 3009 (1996).
- 120 See U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, THE IMPACT OF DELAYING USAID POPULATION FUNDING FROM MARCH TO JULY 1997 6 (1998).
- 121 See Authorization for Population Planning of 1998, Pub. L. No. 105-118, § 592(b), 111 Stat. 2386 (1997).
- 122 See Katharine Q. Seelye, *Heated Battle Is Expected on Financing Birth Control*, N.Y. TIMES, Jan. 30, 1997, at B6. See also, Alan Guttmacher Institute, *Endangered: U.S. Aid for Family Planning Overseas* (1996).
- 123 Testimony of Andrew Natsios, Administrator, U.S. Agency for International Development before the House Appropriations Committee Subcommittee on Foreign Operations, 107th Cong. (2001).