



© 2003 Center for Reproductive Rights

[www.reproductiverights.org](http://www.reproductiverights.org)

*formerly the Center for Reproductive Law and Policy*

# CHAPTER 5

## HARMFUL TRADITIONAL PRACTICES AFFECTING REPRODUCTIVE RIGHTS: FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION (FC/FGM)

*“Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated.”*

*Beijing Platform for Action, 224.<sup>242</sup>*

*“States Parties shall take all appropriate measures . . . [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women . . .”*

*Women’s Convention, Article 5(a).<sup>243</sup>*

### I. Introduction

The UN Special Rapporteur on Violence against Women has noted that “certain customary practices and some aspects of tradition, such as those related to deeply rooted power inequities of society, often constitute a cause of violence against women and girls.”<sup>244</sup> Many societies in many parts of the world have customs and traditions that jeopardize the health, well-being, or dignity of women and young girls. Practices that are consistently recognized as “harmful traditional practices” include: FC/FGM,<sup>245</sup> facial scarring, the force-feeding of women, early marriage, nutritional taboos, traditional practices associated with childbirth, dowry-related crimes, honor crimes, and the consequences of son preference.<sup>246</sup>

This chapter focuses solely on FC/FGM, a set of traditional practices that involve the cutting of the female genitals.<sup>247</sup> FC/FGM is generally performed upon girls between the ages of four and 12, although it is practiced in some cultures as early as a few days after birth or as late as just prior to marriage or after the first pregnancy.<sup>248</sup> It is estimated that 130 million girls and women worldwide have undergone FC/FGM. At least two million girls each year are at risk of undergoing some form of the procedure.<sup>249</sup> It is practiced in 28 countries in Sub-Saharan and Northeastern Africa. Prevalence varies, ranging from 5% in **Uganda** and the **Democratic Republic of Congo** to 98% in **Djibouti** and **Somalia**. According to estimates, 18 African countries have prevalence rates of 50% or higher. FC/FGM is also practiced among immigrant groups from these countries residing in Europe, North America, **Australia**, and **New Zealand**.<sup>250</sup>

This chapter places FC/FGM within a human rights framework and reviews the types of laws and policies that seek to address FC/FGM, with an emphasis on developments since 1995. Recommendations are offered to governments and non-governmental actors, with a view to developing a multi-strategy approach to stopping the practice of FC/FGM.

---

## II. FC/FGM Within a Human Rights Framework

When performed upon girls and non-consenting women, FC/FGM violates a number of recognized human rights protected in international and regional instruments and reaffirmed in international conference documents. These include: the right to non-discrimination, the rights to life and physical integrity, the right to health, and the right of the child to special protections.

### A. The right to non-discrimination

FC/FGM violates women's right to be free from all forms of discrimination. As discussed in Chapter 3, Article 1 of the Women's Convention defines discrimination against women as including any distinction based on sex that has the effect or purpose of impairing the equal enjoyment of rights by women.<sup>251</sup> FC/FGM is practiced only on women and girls,<sup>252</sup> and has the effect of nullifying their enjoyment of fundamental rights discussed below. In addition, the practice carries a strong message about the subordinate role of women and girls in society. It is an attempt to repress the independent sexuality of women by altering their anatomy.

The Women's Convention at Article 2 requires governments to "take all appropriate measures, including legislation, to modify or abolish existing laws, . . . customs and practices which constitute discrimination against women."<sup>253</sup> Article 5 further requires governments to "take all appropriate measures . . . to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of . . . customary and all other practices which are based on . . . stereotyped roles for men and women . . . ." <sup>254</sup>

### B. The rights to life and physical integrity

FC/FGM threatens women's enjoyment of their rights to life and physical integrity. The right to life is violated in the rare cases in which death results from the procedure. When FC/FGM does not result in death, it interferes with a number of the protections encompassed in the right to physical integrity. First, it is an act of violence that poses a threat to personal security. In addition, the dignity, liberty, and privacy interests that are encompassed in the right to physical integrity protect the right to independent decision-making in matters affecting one's own body. An unauthorized invasion or alteration of a person's body represents a disregard for that fundamental right.

The threat to physical integrity posed by FC/FGM is particularly obvious when girls are forcibly restrained during the procedure. Yet the subjection of non-protesting girls and women to the practice of FC/FGM without their informed consent is no less compromising of the right to physical integrity. A decision to alter the body of a woman or a girl for the purpose of reinforcing socially defined roles is a clear interference with the right to autonomy in decision-making about one's body.

### C. The right to health

FC/FGM also prevents women and girls from enjoying their right to health. Under international law, women and girls are entitled to enjoy the highest attainable standard of physical and mental health, defined broadly to encompass social well-being.<sup>255</sup> Furthermore, the ICPD Program of Action defines "reproductive health" as including "sexual health, the purpose of which is the enhancement

of life and personal relations . . . .”<sup>256</sup> While the right to health does not guarantee perfect reproductive health for all people, it has been interpreted to require governments to provide health care and to work toward creating conditions conducive to the enjoyment of good health. CEDAW, in its Recommendation on Health, has urged that governments devise health policies that take into account the needs of girls and adolescents who may be vulnerable to traditional practices such as FC/FGM.<sup>257</sup>

Because the complications associated with FC/FGM can have devastating effects upon a woman's physical and emotional health, this procedure has been viewed as an infringement upon the right to health. But even in the absence of such complications, FC/FGM compromises the right to health. Where FC/FGM results in the removal of bodily tissue necessary for the enjoyment of a satisfying and safe sex life, a woman's right to the “highest attainable standard of physical and mental health” has been compromised. Furthermore, any invasive procedure — no matter how “safe-ly” performed — entails risks to the health of the person who undergoes it.

#### D. The right of the child to special protections

Because children in general cannot adequately protect themselves or make informed decisions about matters that may affect them for the rest of their lives, human rights law grants children special protections. The right of the child to these protections has been affirmed in the Convention on the Rights of the Child (Children's Rights Convention),<sup>258</sup> one of the most widely ratified international human rights instruments. Article 1 of the Children's Rights Convention defines a “child” as a person below the age of 18 unless majority is attained earlier under the law applicable to the child.<sup>259</sup>

The international community has generally regarded FC/FGM as a violation of children's rights. Because FC/FGM is commonly performed upon girls between the ages of four and 12, those most at risk of undergoing the procedure meet the definition of “child” set out in the Children's Rights Convention. Article 24(3) of this treaty is explicit in its call to States to “abolish . . . traditional practices prejudicial to the health of children.” The concern with stopping such traditional practices is also evident in the African Charter on the Rights and Welfare of the Child (African Charter),<sup>260</sup> which was adopted by the Organization for African Unity (OAU) in 1990 and entered into force in 1999.<sup>261</sup> The African Charter calls upon states to “abolish customs and practices harmful to the welfare, normal growth, and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child, and (b) those customs and practices discriminatory to the child on the grounds of sex or other status.”<sup>262</sup>

### III. The Legal Status of FC/FGM

FC/FGM has been prohibited by legal or administrative measures in at least eighteen countries worldwide. The majority of these measures have been adopted during the last five years. In Africa, however, several legal measures banning FC/FGM have been in place for over 30 years. In 1965, **Guinea** prohibited FC/FGM in a Penal Code provision that defines the offense of “castration” to include mutilation of the organs of either a man or a woman.<sup>263</sup> In the **Central African Republic** in 1966, then President Bokassa issued an ordinance prohibiting the practice of FC/FGM, explicitly noting an intent to conform to the provisions of the Universal Declaration of Human Rights and protect women's dignity.<sup>264</sup>

Non-African countries with immigrant communities in which FC/FGM may be prevalent, which will be referred to as “receiving countries,” have also taken legal steps to prevent the practice within their borders. **France** was among the first of these countries to treat FC/FGM as a criminal offense. Since 1978, practitioners of FC/FGM and parents of girls who have undergone it have been prosecuted under a Penal Code provision that prohibits acts of violence against a minor under the age of 15 that result in mutilation or permanent disability.<sup>265</sup> In **Sweden**, a law enacted in 1982 prohibits “operations on the external female genital organs which are designed to mutilate them or produce other permanent changes in them.” This law was modified in 1998 to make the penalties more severe.<sup>266</sup> In 1985, the **United Kingdom** adopted the Prohibition of Female Circumcision Act, which makes it a crime to “excise, infibulate or otherwise mutilate the whole or any part of the labia majora or labia minora or clitoris of another person . . . .”<sup>267</sup>

The 1990s saw heightened legislative and administrative activity aimed at stopping the practice of FC/FGM. In some African countries, this activity coincided with a period of constitutional reform. In 1992, **Ghana** adopted a constitution proclaiming that “[a]ll customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.”<sup>268</sup> Similarly, **Ethiopia’s** Constitution, adopted in 1994, provides that “[w]omen have the right to protection by the state from harmful customs. Laws, customs and practices that oppress women or cause bodily or mental harm to them are prohibited.”<sup>269</sup>

A 1994 amendment to **Ghana’s** Penal Code making FC/FGM a criminal offense was the first of the recent developments in criminal legislation.<sup>270</sup> The law provides that “[w]hoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person” is subject to imprisonment of not less than three years.<sup>271</sup>

## IV. Developments Since 1995

Since 1995, 12 countries<sup>272</sup> have adopted legal or administrative measures making FC/FGM a crime. Following is a brief summary of the measures taken in both African countries and receiving countries to prohibit FC/FGM.

- In **Australia**, between 1994 and 1997, six out of eight states and territories (Australian Capital Territory, Northern Territory, New South Wales, South Australia, Tasmania, and Victoria) adopted legislation prohibiting FC/FGM.<sup>273</sup>
- In 1996, **Burkina Faso** amended its Penal Code to provide that “[a]ny person who violates or attempts to violate the physical integrity of the female genital organ” shall be punished by imprisonment for six months to 10 years, depending on severity, and/or a fine of 150,000 to 900,000 [approximately U.S. \$240 to \$1,440].<sup>274</sup>
- **Canada** amended its Criminal Code in 1997 to provide that the definition of “aggravated assault” applies to actions taken “to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person,” except where necessary for stated medical reasons.<sup>275</sup>
- A 1998 law adopted by **Côte d’Ivoire** defines genital mutilation as a violation of the integrity of the female genital organ, by total or partial ablation, infibulation, desensitization, or by any other

procedure. Any person who commits a genital mutilation shall be punished by imprisonment from one to five years and by a fine of 360,000 to two million francs [approximately U.S. \$576 to \$3,200].<sup>276</sup>

- In 1995, **Djibouti** amended its Penal Code to prohibit FC/FGM.<sup>277</sup> The law provides that “acts of violence resulting in a genital mutilation are punishable by imprisonment for five years and a fine of one million francs” [approximately U.S. \$5,814].<sup>278</sup>
- In **Egypt**, the Minister of Health issued a decree in 1996 prohibiting FC/FGM for non-medical purposes. This decree was the subject of a legal challenge but was ultimately upheld by the highest administrative court in 1997.<sup>279</sup>
- In **New Zealand** in 1995, the Crimes Amendment Act was amended to prohibit “any act involving female genital mutilation” and assigning a penalty of up to seven years in prison.<sup>280</sup>
- **Norway** criminalized FC/FGM in 1995 with a law that provides that “[a]ny person who intentionally performs an intervention on a woman’s sexual organs, thereby damaging those organs or causing them to undergo permanent changes” shall receive a penalty of imprisonment for three to eight years depending on severity.<sup>281</sup>
- **Senegal** amended its Penal Code in 1999 to state that “[a]ny person who violates or attempts to violate the integrity of the genital organs of a female person . . . shall be punished by imprisonment from six months to five years.”<sup>282</sup>
- In 1998, **Tanzania** amended its Penal Code to provide that any person who causes female circumcision is punishable by imprisonment for a term between five and 15 years and/or a fine not exceeding 300,000 shillings [approximately U.S. \$373].<sup>283</sup>
- In 1998, **Togo** adopted a law providing that “[a]ny person who by traditional or modern methods practices or promotes female genital mutilations or participates in these activities” shall be punished by imprisonment from two months to five years and/or a fine of 100,000 to one million Francs [approximately U.S. \$160 to \$1,600].<sup>284</sup> This law also requires the directors of both public and private health facilities to ensure the most appropriate medical care to those arriving in their centers who have undergone FC/FGM.<sup>285</sup>
- In the **United States**, a 1996 law entitled the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides in part that “whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.”<sup>286</sup> In addition, fifteen states have criminalized FC/FGM.<sup>287</sup> With few exceptions, these laws have criminal provisions similar to those of the federal law.

In addition to these criminal law developments, **Uganda** adopted a new constitution in 1995, which provides that “[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution.”<sup>288</sup>

---

## A. Recent non-legal developments

Recognizing that laws by themselves will not change people's behavior, many African countries have sought different approaches to preventing the practice of FC/FGM. Some of these approaches are intended to supplement the criminal legislation described above, while others have been adopted in place of such laws.

Several African governments, including **Benin, Djibouti, Eritrea, Ethiopia, and Tanzania**, have undertaken education and/or outreach campaigns to discourage the practice of FC/FGM. A number of governments, such as **Côte d'Ivoire and Mali**, have formed special commissions within government ministries that are devoted to preventing FC/FGM. National strategies to stop FC/FGM have been adopted by several governments, including **Guinea, Niger, Ghana, and Senegal**.

Education and outreach programs are also active in a number of receiving countries, including **Australia, Canada, Denmark, and the United Kingdom**. The **United States** Congress, in 1996, required by law that the Secretary of Health and Human Services conduct a study of the prevalence of FC/FGM in the United States.<sup>289</sup> It also required the Immigration and Naturalization Service (INS) to provide information about FC/FGM to people entering the United States from countries in which FC/FGM is practiced.<sup>290</sup>

## V. Recommendations

Stopping FC/FGM requires a change in societal and individual thinking. In order to bring about such change, governments and NGOs should take multiple approaches as part of a long-term strategy for achieving social justice for women.<sup>291</sup>

- Governments should ensure that national constitutions contain protections of the rights of women and girls. Such protections may specifically recognize the right of women and girls to be free from harmful traditional practices. These provisions should have supremacy over customary and religious laws that may require women and girls to undergo the practice.
- If appropriate, governments should establish criminal sanctions for the practice of FC/FGM, **provided that:**
  - criminalization of FC/FGM is part of a broader governmental strategy to change individual behavior and social norms, and is accompanied by extensive education and outreach programs;
  - criminal law provisions are widely publicized, the punishable crime is precisely defined, and the parties potentially liable under the law are clearly delineated;
  - the best interests of the child are the primary consideration in determining penalties for parents who arrange for their daughters to undergo FC/FGM; given the effect on the children of long prison terms for their parents, governments should consider either assigning criminal sanctions only to the practitioners, or assigning lighter penalties to parents;
  - the law applies only to FC/FGM performed upon a child or upon a woman who is incapable of providing informed consent or is subject to coercion or violence; and
  - the law is not a pretext for harassment or persecution of minority groups or immigrants.

- 
- Governments should explore the application of non-criminal legal mechanisms — including suits for civil damages and child-protection procedures — as a means of stopping the practice of FC/FGM.
  - Governments should support education and outreach programs aimed at discouraging the practice of FC/FGM. Resources should be devoted to supplying information about the harmful effects of FC/FGM and conducting human rights education in communities in which FC/FGM is practiced.
  - Governments should ensure access to reproductive health services as a means of providing women information about their reproductive and sexual health and about the dangers of FC/FGM.
  - Governments should repeal laws that interfere with women's ability to achieve economic self-sufficiency, and should take positive steps to promote women's financial autonomy.
  - Community-level NGOs can be highly effective in undertaking awareness and outreach programs designed to provide women with the information they need to choose to abandon FC/FGM.
  - NGOs should draw upon their expertise to influence the content of legislation intended to stop the practice of FC/FGM.
  - NGOs should build broad coalitions to support an end to the practice of FC/FGM.
  - NGOs should monitor government action on this issue, collect and disseminate data and information regarding FC/FGM, and undertake public information and media campaigns.
  - NGOs should consider ways to use the judicial system and regional and international human rights mechanisms to stop the practice of FC/FGM.



---

# Chapter 6

## RAPE AND OTHER SEXUAL VIOLENCE

*“The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”*  
*Beijing Platform for Action, Paragraph 113.<sup>292</sup>*

*“[Actions to be taken by governments and international and regional organizations:] (d) Reaffirm that rape in the conduct of armed conflict constitutes a war crime and under certain circumstances it constitutes a crime against humanity and an act of genocide....(e)[u]ndertake a full investigation of all acts of violence against women committed during war, including rape, in particular systematic rape, forced prostitution and other forms of indecent assault and sexual slavery. . . .”*  
*Beijing Platform for Action, Paragraph 145(d), (e).<sup>293</sup>*

### I. Introduction

Violence against women is one of the most tangible consequences of the economic, social, political, and cultural inequalities that exist between men and women. It is also perpetrated by legal and political systems that have historically discriminated against women. The international community has recognized that violence against women constitutes a violation of their human rights and fundamental freedoms. Sexual violence in its various forms is also a violation of women's reproductive rights since it impacts their sexual and reproductive health and autonomy.<sup>294</sup>

This chapter will focus particularly on sexual violence against women and its impact on reproductive and sexual health. It will place rape, forced pregnancy, and other forms of sexual violence within a human rights framework and examine existing laws, policies, and practices that perpetuate sexual violence against women. The chapter also reviews legal developments since 1995 aimed at stopping sexual and other forms of violence against women. It concludes with recommendations to governments and NGOs to eradicate both legal and cultural norms that perpetuate such violence, and to work for the adoption of legislation that protects women against all forms of violence, including sexual violence.

### II. Women's Right to Live Free from Sexual Violence

As discussed in the introduction to this report, sexual violence violates women's reproductive rights, particularly their rights to bodily integrity and to control their sexuality and reproductive capacity. It also severely compromises a woman's right to health, including her physical, psychological, reproductive, and sexual health. Sexual violence occurs in both the private and the public spheres of women's lives. It is a violation of women's human rights whether an agent of the state or a private citizen is the perpetrator.<sup>295</sup> It can occur against girls or women of any age; within the family or domestic unit or any other interpersonal relationship; within the community or in the workplace; in an educational institution; in a health facility; during armed conflict or other civil strife; or at any other time or place.<sup>296</sup>

The international community has specifically recognized women's right to be free from gender-based violence, including rape and other sexual violence. Not only are such acts direct violations of women's health and reproductive rights, they also prevent women from enjoying other protected rights, including their rights to life, health, and bodily integrity. CEDAW has stated that "[g]ender-based violence is a form of discrimination which seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."<sup>297</sup> Discrimination on the basis of sex is prohibited by virtually all human rights treaties.<sup>298</sup> As noted in Chapters 3 and 5, the Women's Convention defines "discrimination against women" to include any distinction made on the basis of sex which has the effect or purpose of preventing women from enjoying their human rights and fundamental freedoms on the basis of equality with men.<sup>299</sup> Sexual violence in its various forms is one of the most brutal methods men use to maintain women in subordinate gender-based roles — to discriminate against them on the basis of sex.<sup>300</sup>

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) directly addresses gender-based violence by specifically prohibiting rape and other forms of violence.<sup>301</sup> Similarly, the ad hoc tribunals for the former **Yugoslavia** and **Rwanda** (ICTY and ICTR, respectively), which have mandates to prosecute individuals for genocide, war crimes, and crimes against humanity following armed conflicts in those countries, have held that rape committed during armed conflict constitutes both torture and genocide under international law.<sup>302</sup>

The Rome Treaty, adopted in 1998, explicitly defines, for the first time under international humanitarian law, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence as both crimes against humanity and war crimes.<sup>303</sup> This codification builds on the foundation that was laid in the Beijing Platform<sup>304</sup> and in the Vienna Programme of Action.<sup>305</sup> The Rome Treaty places rape and other reproductive and sexual crimes on a par with the most egregious international crimes and rejects previous references under earlier humanitarian law treaties to rape and other sexual assault as exclusively "crimes against honour" and "outrages upon personal dignity" rather than violence and, in some cases, torture and genocide.<sup>306</sup> Moreover, for the first time, international humanitarian law recognizes violations of women's reproductive self-determination — both forced pregnancy in which women are compelled to bear a child against their will, and enforced sterilization in which women are prevented from bearing children — as among the most serious crimes under international humanitarian law.<sup>307</sup>

### III. Laws, Policies, and Practices that Perpetuate a Culture of Sexual Violence Against Women

As noted above, while rape commonly occurs as an act of violence against an individual woman, it also is used as a weapon of war, political repression, and ethnic cleansing.<sup>308</sup> For example, during the conflict in the former **Yugoslavia**, "rape camps" were established in which tens of thousands of Muslim women were held and raped repeatedly. Many were subjected to forced pregnancy, i.e. forced to bear children against their will.<sup>309</sup> Similarly, during the 1994 conflict in **Rwanda**, ethnically-targeted rape, often followed by murder, was carried out against even larger numbers of Tutsi women.<sup>310</sup> And during riots in **Indonesia** in May 1998, ethnic Chinese women were the targets of widespread rape.<sup>311</sup>

Every country in the world formally outlaws rape and at least some other sexual crimes, but in many cases enforcement is often sporadic, especially when allegations of rape relate to the “private” sphere of relations between men and women.<sup>312</sup> Sometimes, the law itself fails to protect women against sexual violence and thus serves to perpetuate a culture of violence against women. Many countries, such as **India**, **Malaysia**, and **Papua New Guinea**, fail to recognize forced sexual relations within marriage as rape, thus exempting husbands from criminal liability.<sup>313</sup> In **Mexico**, a Supreme Court decision in June of 1997 held that sexual relations within marriage that are the result of violence do not constitute a crime because such acts are the exercise of a “right.”<sup>314</sup>

Other laws that condone sexual violence against women are those that permit a rapist to avoid criminal liability and punishment by marrying the victim. Such laws are in place in **Costa Rica**,<sup>315</sup> **Ethiopia**,<sup>316</sup> **Lebanon**,<sup>317</sup> **Guatemala**,<sup>318</sup> **Romania**,<sup>319</sup> and **Uruguay**.<sup>320</sup> A 1997 law repealed a similar provision in Peru, but let stand a provision negating criminal liability of anyone found guilty of seducing an adolescent (defined as having sexual relations with a girl between the ages of 14 and 18 through deception but without violence). Thus, if the perpetrator of the crime marries the girl with her consent, he is not liable. Moreover, the amendment also failed to modify the classification of the rape of an adult woman as a “private action,” which means that the state does not automatically prosecute such crimes, but does so only if the victim insists on pressing charges.<sup>321</sup>

The practice of so-called honor killings, an extreme form of violence against women aimed at controlling their sexuality, is still allowed by law in some countries. For example, the Penal Code of **Jordan** states: “He who discovers his wife or one of his female unlawfully committing adultery with another, and he kills, wounds, or injures one or both of them, is exempt from any penalty.”<sup>322</sup> Under **Syria’s** law, the “right” to injure and kill is extended even further. The Penal Code reads: “He who catches his wife or one of his ascendants, descendants or sister committing adultery (*flagrante delicto*) or illegitimate sexual acts with another and he killed or injured one or both of them benefits from an exemption of penalty.”<sup>323</sup> Even when the law does not explicitly condone such violence, “honor killings” are often not investigated or prosecuted. In **Pakistan**, hundreds of women are killed each year for “Hudood” crimes,<sup>324</sup> which include “adultery,” “fornication,” and breaking arranged marriages.<sup>325</sup> According to news reports, some women who are not killed are tortured by their families for practices such as refusing an arranged marriage.<sup>326</sup>

In addition to laws that openly condone violence and sexual violence against women, rules of procedure or rules of evidence used by courts also often perpetuate a culture of violence against women. For example, rules of evidence sometimes require multiple corroborating witnesses to prove rape or other sexual offenses. An example of this type of discrimination can be found in the rules of evidence in **Pakistan**. In order for rape to be proven, “at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirement of [credibility] . . . [must] give evidence as eye-witnesses of the act of penetration necessary to the offense.”<sup>327</sup> Such provisions render it virtually impossible for a woman to allege rape and see the perpetrator punished.

Some countries, including **South Africa**,<sup>328</sup> have “cautionary rules” of evidence, which require that additional care be taken when accepting the uncorroborated testimony of women who have been raped. In effect, cautionary rules result in an additional burden of proof for the prosecution beyond that ordinarily required to prove other assault crimes. In other countries, evidence of a woman’s past sexual history is admissible to rebut charges of sexual assault. This is true in **Zimbabwe**, where evidence of the complainant’s prior sexual history may be admitted as relevant to the issue of consent.<sup>329</sup>

Finally, a number of factors continue to impede investigations and prosecutions of sexual violence crimes, including attitudes of law enforcement and judicial personnel, investigative techniques, and presumptions disfavoring intrusion in “private matters” or requiring physical evidence or evidence of a “struggle.” These types of rules and practices serve to victimize doubly women who report sexual violence crimes and discourage women from coming forward when they see how other victims are treated by the criminal justice system.

#### IV. Developments Since 1995

- In **Ecuador**, the National Congress approved reforms to the Penal Code in April of 1998 to define “sexual attack,” and provide sanctions thereto.<sup>330</sup> Furthermore, constitutional reforms of 1998 include a statement of commitment to adopting measures to prevent, eliminate, and punish violence against women.<sup>331</sup>
- A 1997 law in **Colombia** increased the penalties for rape and eliminated an earlier provision by which a defendant could be exempted from punishment if he married the victim of his crime.<sup>332</sup> Also, since 1996, marital rape has been formally recognized as a crime.<sup>333</sup>
- Two countries in the Central and Eastern European Region have recently passed legislation dealing with trafficking in women out of their countries. In **Hungary**, as of March 1, 1999, both trafficking in persons and depriving a person of personal freedom is a crime.<sup>334</sup> Similarly, in **Croatia**, as of 1998, trafficking in women of all ages is a criminal offense.<sup>335</sup>
- One measure taken by many governments in recent years is the passage of laws that provide sanctions against domestic violence, that is, violence that occurs in the home (including sexual violence). These laws vary in their scope and in the remedies afforded to the victims. The adoption and ratification of the Convention of Belém do Pará in 1994 has prompted numerous countries in Latin America to undertake reforms. The following Latin American and Caribbean countries have passed laws to protect women from domestic violence since 1995: **Bolivia** (1995); **Colombia** (1996); **Costa Rica** (1996); **Dominican Republic** (1997); **Ecuador** (1995); **El Salvador** (1997); **Guatemala** (1996); **Honduras** (1997); **Jamaica** (1995); **Mexico** (Federal District, 1996); **Nicaragua** (1996); **Panama** (1995); **Peru** (1997); and **Uruguay** (1995).<sup>336</sup>
- Some countries have passed legislation that is extremely comprehensive in its treatment of domestic violence. For example, the new law in **Colombia** implements a constitutional mandate to provide comprehensive treatment for different forms of domestic violence. The law provides that physical, psychological, or sexual abuse against a family member is a crime. Furthermore, this law empowers the Colombian Institute of Family Welfare to develop programs to prevent and remedy domestic violence. It also provides resources to state and city governments to establish “Family Prevention Councils” to study and promote activities to prevent domestic violence. In addition, the National Development Plan provides that the government must improve the training of law enforcement personnel and justices of the peace that deal with this issue.<sup>337</sup> Since 1997, the National Office on Equality for Women has coordinated a task force concerning “Revisions in Procedures for Victims of Sexual Abuse.” The main goal of this task force is to improve protection and assistance to domestic violence-abuse victims by integrating and coordinating the institutions responsible for such cases.<sup>338</sup>

- Another example of the use of legal provisions to protect women who have been victims of sexual crimes can be found in the rules of evidence of the ad hoc tribunals, the ICTY and ICTR.<sup>339</sup> The tribunals have an identical rule regarding evidence in cases of sexual assault. Rule 96 of the ICTY provides:

*In cases of sexual assault: (i) no corroboration of the victim's testimony shall be required; (ii) consent shall not be allowed as a defence if the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear; (iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible; (iv) prior sexual conduct of the victim shall not be admitted in evidence.<sup>340</sup>*

This rule has been important in ensuring the effective and gender-sensitive investigation and prosecution of the sexual-violence crimes involved in several of the tribunals' cases,<sup>341</sup> notably the Gagovic (aka Foca),<sup>342</sup> Akayesu,<sup>343</sup> Tadic,<sup>344</sup> Furundzija,<sup>345</sup> and Delalic (aka Celibici)<sup>346</sup> cases. Without this rule, it would have been extremely difficult to ensure the rights of the victims and many of them likely would not have been willing to testify. Moreover, Rule 96 should also serve as a model to national-level jurisdictions committed to promoting the prosecution and punishment of sexual-violence crimes. Governments are currently negotiating the Rules of Procedure and Evidence for the ICC and women's and victim's rights advocates have been pressing for comparable rules to ensure adequate treatment of victims before the new court.<sup>347</sup>

## V. Recommendations

- Governments should enact and enforce legislation with appropriately severe penalties against the perpetrators of acts of violence against women, including rape, sexual assault, sexual exploitation, and sexual harassment.
- Governments should review and amend legislation that discriminates against women by condoning violence against them, such as exclusions found in penal codes for marital rape and "honor killings" and laws that excuse defendants from rape charges if they marry their victims.
- Governments should also ensure that practices and procedures do not in themselves violate women's rights, but rather encourage women to report violations of their rights and provide them with full access to the mechanisms of justice and to just and effective remedies. To this end, governments should review the procedural and evidentiary rules of the courts and amend them to help protect victims of sexual violence. In addition, governments should enact witness protection measures, including shelters for victims of domestic violence and comprehensive psychological and medical support for victims.
- Governments should create programs to sensitize and train law enforcement and judicial personnel and health care providers to deal effectively with situations of sexual violence and other forms of violence against women. Governments also should create sensitization programs aimed at other civil society groups.

- 
- Governments should collaborate with NGOs that deal with violence against women in the design, implementation, and evaluation of such programs, particularly those aimed at primary- and secondary-school students.
  - Governments should ratify the Rome Treaty and support the work of international tribunals in prosecuting rape and other sexual and reproductive crimes as genocide, crimes against humanity, and war crimes, as appropriate.
  - NGOs should conduct advocacy campaigns promoting the passage of laws that protect women against violence in all realms of their lives, and should monitor the enforcement of existing laws and policies.

---

# Chapter 7

## MARRIAGE AND FAMILY LAW

*“Governments [should] enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses; in addition, enact and strictly enforce laws concerning the minimum age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary.”*

*Beijing Platform for Action, para. 274.<sup>348</sup>*

*“Governments [should] eliminate the injustice and obstacles in relation to inheritance faced by the girl-child so that all children may enjoy their rights without discrimination, by, inter alia, enacting, as appropriate, and enforcing legislation that guarantees equal right to succession and ensures equal right to inherit, regardless of the sex of the child.”*

*Beijing Platform for Action, para. 274.<sup>349</sup>*

*“State Parties [to the Convention on the Elimination of All Forms of Discrimination Against Women] shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

- a. The same right to enter into marriage;*
- b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
- c. The same rights and responsibilities during marriage and at its dissolution;*
- d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*
- e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*
- f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*
- g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*
- h. The same rights for both spouses in respect to ownership, acquisition, management, administration, enjoyment, disposition of property, whether free of charge or for a valuable consideration.”*

*Women’s Convention, art. 16.<sup>350</sup>*

### I. Introduction

A woman’s rights under marriage and family law greatly affect her ability to control her life and make voluntary, informed reproductive choices. This chapter reviews international legal protections for women within marriage and the family and examines the obstacles women face to full enjoyment of their rights upon entering into marriage, during marriage, and at its dissolution. Following a review of some developments since 1995, the chapter closes with recommendations for government action to ensure women’s equality within marriage and the family.

### II. Marriage and Family Law Under International Human Rights Law

The rights of women within marriage and the family were among the first human rights pertaining

to women's status to be explicitly recognized under international law. One of the basic principles governing marriage under human rights law is that no one may be forced to enter marriage against her will. The Universal Declaration, the Civil and Political Rights Covenant, and the Economic, Social and Cultural Rights Covenant obligate States Parties to ensure that marriage is entered into only with the free consent of the intending spouses.<sup>351</sup> Moreover, according to the Universal Declaration and the Civil and Political Rights Covenant, men and women have equal rights upon entry into marriage, during marriage, and at its dissolution.<sup>352</sup>

The Women's Convention also recognizes these rights.<sup>353</sup> It goes further, however, by guaranteeing women's right to equality as parents in matters relating to their children; in deciding on the number and spacing of their children; as guardians, wards, trustees, and adoptive parents; and in choosing a family name, a profession and an occupation.<sup>354</sup> In addition, under the Women's Convention, spouses have equal rights "in respect to ownership, acquisition, management, administration, enjoyment, and disposition of property."<sup>355</sup>

### III. Violations of Women's Rights Within Marriage and the Family

Despite international guarantees of women's rights within marriage and the family, women continue to face violations of their rights in these contexts. Discrimination pervades the laws of many countries regulating marriage and the family. It is also manifested in official tolerance of cultural, societal, and customary norms that shape the institution of marriage and family life. Even countries that have adopted legislation that is protective of women's rights often do not adequately enforce these laws.

#### A. Marriage formation: the right to consent to marriage

Under the laws and customs governing marriage in some countries, the consent of the bride and groom are not required to create a marriage. Instead, unions may be contracted by the families of the bride and groom, without consultation of the parties to be married. This is often the case in countries that permit customary or religious law to govern matters relating to marriage and the family. In **Nigeria**, for example, the law recognizes three types of marriage: customary, Islamic, and civil. Under customary law, marriages are arranged by families and the prospective husband is often required to pay a bride price to the bride's family. Similarly, under the prevailing interpretation of Islamic law, a woman's father retains the right to arrange her marriage, regardless of her age and without her consent.<sup>356</sup> Another practice that nullifies a woman's right to consent to marriage is the custom of "widow inheritance," whereby a woman whose husband dies is forced to marry one of his close surviving relatives. In **Burkina Faso**, for example, where the practice has been specifically prohibited under the Code of Persons and the Family, it is known to continue to occur.<sup>357</sup>

A number of countries around the world tolerate child marriage. Child marriage is the marriage of a person who is below the age of 18 — the age under which a person is still a child, according to the Children's Rights Convention.<sup>358</sup> This practice contravenes the specific provision of the Women's Convention that states that "the betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age of marriage . . ." <sup>359</sup> Child marriage also nullifies women's right to consent to marriage. A young girl or adolescent may be pressured by her family to marry a man who is chosen for her. Even a child who willingly enters into marriage may lack the knowledge or understanding required to make an informed decision about a matter of life-long consequence. In **Niger**, more than three-quarters of young women enter marriage



or consensual unions before the age of 18,<sup>360</sup> and in many other countries in sub-Saharan Africa, about half do so.<sup>361</sup> In Latin America and the Caribbean, some 20-40% of young women enter their first marriage before age 18,<sup>362</sup> while in North Africa and the Middle East, 30% of women marry this young.<sup>363</sup> In many of these countries, the average age of first marriage is considerably lower than 18. In **Mali**, for example, the median age of first marriage is 16.<sup>364</sup>

In contrast, marriage during adolescence is not customary among young men anywhere in the world, mainly because a man's marriageability is often dependent upon his being able to support a family.<sup>365</sup> Women are therefore likely to marry men who are older than they are.<sup>366</sup> The resulting inequality in economic and social status may lead to unequal decision-making power within marriage, with significant repercussions for women's health and development.<sup>367</sup> In many countries, this disparity in marital age is sanctioned by law. The minimum age of first marriage is often lower for females than it is for males, violating women's right not to be discriminated against on the basis of sex in the formation of marriage. For example, in **Albania**,<sup>368</sup> **Romania**,<sup>369</sup> and **Argentina**,<sup>370</sup> the minimum age for first marriage for women is 16 and for men it is 18. In **Ethiopia** it is 15 for women and 18 for men.<sup>371</sup> In **Burkina Faso** it is 17 for women and 20 for men.<sup>372</sup> In **Bolivia**, it is 14 for women and 16 for men.<sup>373</sup> For further discussion of the repercussions of these laws, see Chapter 8 on adolescents.

## B. Rights within marriage: unequal status of spouses

Women also may be prevented from enjoying equality with their husbands during marriage. A number of laws explicitly provide for the subservience of women to their husbands. For example, in **Turkey**, the Civil Code provides that "[t]he husband is the head of the union. It is the husband who decides where the family will live and who is responsible for adequately maintaining the wife and the children."<sup>374</sup> Similarly, in **Mali**, the Code of Marriage and Guardianship of 1992 states that "[t]he husband is bound to protect his wife and the wife to obey her husband."<sup>375</sup> In a number of countries, discriminatory marital arrangements, such as polygamy, are sanctioned by law. Polygamy is legal in many sub-Saharan African countries.<sup>376</sup> One exception is **Côte d'Ivoire**, which has criminalized polygamy, making it punishable with a prison sentence and a fine.<sup>377</sup>

## C. Protection from marital rape and domestic violence

Married women often encounter violence, including sexual violence, in the home. Aggravating this situation are laws, or the absence of laws, that either condone or fail to protect women from marital rape and domestic violence. In a number of countries, including **Honduras** and **Nicaragua**, there is no penal code provision expressly prohibiting rape within marriage.<sup>378</sup> Domestic violence continues to be a grave concern around the world. It puts women's health, including their reproductive health, at risk and affects their abilities to enjoy other basic rights and freedoms. For further discussion of marital rape and domestic violence, see Chapter 6 on Rape and Other Sexual Violence.

## D. Discrimination in family planning

Another type of discrimination in marriage is the requirement that a married woman inform or obtain the consent of her husband before obtaining contraception or having an abortion. Because of the ramifications of pregnancy and childbirth on a woman's health and access to education and employment, she alone must have the power to determine whether she will become pregnant and have a baby.<sup>379</sup> Laws that require her to confer with her husband prior to accepting a contraceptive method deny her autonomy over

her reproductive capacity. Such a law is in place in **Chad**, where a woman must obtain the consent of her husband in order to be prescribed any reversible contraceptive method.<sup>380</sup> Likewise, spousal authorization is required for a woman to have an abortion under the laws of **Japan**, **Morocco**, and **Turkey**.<sup>381</sup>

### E. Discrimination in ownership and inheritance of property

The property laws of certain countries further weaken women's roles in the marital relationship, as well as their ability to leave a marital relationship. In **Nepal**, a woman has to be married for at least 15 years, and be a minimum of 30 years of age, before she may "obtain a share of the property from her husband."<sup>382</sup> In some countries, such as **Cameroon**, a woman is not empowered to enter into contracts involving the marital property.<sup>383</sup> Other countries also severely limit women's right to inherit property upon the death of a spouse. For example, most systems of customary law in **Nigeria** exclude widows from inheriting property in their own right, and a widow is forced to marry a close relative of her husband, such as a brother, to ensure the continuing support of her husband's family.<sup>384</sup> Under Islamic inheritance laws as practiced in Northern Nigeria, one eighth of a man's estate is allocated to his surviving wife or wives, and the remainder of the estate is distributed so that male heirs receive twice the share of any female heirs.<sup>385</sup> In **Tanzania**, four different systems of law govern the administration of an estate, and under one of these systems — customary law — a widow whose spouse dies intestate does not obtain a share of her husband's estate if there are any children from the marriage.<sup>386</sup>

Furthermore, in a number of countries, women's ability to inherit from their parents is limited under the law. For example, although the Constitution of **Ethiopia** provides for women's equal treatment in the inheritance of property, under customary laws still applied in the north of Ethiopia, a woman is not allowed to inherit land unless her father dies before giving her hand in marriage; under such circumstances, she is entitled to a dowry. In the south of Ethiopia, customary law still bars women from inheriting land, contrary to provisions of the Civil Code.<sup>387</sup>

### F. Discrimination in divorce

Just as discrimination is present in marriage, women often are discriminated against in divorce as well. In **Chile** and the **Philippines**, divorce is not recognized under law, denying women the ability to end a union that is abusive or otherwise oppressive.<sup>388</sup> In many other countries, women face enormous economic difficulties when they divorce. A number of countries do not ensure a division of property that allows a woman to subsist independently of her spouse. In **Cameroon**, for example, a number of courts have imposed a "proportionality of contributions" rule at the time the community property is liquidated. Following this rule, one-quarter or one-third of the community property is allocated to the woman, but she still has to prove (generally by documentary evidence) that she participated in accumulating it.<sup>389</sup>

## IV. Developments Since 1995

Women's rights within marriage and the family are the subject of continuing debate and legal reform, both within national legislatures and the courts. For the most part, changes during the last five years have been consistent with growing international recognition of women's human rights within all sectors of society.

- **Colombia** enacted a law in 1996 that requires the signature of both spouses when transferring immovable property pertaining to the family domicile, thereby protecting women's interest in

---

joint property.<sup>390</sup> Also in 1996, Colombia passed a law to curtail the practice of avoiding alimony payments. This new law established the National Registry for Protection of the Family, which seeks to identify those who avoid alimony obligations and to enforce compliance.<sup>391</sup>

- In **Guatemala**, the Civil Code was reformed in 1998, eliminating many, although not all, of the discriminatory laws therein.<sup>392</sup> Under the reformed Code, either spouse can represent the couple in transactions. Furthermore, these reforms abolished a Civil Code provision giving the husband the right to oppose his wife's employment outside the home.<sup>393</sup>
- In **Egypt**, a family law enacted in 2000 enables a woman to divorce her husband, with or without his assent.<sup>394</sup> Previously, a husband's consent was needed in order for a woman to obtain a divorce. Furthermore, under this new law, a divorced woman will be able to garnish her husband's wages if he refuses to pay alimony. If the ex-husband cannot be found or cannot pay a court-ordered alimony, the woman will be able to draw from a special state bank account.<sup>395</sup>
- In 1998 in **Turkey**, after years of lobbying by women's advocates, the Parliament approved a law on domestic violence permitting any member of a family subject to domestic violence to file a petition for a protection order against the perpetrator of the violence.<sup>396</sup> Protection orders may direct the violent family member to cease all threatening behavior, leave the family dwelling, and surrender weapons to the police. An order may also instruct an abuser not to approach the dwelling or place of work of family members, damage family property, cause distress using means of communication, or arrive at the shared dwelling while under the influence of alcohol or other intoxicating substances, or use such substances in the dwelling.<sup>397</sup>
- Many other countries, including **Bolivia**, **Ecuador**, and **El Salvador**, have promulgated domestic violence laws in an effort to curb violence — including sexual violence — against women.<sup>398</sup> For a discussion of these laws see Chapter 6 on rape and other forms of violence against women.

Not all recent developments protect women's rights in the area of family law. In countries where women's rights receive only limited protection under national legal instruments, women's economic and social status is precarious.

- A 1999 decision by the Supreme Court of **Zimbabwe** permitted the application of customary law, which is recognized in that country, to be applied to prevent a woman who was an eldest child from inheriting from her father in favor of a younger male sibling.<sup>399</sup> Although the Constitution guarantees non-discrimination, the Court recognized an exception to this guarantee, which permits discrimination where "devolution of property on death" is concerned and "customary law [is] applied between Africans."<sup>400</sup> The Court stated that:

*Whilst I am in total agreement with the submission that there is a need to advance gender equality in all spheres of society, I am of the view that great care must be taken when African Customary law is under consideration. In the first instance, it must be recognized that customary law has long directed the way African people conducted their lives and the majority of Africans in Zimbabwe still live in rural areas and still conduct their lives in terms of customary law. In the circumstances, it will not readily be abandoned, especially by those such as senior males who stand to lose their positions of privilege.<sup>401</sup>*

---

## V. Recommendations

- Governments should deny legal force to religious or customary laws that conflict with guarantees of non-discrimination within marriage and the family under international law.
- Governments should prohibit the contracting of marriage made without the free consent of both intending spouses.
- Governments should enact legislation prohibiting the marriage of children who are below the age of 18.<sup>402</sup>
- Governments should enact and enforce laws that prohibit violence within the family.
- Governments should reform all legislation requiring a husband's consent in order for a woman to obtain contraception or undergo an abortion.
- Governments should protect women's property and inheritance rights, granting women and men identical legal capacity in all civil matters.<sup>403</sup>
- Governments should ensure that laws pertaining to the termination of marriage protect women's ability to divorce at will and that adequate financial support is in place to enable them to do so.
- Governments should discourage customary norms that reflect notions of women's inferiority to men.

---

# Chapter 8

## ADOLESCENTS

*“The International Conference on Population and Development recognized in paragraph 7.3 that “full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality,” taking into account the rights of the child to [have] access to information, privacy, confidentiality, respect and informed consent, as well as the responsibilities, rights and duties of parents and legal guardians to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention on the Rights of the Child, and in conformity with the Convention on the Elimination of All Forms of Discrimination against Women. In all actions concerning children, the best interests of the child shall be the primary consideration. Support should be given to integral sexual education for young people with parental support and guidance that stresses the responsibility of males for their own sexuality and fertility and that help[s] them exercise their responsibilities.”*

*Beijing Platform for Action, para. 267.<sup>404</sup>*

*“States Parties [to the Convention on the Rights of the Child] 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.”*

*Convention on the Rights of the Child, art. 24.<sup>405</sup>*

### I. Introduction

One out of five people in the world is an adolescent.<sup>406</sup> The reproductive health needs of this group for the most part have been either ignored or neglected by governments and societies, or adolescent health has been treated as indistinguishable from childhood health concerns.<sup>407</sup> Adolescents have reproductive rights just as adults do and they are entitled to have their reproductive health needs met. This chapter discusses the basis in international human rights law for the protection of adolescents' reproductive rights. It then discusses why adolescents' reproductive rights are especially vulnerable. The chapter includes an analysis of several specific aspects of adolescents' reproductive rights: access to reproductive health care, sexual and reproductive health education, early marriage, contraception and early childbearing, unsafe abortion, HIV/AIDS and STIs, sexual violence, and FC/FGM. The chapter recommends that governments acknowledge the special needs of adolescents in all areas of reproductive health and that governments work to protect reproductive rights and to provide comprehensive reproductive health care to all adolescents.

While the concept of youth varies across cultures, in recent years there has been increasing global agreement that adolescence is a distinct and important period in a person's life.<sup>408</sup> In a joint statement, WHO, the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) agreed that the term “adolescent” refers to people between the ages of 10 and 19. “Youth,” defined as people between 15 and 24 years of age, and “young people,” who are between 10 and 24 years old,<sup>409</sup> make up distinct yet overlapping categories. Although puberty often begins after

age 10, young adolescents — particularly girls — in many social and cultural contexts are confronted with sexual and reproductive health issues around age 10, sometimes even earlier. They may be forced into early marriage, become victims of rape or incest, or undergo FGM. At some point during adolescence, many may decide to become sexually active, but lack access to information and services to prevent STIs and unwanted pregnancy.

## II. Adolescents' Reproductive Rights

Adolescents' right to health, which includes reproductive health, was first internationally recognized in the Children's Rights Convention of 1990.<sup>410</sup> By its terms, the provisions of the Children's Rights Convention generally apply to persons under 18 years of age.<sup>411</sup> Article 24 recognizes children's right "to the enjoyment of the highest standard of health and to facilities for the treatment of illness and rehabilitation of health."<sup>412</sup> It also requires States Parties to take appropriate measures "to develop family planning education and services."<sup>413</sup> Furthermore, while the Children's Rights Convention requires States Parties to "respect the responsibilities, rights and duties of parents . . . to provide . . . appropriate direction and guidance in children's exercise of their rights,"<sup>414</sup> it clearly recognizes that in all matters, the best interests of the child take precedence and the child should be enabled to exercise his or her rights.<sup>415</sup> The Children's Rights Convention was also the first international human rights treaty to explicitly recognize sexual violence and abuse, a major factor related to adolescents' reproductive and sexual health.<sup>416</sup> In addition, the Children's Rights Convention addresses states' obligation to ensure children's privacy,<sup>417</sup> and their 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."<sup>418</sup> Full implementation of these provisions is highly relevant to adolescents' ability to determine their future lives, including when and whether to bear children.<sup>419</sup>

At the ICPD and the Beijing Conference, governments again recognized and affirmed many of the reproductive rights articulated in the Children's Rights Convention. The consensus documents agreed to at those conferences contain chapters<sup>420</sup> devoted exclusively to adolescents which outline specific actions to better ensure protection and realization of adolescents' reproductive rights.<sup>421</sup> However, there remains a significant gap between the provisions contained in these instruments and the reality of adolescents' reproductive health and lives.

The UN human rights treaty committees charged with overseeing such treaties' implementation have emphasized the need to recognize and respect the reproductive rights of adolescents. In particular, the Committee on the Rights of the Child (CRC) and CEDAW have consistently stressed the need for governments to ensure adolescents' reproductive rights. For example, in its concluding observations on Belize, the CRC expressed its concern over the limited availability of programs and services in the area of adolescent health and, specifically reproductive health.<sup>422</sup> The CRC recommended that Belize increase its efforts to promote and strengthen policies and programs on reproductive health education and counseling services for adolescents.<sup>423</sup> CEDAW, in its concluding observations on Chile, expressed concern over the alarming levels of teenage pregnancy and lack of access to sexual education for adolescents.<sup>424</sup> In its concluding observations on Australia, CEDAW specifically inquired into the availability of family planning and contraceptive advice for adolescents without parental consent.<sup>425</sup> CEDAW further inquired into the availability of abortion for adolescents on the same basis as adult women.<sup>426</sup>

---

### III. Vulnerability of Adolescents' Sexual and Reproductive Rights

Adolescent girls have reproductive health needs that are similar to those of adult women, but due to their age and life circumstances they tend to have less autonomy to ensure that their needs are met. Adolescents often face reproductive health risks associated with the broader social and economic conditions of their lives. Factors such as access to basic health care, standard of living, social status and autonomy, and access to information and medical services all help to determine adolescent girls' reproductive health as well as their overall well-being.<sup>427</sup>

Cultural factors also prevent adolescents from fully enjoying their reproductive rights. In many cultures, there is a disparity in attitudes regarding the sexuality of young women and men, and the realities that confront them.<sup>428</sup> Conservative elements in society often do not acknowledge adolescents' sexuality, especially that of unmarried adolescent girls. This situation leaves the needs of these adolescents unattended. The reproductive rights of adolescent girls are also particularly vulnerable because they are more often subject to coercion in sexual relations. In addition, the consequences of unprotected sexual activity in adolescence are more onerous for young women than for their male peers.<sup>429</sup> For example, adolescent girls are more likely to interrupt their education due to early child-bearing. Doing so has tremendous consequences for their lifelong social and economic status.

Compounding the social and cultural factors that may prevent adolescents from exercising their reproductive rights are legal and policy barriers that have the same effect. For instance, some countries maintain burdensome restrictions for unmarried adolescents, either officially or in practice, on access to reproductive health services, including contraception and condoms to protect against STIs. **South Africa** offers two examples of such practices: the Child Care Act prohibits persons under the age of 15 from accessing contraceptives without the consent of their parent or guardian.<sup>430</sup> Furthermore, the Medicines and Related Substances Control Act of 1965<sup>431</sup> provides for the sale of oral contraceptives to a person under the age of 16 years only if the sale is made pursuant to a prescription issued by a medical practitioner, or pursuant to a written order disclosing the purpose for which the substance will be used. It must be signed by someone who the seller knows to be over the age of 16 years.<sup>432</sup>

In addition, numerous countries, including industrialized countries such as **Denmark, Italy,** and **Norway,** require parental consent for minors to obtain a legal abortion.<sup>433</sup>

### IV. Adolescents' Rights in Laws and Policies

#### A. Access to reproductive health care

Adolescent reproductive health care needs vary with culture, age, and marital status, but all adolescents need access to affordable, high quality reproductive health services. In addition, it is essential that this care be confidential and that it respect adolescents' privacy. This is particularly important for unmarried adolescents who may confront negative attitudes for being sexually active.

Due to controversies related to adolescent sexuality and the general lack of knowledge regarding the reproductive and sexual needs of this population, relatively few countries in the world have adequate reproductive health care services for young people. One example of a positive governmental initiative to address this issue is in **Costa Rica**, where a law relating to adolescents was passed

on January 6, 1998 entitled the Code of Childhood and Adolescents. This Code guarantees the establishment of programs — to be overseen by the Ministry of Health — that offer comprehensive services to adolescents in relation to prenatal, perinatal, postnatal, and psychological, and HIV/AIDS-related care. It further provides that the state should design a national education policy that includes issues such as sex education, reproduction, adolescent pregnancy, drugs, gender violence, STIs, HIV/AIDS, and other issues.<sup>434</sup>

In 1996, the government of **Ghana** enacted the Adolescent Reproductive Health Policy, which is aimed at addressing the reproductive health needs of adolescents and providing guidelines for government agencies.<sup>435</sup> Most importantly, the policy recognizes the rights of adolescents to information and services relating to sexual and reproductive health. The goals of the policy are to promote the physical, mental, and social well-being of adolescents in Ghana and to encourage the development and implementation of activities and services to expand the reproductive health options available to adolescents. The long-term objectives of the policy include the following: promoting education programs on reproductive health for adolescents; implementing programs to reduce early pregnancy, reproductive tract infections, STIs (including HIV), unsafe abortions, FC/FGM, and early marriage; developing and strengthening programs for marginalized adolescent groups; and pursuing policies to eliminate violence against adolescents and biases against the girl-child. Ghana's adolescent policy also recognizes the need for targeted research, monitoring, and evaluation of adolescent reproductive health issues and programs.<sup>436</sup>

## B. Education, including sexual and reproductive health education

Education is a prerequisite for fulfilling the right to reproductive health. Education enables young people to obtain information that they can use to exercise and protect a range of interests and rights, including their sexual and reproductive rights. Studies indicate that educated women are able to have a greater say in their reproductive lives than women with little or no education, and that a minimum of five years of education greatly increases the likelihood that a woman will control her reproductive life.<sup>437</sup> This has been demonstrated across many regions and cultures. Yet despite the numerous benefits associated with ensuring educational opportunities for young girls and women, many countries continue to lag in improving women's education. Low school enrollment of girls is related primarily to enforcement of traditional gender roles and lack of economic resources.<sup>438</sup>

Another obstacle to education faced by young women is the fact that when adolescent girls become pregnant, they often suffer discriminatory treatment in educational institutions. Sometimes under these circumstances, the young woman is expelled from school and not allowed to continue her studies. Some governments have taken steps to put an end to such discrimination and allow these young women to continue their education, and some countries also attempt to facilitate the continuation of schooling both during pregnancy and after. For example, the Congress of **Peru** passed a law prohibiting any administrative action that inhibits continuity of school attendance of pregnant girls.<sup>439</sup> The law places responsibility on the appropriate educational authority to adopt necessary measures to prevent discrimination against pregnant students.<sup>440</sup> In some countries, the mere adoption of such measures may not be adequate. In **Chile**, pregnant adolescents continue to be pressured into abandoning school despite the existence of a Ministry of Education circular recommending that they be allowed to complete their studies.<sup>441</sup>

In **Bangladesh**, where a large number of adolescent girls have not attended school, the government has undertaken a comprehensive policy initiative to increase adolescent girls' opportunity to obtain a sec-



---

ondary education.<sup>442</sup> The stated objectives of the initiative are to retain female students at the secondary stage and thereby promote higher education; to increase the enrollment rates and reduce dropout rates; and to control the population growth rate by discouraging girls from marrying before 18 years of age.

Along with formal education, it is equally important to provide young people with education about sexual and reproductive matters. Many countries resist such education in a formal setting under the erroneous assumption that educating adolescents about sexuality will encourage early sexual activity. On the contrary, studies indicate that sex education actually has the effect of delaying sexual activity.<sup>443</sup>

Examples can be found from around the world of different types of efforts to integrate sex education into schools. In **Panama**, the Family Code that went into effect on January 3, 1995, has two separate articles that deal with sex education. Article 671 provides that the Ministry of Education will include official and obligatory programs on sex education and family life.<sup>444</sup> Article 703 provides that sex and family education are to be obligatory for adolescent mothers and fathers.<sup>445</sup> Sex education is also addressed in a 1995 law that seeks to reform the educational system and calls for the inclusion of education on issues of population and human sexuality in basic educational curricula.<sup>446</sup>

### C. Early marriage

Marriage contracted before the age of 18 is generally considered early marriage.<sup>447</sup> Early marriage may negatively impact on a young woman's life by affecting her full development, particularly in terms of education, economic autonomy, and physical and psychological health. Most adolescents who marry young are pressured to begin childbearing prior to physiological maturity. Tragically, this can lead to maternal mortality and morbidity. Furthermore, when a child or adolescent is compelled to marry at a young age and she refuses to consent to sexual relations or is too young to consent knowingly thereto, such marriages may result in sexual violence. In many cultures where the female age of marriage remains low, there is also a significant age differential between the spouses, which often leads to relationships of greater dependence and powerlessness for the woman.<sup>448</sup>

In addition to the cultural pressure or coercion adolescents may face to marry young, many women are pressured or coerced into marrying a man chosen for them. Some customs and religious beliefs condone or require forced marriage, child marriage, dowry and bride price arrangements, consanguineous marriage, polygamy, and polygyny.<sup>449</sup> Many of these practices violate numerous international human rights instruments, such as the provisions in the Women's Convention and other instruments that provide that marriage shall be entered into only with the free and full consent of each spouse.<sup>450</sup>

### D. Early childbearing and contraception

Because adolescents are often not physiologically mature enough for childbearing, early childbearing is associated with high levels of maternal mortality and morbidity.<sup>451</sup> The risks of early childbearing include hemorrhaging, anemia, malnutrition, delayed or obstructed labor, low birth weight, and death for the mother and/or the infant.<sup>452</sup> Young adolescents are up to four times as likely as women over 20 to die from pregnancy-related causes.<sup>453</sup> In addition to the decreased health risks, there are socio-economic benefits for delaying a pregnancy. A young woman who delays pregnancy has a better chance of furthering her education, thus acquiring skills and knowledge that will allow her to better take care of herself and her future family.

Due to the high level of sexual activity and unplanned pregnancy among adolescents, it is essential to ensure young people have access to contraceptives. Unfortunately, many adolescents have little or no information about contraceptives and their proper use.<sup>454</sup> For additional discussion on contraception, see Chapter 2.

In an effort to make emergency contraceptives<sup>455</sup> more available to young people, **France** became the first country in the world to dispense emergency contraception pills through school nurses.<sup>456</sup> The pills are to be available in both high schools and junior high schools.<sup>457</sup> Although the nurses are advised to make efforts to inform the child's parents, they are not required to do so.<sup>458</sup> French health and education officials hope the policy will help lower unwanted pregnancies among teenagers and reduce the country's abortion rate, which is among the highest in the European Union. Despite protests from the Catholic Church and some parents' groups, the measure has wide support in France.<sup>459</sup> It is a major step toward making contraception more accessible to young people and is especially important to those who are victims of rape, who experience method failure, or who cannot afford to buy the pills over the counter, as well as those who are too shy to go to the local pharmacist.

## E. Unsafe abortion

Adolescents worldwide are disproportionately victims of unsafe abortions due to their lower access than adults to quality, confidential reproductive health services and information, including contraception. Adolescents are less likely than older women to have the social contacts, access to transportation, and financial means to obtain a safe abortion.<sup>460</sup> Furthermore, adolescents tend to delay obtaining an abortion until after the first trimester and often seek help from non-medical providers, leading to higher rates of complications. Self-induced abortion is also common among adolescents in many countries.<sup>461</sup>

In countries where abortion is illegal, highly restricted, or inaccessible to certain sectors of the population, adolescents have even less access due to additional restrictions on them, notably those requiring parental consent. At least 28 countries require parental authorization, although in several, including **Denmark, Italy, and Norway**, a minor may forgo parental consent if she seeks authorization from a court or hospital committee instead.<sup>462</sup>

## F. HIV/AIDS and STIs

Of the 30 million people living with HIV in 1998, at least one-third were aged 10 to 24.<sup>463</sup> Furthermore, around half of the 333 million new STIs each year are in people under 25 years old.<sup>464</sup> Young women are especially susceptible to STI transmission because they have fewer antibodies than older women, and the immaturity of their cervix increases the likelihood that exposure to the infectious agent will result in the disease being transmitted.<sup>465</sup> In addition to the physiological factors putting young women at risk, adolescent girls are often more vulnerable to HIV/AIDS and STIs than their male counterparts due to factors such as sexual violence and exploitation, early sexual initiation, and inability to negotiate safe sex with partners, who are often older than they are.

In communities that lack contraceptive services at health facilities or that restrict adolescent access to male and female condoms, it is nearly impossible for adolescents to protect themselves from STIs, HIV, and unwanted pregnancies.<sup>466</sup> Some governments have undertaken specific initiatives to address the high rates

of STIs and HIV in adolescents. One of the components of **Ghana's** 1996 Reproductive Health Service Policy is the prevention, control, diagnosis and treatment of reproductive tract infections, including HIV/AIDS, by targeting all sexually active individuals, including adolescents.<sup>467</sup> In **South Africa**, as part of the Department of Health's strategy to combat HIV and STD epidemics, life skills and responsible sex education programs in schools and youth centers have been implemented.

## G. Sexual violence

Although there are relatively few studies regarding sexual violence against adolescents, those that have been conducted indicate that adolescents around the world are at high risk of exposure to various forms of sexual abuse, including rape, sexual assault, incest, commercial sexual exploitation, and sexual slavery.<sup>468</sup>

Many adolescents around the world report that their first sexual experience was forced or coerced by an older partner,<sup>469</sup> and the majority of victims of sexual violence are adolescent girls.<sup>470</sup> Most sexual violence is committed by acquaintances, family members, and authority figures, a crucial factor in the underreporting of such incidences. The fear of reporting is compounded by health care providers and law enforcement agencies that are ill equipped to address such abuses. Lack of information, combined with the often low status of women in many societies, contribute to making adolescent girls one of the groups most vulnerable to sexual violence. Examples of efforts to curb sexual violence against women, including adolescent girls, can be found throughout the world. See Chapter 6 on rape and other sexual violence.

## H. Female circumcision/female genital mutilation (FC/FGM)

Most commonly, girls experience FC/FGM between the ages of four and 12 years.<sup>471</sup> Because FC/FGM most frequently occurs prior to or during adolescence, adolescent girls are particularly affected by this harmful traditional practice as they enter their reproductive years and become sexually active. It is important to note that this procedure is usually performed upon young girls who have no say in the matter.<sup>472</sup>

The practice of FC/FGM constitutes a violation of girls' and young women's human rights. It violates the right to be free from all forms of gender discrimination, the right to life and physical integrity, and the right to health.<sup>473</sup> Moreover, the international community generally has regarded FC/FGM as a violation of children's rights.<sup>474</sup> Because children are mostly unable to protect themselves adequately or make informed decisions about matters that could affect the rest of their lives, governments are obligated under human rights law, particularly the Children's Convention, to protect the rights of children.

Governments have undertaken a variety of strategies to eliminate FC/FGM. When used in conjunction with outreach and education programs, it is appropriate for governments to adopt laws criminalizing this practice.<sup>475</sup> Since 1995, several countries in Africa have passed legislation that criminalizes FC/FGM. For example, in 1999, **Senegal** amended its penal code to provide that "[a]ny person who violates or attempts to violate the integrity of the genital organs of a female person . . . shall be punished by imprisonment from six months to five years."<sup>476</sup> For more information on FC/FGM, see Chapter 5.

## V. Recommendations

### A. Reproductive health

- Governments should remove all legal and regulatory barriers to reproductive health care for adolescents and create comprehensive, age-specific health programs for them as part of the country's overall health policy. These services should be geared toward married and unmarried adolescents, and should include information and services addressing reproductive health, STIs, gender roles, sexuality, and responsible use of contraceptives.
- Governments should provide universal access to contraception and maternal health care, including pre- and post-natal care for pregnant adolescents, regardless of marital status.
- NGOs should work to sensitize governments and the community at large to the special reproductive health needs of adolescents.
- Family planning associations should provide services geared specifically towards adolescents.
- Donors should support NGOs working to offer services to young people.

### B. Education

- Governments should enact laws to make primary school attendance mandatory for both sexes where it is not currently, and enact policies to encourage education for girls through the secondary and tertiary levels.
- Governments should also develop and implement sex education and life-skills programs for all levels of education — primary, secondary, and tertiary. It is also important that government policies reflect the special needs of marginalized adolescents, such as street children and out-of-school youth.
- Government should initiate education campaigns for STI- and HIV/AIDS-prevention specifically aimed at adolescents.

### C. Early marriage

- Governments should adopt 18 as the minimum age of marriage for both women and men and they should enforce these or existing laws on minimum age of marriage and work toward establishing a uniform statutory law applicable to all marriages.
- Governments should enact and enforce laws to ensure that marriage is only entered into with the consent of the intended spouses.

### D. Sexual violence

- Governments should create programs to sensitize the community, including health care providers and law enforcement officials, regarding the need to protect the girl child and adolescents against all forms of sexual violence, including rape, incest, and trafficking.

---

# Conclusion

In the last five years, governments around the world have increasingly taken action to promote the human rights of women, including their reproductive rights. These advances can be attributed to the work of advocates for women's rights worldwide. While the Beijing Conference was undoubtedly a catalyst for change, it is only through the efforts of women's rights advocates that the Beijing principles are being translated into solid legislative and policy reforms. Through data collection, policy analysis, legislative drafting, organizing, lobbying, and litigation, women around the world have seen gains in the content of the laws and policies that govern their lives.

There is still much to be accomplished to fulfill the commitments made at Beijing. While women's rights advocates will be at the forefront of these changes, governments themselves should be mindful of the obligations they undertook by adopting the Beijing Platform for Action in 1995. They must address discrimination against women in every sector of society, understanding that all of women's rights are connected and interdependent. Government commitment to women's rights should be reflected in legal and policy reforms, which not only affect behavior, but can shape people's understanding of equity and justice. The adoption of laws and policies should be accompanied by vigorous efforts to enforce and implement these measures.

This report has highlighted the diverse fronts upon which advocates can work to promote reproductive rights. It has shown that a woman's ability to exercise her reproductive rights depends upon a host of conditions, including her access to health care and family planning information, her freedom from violence, and her rights within marriage and the family. Promotion of reproductive rights thus requires action on behalf of women's rights in every social sphere.

As seen in Chapter 1, women's reproductive rights can be promoted by influencing the content of governments' **population, reproductive health, and family planning policies**. While these policies may not have women's rights as their primary focus, their provisions affect women's ability to access reproductive health care, contraception, and information about family planning. Once in place, implementation of these policies must be carefully monitored to ensure that reproductive health services are delivered in a comprehensive manner, free of coercion, discrimination, and violence. Since the adoption of the ICPD Programme of Action in 1994, which was reinforced by the Beijing Platform for Action in 1995, the policies and implementation strategies of many countries have reflected the broad view of reproductive health articulated at the ICPD.

Access to specific methods for controlling fertility is also affected by law and broad governmental policies. As discussed in Chapter 2, while most forms of **contraception** are legal in most countries, some contraceptive methods — such as surgical sterilization and EC — are more strictly regulated or prohibited altogether. Similarly, as seen in Chapter 3, most of the world's women (62%) live in countries in which **abortion** is permitted with few restrictions. For a shrinking minority, however, abortion remains generally prohibited. Laws that limit access to safe methods and procedures for regulating fertility violate women's rights and expose them to health risks. The trend since 1995 has been toward liberalization of such laws. It is important to point out, though, that even in countries that permit abortion and the full range of contraceptives, their availability may not be guaranteed by law. Addi-

tional policies may be required to ensure that all women can access the family planning and abortion services they need. Such policies exist in many countries, but their fulfillment depends upon the availability of funds and other resources. Any effort to promote access to abortion and the full range of contraceptive methods must aim to ensure that services are delivered in a setting where adequate information is provided and clients give their informed consent.

Certain threats to women's health are more a product of women's vulnerable social status than their physiology. An example is **HIV/AIDS**, which is discussed in Chapter 4. The international community has recognized that, in many parts of the world, women are becoming infected with HIV at higher rates than men. Pervasive discrimination against women affects their ability to educate themselves and demand that their partners practice safer sex. In addition, because women in many countries face discrimination in every sector of society, women living with HIV/AIDS have little protection from persecution. Since 1995, a number of governments have undertaken legislative, policy and programmatic initiatives to prevent transmission and treat HIV/AIDS, as well as to address discrimination against those living with HIV/AIDS.

Women's reproductive rights and health also are threatened directly by physical mistreatment, often endured without the protection of the community or the state. Two examples of this mistreatment, the subjects of Chapters 5 and 6 respectively, are **harmful traditional practices, such as FC/FGM**, and **rape and other forms of sexual violence**. These acts violate women's right to physical integrity and severely impair women's ability to enjoy their other reproductive rights. Since the Beijing Conference, governments have increasingly adopted legislation addressing these issues, extending the legal protection available to women in their homes and their communities. In addition, the use of rape as a weapon of war and political repression has in recent years been the subject of condemnation by the international community.

The rights a woman is able to exercise within **marriage and the family** greatly affect her status within society, as well as her ability to make informed and voluntary decisions about her reproductive health. As discussed in Chapter 7, numerous cultural norms, practices, laws and policies discriminate against women in the formation of marriage, as well as during marriage and at its dissolution. These include: forced marriage, early marriage, polygamy, discriminatory inheritance laws, marital rape, and domestic violence. Despite the international legal prohibition of these practices, they are protected by law or ignored by law enforcement officials in many countries. A number of recent developments in this area are positive, but much work remains to be done to ensure equality within marriage and the family worldwide.

Finally, certain groups of women face heightened obstacles to enjoying their reproductive rights. The needs of one such group — **adolescent girls** — are addressed in Chapter 8. Social and cultural norms, as well as discriminatory laws, deny adolescents their reproductive rights. Adolescents have many of the same reproductive health needs as adult women. However, because of their life circumstances, they are less likely to have these needs met. In recent years, there has been increased awareness of the needs of adolescents, and some governments have adopted laws and policies to protect and promote adolescents' reproductive health and rights. For the most part, however, adolescents still lack access to a full range of contraceptive methods, safe abortion services, and comprehensive health services, including measures to prevent and treat HIV/AIDS

---

and other STIs. In addition, government action is still needed to prevent early marriage and violence against adolescent girls.

The subjects addressed in this report are only a sampling of the key reproductive rights challenges facing women in the year 2000. Their diversity, however, reveals the breadth of social, cultural, and legal factors affecting women's health and rights. As women worldwide move forward, each victory — no matter where in the world — helps to build a future in which women's reproductive health and choices will be recognized as fundamental human rights.

## Notes for Introduction

**1** *Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, 4-15 Sept. 1995*, para 95, U.N. Doc. DPI/1766/Wom (1996) [hereinafter *Beijing Platform for Action*]. This provision is identical to Paragraph 7.3 of the *Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5-13 September 1994*, 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 *ICPD Programme of Action*].

**2** For purposes of this report, the term "reproductive rights" is intended to encompass a number of rights that are often also referred to as "sexual rights," including the right to be free from sexual violence and coercion and the right to the highest standard of sexual health. Similarly, we interpret the term "reproductive health" to encompass many of the elements of "sexual health." For further information on sexual rights and sexual health, see International Women's Health Coalition, *Sexual Rights* (visited April 13, 2000) <<http://www.iwhc.org/defining.html>>.

**3** Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, art. 3, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*]; International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 6, 999 U.N.T.S. 171, 6 I.L.M. 368 (*entry into force* March 23, 1976), [hereinafter *Civil and Political Rights Covenant*].

**4** Human Rights Committee, General Comment 6, The right to life (article 6), para. 5, July 30, 1982.

**5** International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 12, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976) [hereinafter *Economic, Social and Cultural Rights Covenant*].

**6** World Health Organization (WHO), *Definition of Health* (visited Feb. 17, 2000) <<http://www.who.org/about-who/en/definition.html>>.

**7** *ICPD Programme of Action*, *supra* note 1, para. 7.2.

**8** Economic, Social and Cultural Rights Covenant, *supra* note 5, art. 12(2)(d).

**9** Civil and Political Rights Covenant, *supra* note 3, art. 2; Economic, Social and Cultural Rights Covenant, *supra* note 5, art. 3.

**10** Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, art. 12(1), 1249 U.N.T.S. 13, 19 I.L.M. 33 (*entry into force* Sept. 3, 1981) [hereinafter *Women's Convention*].

**11** Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 24 on Women and Health, para. 29, Feb. 2, 1999 [hereinafter *General Recommendation on Health*].

**12** *Id.* para. 14.

**13** Privacy and family life are protected by Article 12 of the Universal Declaration of Human Rights, *supra* note 3; Article 17 of the Civil and Political Covenant, *supra* note 3;

Article 11 of the American Convention on Human Rights, *signed* Nov. 22, 1969, O.A.S. Treaty Ser. No. 36, OEA/Ser.L./V/II.23.doc.21, rev. 6 (1979), 9 I.L.M.673 (1970) (*entry into force* July 18, 1978) [hereinafter *American Convention*]; and Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *signed* Nov. 4, 1950, 213 U.N.T.S. 222 (*entry into force* Sept. 3, 1953) [hereinafter *European Convention*].

**14** African Charter on Human and Peoples' Rights, *adopted* June 26, 1981, art. 5(1), OAU Doc. CAB/LEG/67/3/Rev.5, 21 I.L.M. 58 (1982) (*entry into force* Oct. 21, 1986) [hereinafter *Banjul Charter*]; American Convention, *supra* note 13, art. 5(1).

**15** *ICPD Programme of Action*, *supra* note 1, para. 7.3.

**16** United Nations General Assembly, Declaration on the Elimination of Violence Against Women, (85th Plenary Meeting, 1993) A/RES/48/104, February 23, 1994.

**17** *Final Act of the International Conference on Human Rights, International Conference on Human Rights, Teheran, Iran, 12 May 1968*, Res. XVIII, U.N. Doc.A/CONF.32/41 (1968), in U.N. DEPARTMENT OF PUBLIC INFORMATION, THE UNITED NATIONS AND THE ADVANCEMENT OF WOMEN 1945-1995, at 167-69, U.N. Doc.DPI/1679, U.N. Sales No.E.95.I.29(1995).

**18** *Recommendations for the Further Implementation of the World Population Plan of Action*, in REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION, Mexico City, Mexico 6-14 August 1984, at Recommendation 30, U.N.Doc.E/CONF.76/19 (1984).

**19** Women's Convention, *supra* note 10, art. 16(1)(e).

**20** United Nations Development Fund for Women, *Women's Human Rights* (visited April 9, 2000) <<http://www.unifem.undp.org/cedaw.htm#about>>.

**21** Women's Convention, *supra* note 10, art. 10(h).

**22** *United Nations Program of Action from Rio*, para. 3.8(j), at 13-288, U.N. Doc. DPI/1344, U.N. Sales No.E.93.I.11, (1994) [hereinafter *Agenda 21*].

**23** *Id.*

**24** *Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, Austria, 14-25 June 1993*, Sect. II, para. 41, U.N.Doc.A/CONF.157/23 (1993).

**25** *ICPD Programme of Action*, *supra* note 1, para. 7.3.

**26** *Id.*

**27** *Id.* para. 7.2.

**28** *Id.*

**29** *Id.*

**30** *Id.* para. 7.3.

**31** *Beijing Platform for Action*, *supra* note 1, para. 96.

**32** Rome Statute of the International Criminal Court, *opened for signature* July 17, 1999, U.N. Doc. A/CONF.183/9 [hereinafter *Rome Treaty*].

**33** Barbara Bedont & Katherine Hall-Martinez, *Ending Impunity for Gender Crimes under the International Criminal Court*, 6 BROWN J. WORLD AFF. 65, 65 (1999).

**34** *Id.*

**35** Rome Treaty, *supra* note 32, art. 126.



36 United Nations, *Rome Statute of the International Criminal Court, Ratification Status* (visited April 13, 2000) <<http://www.un.org/law/icc/statute/status.htm>>.

37 *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, July 1, 1999, U.N. Doc. A/S-21/5/Add.1 [hereinafter *ICPD+5 Key Actions Document*].

38 CENTER FOR REPRODUCTIVE LAW AND POLICY (CRLP), *ICPD+5: GAINS FOR WOMEN DESPITE OPPOSITION 1* (1999).

## Notes for Chapter 1

39 *Beijing Platform for Action*, *supra* note 1, para. 92.

40 *ICPD Programme of Action*, *supra* note 1, Principle 8.

41 See generally, CRLP, *PROMOTING REPRODUCTIVE RIGHTS: A GLOBAL MANDATE 11-12* (1997) [hereinafter CRLP, *A GLOBAL MANDATE*].

42 *ICPD Programme of Action*, *supra* note 1, para. 4.1.

43 *Id.* para. 7.3.

44 *Id.*

45 *ICPD Programme of Action*, *supra* note 1, Principle 8 and para. 7.3.

46 *Beijing Platform for Action*, *supra* note 1 para. 105, Strategic Objective C.1; para. 108, Strategic Objective C.4.

47 CRLP, *A GLOBAL MANDATE*, *supra* note 41, at 19.

48 CENTRE POUR LE DROIT ET LES POLITIQUES EN MATIÈRE DE SANTÉ ET DE REPRODUCTION (CRLP) ET GROUPE DE RECHERCHE FEMMES ET LOIS AU SÉNÉGAL (GREFELS), *LES FEMMES À TRAVERS LE MONDE: LOIS ET POLITIQUES QUI INFLUENT LEUR VIE REPRODUCTIVE, L'AFRIQUE FRANCOPHONE 35-36* (1999).

49 CRLP & INTERNATIONAL FEDERATION OF WOMEN LAWYERS (F.I.D.A.-K), *WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, ANGLOPHONE AFRICA 117* (1997).

50 CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, EASTERN EUROPE (draft)* (forthcoming 2000).

51 *Id.*

52 *Id.*

53 INDONESIA, *LAW ON POPULATION DEVELOPMENT AND PROSPEROUS FAMILY OF 1992*, art. 3(2), *reprinted in ANNUAL REVIEW OF POPULATION LAW* (Reed Boland, ed.) (visited May 12, 2000) <<http://cyber.law.harvard.edu/population/policies/INDONES.html>>.

54 *Id.* art. 14(1).

55 CRLP & DEMUS, *ESTUDIO PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER, WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE RIGHTS, LATIN AMERICA AND THE CARIBBEAN 132* (1997).

56 *Id.*

57 CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *supra* note 50. Between 1981 and 1991, the natality rate decreased from 14.6% to 11.6%. In the period from 1991-

1994, more people died in Croatia than were born. See *id.*

58 *Id.*

59 CRLP & F.I.D.A.-K., *supra* note 49, at 19.

60 *Id.*

61 *Id.* at 61.

62 Xizhe Peng, *Population Policy and Program in China: Challenge and Prospective*, 35 *TEX. INT'L L.J.* 51, 58 (2000).

63 *Id.* The government is currently exploring the idea of providing contraceptives to unmarried adolescents and questioning whether such a policy would encourage sexual activity and erode social and moral standards. *Id.*

64 CRLP & DEMUS, *supra* note 55, at 192.

65 AVSC International, *Counseling, Informed Choice, Informed Consent, and the Rights of the Client in Family Planning and Reproductive Health Care* (visited April 21, 2000) <<http://www.AVSC.org/informed/iwhat.html>>.

66 See generally COMITÉ DE AMÉRICA LATINA Y EL CARIBE PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (CLADEM), *NADA PERSONAL, REPORTE DE DERECHOS HUMANOS SOBRE LA APLICACIÓN DE LA ANTICONCEPCIÓN QUIRURGICA EN EL PERÚ 1996-1998* (1999).

67 CRLP & DEMUS, *supra* note 55, at 57.

68 *Id.* at 170, *citing* The Program on Reproductive Health and Family Planning approved by Ministerial Resolution No. 071-96-SA/DM, Feb. 6, 1996. at p.5.

69 CRLP & CLADEM, *SILENCIO Y COMPLICIDAD 23-28* (1998); CLADEM, *supra* note 66.

70 *Legal Norms (Peru)*, Vol. 260, Jan. 1998, at 360-64.

71 CRLP & F.I.D.A.-K., *supra* note 49, at 38.

72 See Rebecca J. Cook and Bernard M. Dickens, WHO, *CONSIDERATIONS FOR FORMULATING REPRODUCTIVE HEALTH LAWS, WHO/FRH/WOM/98.1* (1998).

## Notes for Chapter 2

73 *Beijing Platform for Action*, *supra* note 1, para. 94.

74 *ICPD Programme of Action*, *supra* note 1, para. 7.16.

75 Safe Motherhood Inter-Agency Group, *Unwanted Pregnancy* (visited April 17, 2000) <[http://www.safemotherhood.org/init\\_facts.htm](http://www.safemotherhood.org/init_facts.htm)>.

76 Women's Convention, *supra* note 10, art.16 (1)(e).

77 *Id.*

78 *Id.* art. 12(1).

79 *Id.* art. 10(h).

80 General Recommendation on Health, *supra* note 11, para. 31(c).

81 WHO, *Providing an Appropriate Contraceptive Method Choice* (visited March 27, 2000) <<http://www.who.int/rht/documents/FPP93-3/FPP93-3.htm>>.

82 Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, its causes and consequences, Addendum: Policies and Practices that Impact Women's Reproductive Rights and Contribute to, Cause or Constitute Violence against Women*, para. 51, E/CN.4/1999/68/Add.4, Jan. 21, 1999 [hereinafter *Special Rapporteur's Report on Violence and Reproductive Rights*].

- 83** CRLP & DEMUS, *supra* note 55, at 151.
- 84** See Family Planning Services & Population Research Act of 1970, Pub. L. No. 91-572, 84 Stat. 1504 (1970) (codified as amended at 42 U.S.C. §§ 300 et seq. (1991 & Supp. 1998)).
- 85** CRLP & WOMEN'S CENTRE FOR PEACE AND DEVELOPMENT, WOMEN'S REPRODUCTIVE RIGHTS IN NIGERIA: A SHADOW REPORT 3 (1998).
- 86** *Id.* at 4.
- 87** CRLP & F.I.D.A.-K, *supra* note 49, at 61.
- 88** Reproductive Health Manual approved by Ministerial Resolution No. 0738-92-SA/DM on Dec. 2, 1992 at 119.
- 89** *Id.*
- 90** *Id.*
- 91** The Republic of Argentina Penal Code, Law No. 11,719, text codified by Decree No. 3992, Dec. 21, 1984 (B.O. Jan. 16, 1985), art. 90
- 92** *Id.* art. 91
- 93** *Id.* art. 92.
- 94** CRLP & DEMUS, *supra* note 55, at 24.
- 95** CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *supra* note 50, *citing* Criminal Code, art.156 (Dz.U. nr 88/97, poz. 553 and Nr 128/97, poz. 840)
- 96** *Id.*
- 97** CRLP & GREFELS, *supra* note 48, at 107.
- 98** James Trussel et al., *Emergency Contraception: A Cost-Effective Approach to Preventing Unintended Pregnancy*, 1 WOMEN'S HEALTH IN PRIMARY CARE 55-69 (1998) (updated Nov. 9, 1998).
- 99** Anna Glasier, *Drug Therapy: Emergency Postcoital Contraception*, 337 NEW ENGLAND JOURNAL OF MEDICINE 1058 (1997).
- 100** Michael Klitsch, *The Bumpy Road from Cairo to Now—and Beyond*, 25 FAMILY PLANNING PERSPECTIVES 196, 199 (1999).
- 101** *Id.*
- 102** *Id.* For an explanation of why EC is not an abortifacient, see CRLP, EMERGENCY CONTRACEPTION, CONTRACEPTION, NOT ABORTION: AN ANALYSIS OF LAWS AND POLICIES AROUND THE WORLD (1999).
- 103** *Id.*
- 104** CRLP & F.I.D.A.-K, *supra* note 49, at 39.
- 105** *Id.*
- 106** CRLP & GREFELS, *supra* note 48, at 35-36.
- 107** CRLP & ASSOCIATION DES FEMMES JURISTES DU BÉNIN (AFJB), REPRODUCTIVE RIGHTS OF YOUNG GIRLS AND ADOLESCENTS IN BÉNIN: A SHADOW REPORT 3 (1999).
- 108** *Id.*
- 109** CRLP & GREFELS, *supra* note 48, at 81.
- 110** *Id.* at 174.
- 111** *Id.*
- 112** CORPORACIÓN DE LA MUJER LA MORADA ET AL., WOMEN'S RIGHTS IN CHILE: A SHADOW REPORT 17 (1999).
- 113** *Special Rapporteur's Report on Violence and Reproductive Rights*, *supra* note 82, para. 52.
- 114** LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN'S RIGHTS (CLADEM), NOTHING PERSONAL: A HUMAN RIGHTS REPORT ON THE PROVISION OF SURGICAL STERILIZATION IN PERU (1996-1998) EXECUTIVE SUMMARY 4 (1999).
- 115** *Id.* at 7-11.
- 116** *Special Rapporteur's Report on Violence and Reproductive Rights*, *supra* note 82, paras. 51-53.
- 117** *Id.* para. 55.
- 118** *Id.*
- 119** *Id.*
- 120** *Id.*
- 121** *Id.* *citing* International Reproductive Rights Research Action Group, Statement and recommendations, prepared in response to Special Rapporteur's request for comments, September 1998, p. 14.
- 122** Evy F. McElmeel, *Legalization of the Birth Control Pill in Japan will Reduce Reliance on Abortion as the Primary Method of Birth Control*, 8 PAC. RIM L. & POL'Y J. 681, 681 (1999).
- 123** Ethiopia, Proclamation No. 141/1998 amending the 1957 Penal Code.
- 124** Loren Galvão et al., *Emergency Contraception: Knowledge, Attitudes and Practices among Brazilian Obstetrician-Gynecologists*, 25 INTERNATIONAL FAMILY PLANNING PERSPECTIVES 168 (1999).
- 125** FRANCE, REPORT ON FRANCE'S IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PROGRAM OF ACTION OF THE FOURTH WORLD CONFERENCE ON WOMEN: "BEIJING PLUS FIVE" 31 (1999).
- 126** Pamela Fayerman, *Morning-After Pill to be Sold Over the Counter in B.C.*, VANCOUVER SUN, March 22, 2000 (visited April 17, 2000) <<http://www.vancouver.sun.com/newsite/news/000322/3798013.html>>.
- 127** *Britain: Pilot Program Offers Over-the Counter EC*, KAISER DAILY REPRODUCTIVE HEALTH REPORT, Jan. 11, 2000 (visited April 17, 2000) <<http://report.kff.org/archive/repro/2000/01/kr000111.5.htm>>.
- 128** Deirdre Wulf, Jennifer Frost & Jaqueline E. Dorroch, *Microbicides A New Defense Against Sexually Transmitted Disease* (visited Feb. 11, 2000) <<http://www.agi-usa.org/pubs/microbicides.html>> *citing* Alliance for Microbicide Development, *Microbicides: research and development status as of July 1999* (1999).
- 129** *Id.* *citing* JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS), MICROBICIDES FOR HIV PREVENTION: UNAIDS TECHNICAL UPDATE (1998); FAMILY HEALTH INTERNATIONAL (FHI), MICROBICIDES/SPERMICIDES: OPPORTUNITIES FOR INDUSTRIAL COLLABORATION. SUMMARY OF AN INTERNATIONAL CONFERENCE (1999).
- 130** Janneke H.H.M. van de Wijgert et. al., *Men's Attitudes Toward Vaginal Microbicides And Microbicide Trials in Zimbabwe*, 25 INTERNATIONAL FAMILY PLANNING PERSPECTIVES (1999) (visited April 17, 2000) <<http://www.agi-usa.org/pubs/journals/2501599.html>>.
- 131** *Id.*
- 132** *The Female Condom and AIDS*, reprinted from UNAIDS POINT OF VIEW, BEST PRACTICE COLLECTION (1997) (visited Feb. 14, 2000) <<http://hivinsite.ucsf.edu/social/un/2098.3d5c.html>>.
- 133** UNAIDS press release: *Update on Female-Con-*

*trolled Methods for HIV and STD Prevention Search for Vaginal Microbicides Continues; Female Condom to Receive Major Push from UNAIDS for Wider Availability* (June 22, 1999) (visited Feb. 11, 2000) <<http://www.unaids.org/whatsnew/press/eng/pressarc99/microb99.html>>.

**134** *The Female Condom and AIDS*, *supra* note 132.

**135** UNAIDS press release, *supra* note 133.

## Notes for Chapter 3

**136** *Beijing Platform of Action*, *supra* note 1, para. 106(k).

**137** General Recommendation on Health, *supra* note 11, para. 14.

**138** The right to physical integrity is rooted in a number of broader human rights principles, including the inherent dignity of the person and the right to liberty and security of the person. It is explicitly recognized in Article 4 of the Banjul Charter, *supra* note 14, and Article 5(1) of the American Convention, *supra* note 13.

**139** Women's Convention, *supra* note 10, art. 16(1)(e). See Introduction for further discussion of this right.

**140** Freedom from interference in one's privacy and family life is protected by Article 12 of the Universal Declaration, *supra* note 3, Article 17 of the Civil and Political Rights Covenant, *supra* note 3; Article 11 of the American Convention, *supra* note 13; and Article 8(1) of the European Convention, *supra* note 13.

**141** The right to freedom from discrimination is found in: Article 2 of the Universal Declaration, *supra* note 3; Article 3 of the Civil and Political Rights Covenant, *supra* note 3; Article 3 of the Economic, Social and Cultural Rights Covenant, *supra* note 5; Article 2 of the Banjul Charter, *supra* note 14; Article 1 of the American Convention, *supra* note 13; and Article 14 of the European Convention, *supra* note 13.

**142** Women's Convention, *supra* note 10, art. 1.

**143** Economic, Social and Cultural Rights Covenant, *supra* note 5, art. 12.

**144** WHO, *Definition of Health*, *supra* note 6.

**145** Safe Motherhood Inter-Agency Group, *Unsafe Abortion* (visited April 7, 2000) <[http://safemotherhood.org/init\\_facts.htm](http://safemotherhood.org/init_facts.htm)>.

**146** *Id.*

**147** *ICPD Programme of Action*, *supra* note 1, para. 8.25.

**148** *ICPD+5 Key Actions Document*, *supra* note 37, para. 63(iii).

**149** ALAN GUTTMACHER INSTITUTE, *INTO A NEW WORLD* 25 (1998) [hereinafter ALAN GUTTMACHER INSTITUTE, *INTO A NEW WORLD*].

**150** DIV. OF REPRODUCTIVE HEALTH, WHO, *UNSAFE ABORTION* 9 (3d ed. 1998).

**151** Universal Declaration, *supra* note 3, art. 3; Civil and Political Rights Covenant, *supra* note 3 art. 6.

**152** Human Rights Committee, The right to life (article 6), para. 5. July 30, 1982.

**153** Ipas, *ICPD Paragraph 8.25: A Global Review of*

*Progress* (visited January 31, 2000) <<http://www.ipas.org/ipas/rights/icpd825EG.htm#>>.

**154** DIV. OF REPRODUCTIVE HEALTH, WHO, *supra* note 150 at 9.

**155** Human Rights Committee, Concluding observations of the Human Rights Committee: Peru, para. 15, CCPR/C/79/Add.72, Nov. 18, 1996.

**156** CRLP, *THE WORLD'S ABORTION LAWS* 1999 (wallchart) [hereinafter CRLP, *THE WORLD'S ABORTION LAWS*]

**157** *Id.*

**158** Anika Rahman, Laura Katzive & Stanley K. Henshaw, *A Global Review of Laws on Induced Abortion, 1985-1997*, 24 *INTERNATIONAL FAMILY PLANNING PERSPECTIVES* 56, 75 (1998).

**159** CRLP, *THE WORLD'S ABORTION LAWS*, *supra* note 156.

**160** *Id.*

**161** Rahman, Katzive & Henshaw, *supra* note 158, at 60.

**162** *Id.*

**163** *Id.* at 59.

**164** ADRIENNE GERMAIN & THERESA KIM, *INTERNATIONAL WOMEN'S HEALTH COALITION, EXPANDING ACCESS TO SAFE ABORTION: STRATEGIES FOR ACTION* 17 (1998).

**165** *Id.*

**166** Rahman, Katzive & Henshaw, *supra* note 158, at 57 *citing* Medical Termination of Pregnancy Act, Act No. 34 of 1971, sect. 3(2), Explanation I, *reprinted in* *INTERNATIONAL DIGEST OF HEALTH LEGISLATION*, 1971, 22:965.

**167** *Special Rapporteur's Report on Violence and Reproductive Rights*, *supra* note 82, para. 62.

**168** *Id.* para. 50.

**169** *Id.*

**170** Albania, Directive of June 8, 1991 of the Ministry of Health to the Order of June 17, 1989, *translated in* 18 *ANNUAL REVIEW OF POPULATION LAW* 26 (Reed Boland ed., 1991).

**171** In this report, gestational age limits are calculated from the last menstrual period (LMP), which is generally considered to occur two weeks prior to conception.

**172** Albania, Law No. 8045 of Dec. 7, 1995 on the Interruption of Pregnancy, *summarized in* 40 *RECHT IN OST UND WEST* 113 (1996).

**173** *Id.*

**174** Albania, Order No. 1765 of June 17, 1989 of the Ministry of Health on Permission of Prevention and Eventual Interruption of Pregnancy, *summarized in* 18 *ANNUAL REVIEW OF POPULATION LAW* 26 (Reed Boland ed., 1991).

**175** Burkina Faso, Law No. 043/96/ADP amending the Penal Code, arts 383, 387 (1996).

**176** *Id.*

**177** Burkina Faso, Penal Code, arts. 317, 328 (1984) (superseded).

**178** Cambodia, Royal Kram of Nov. 12, 1997.

**179** *Id.*, art. 8.

**180** POPULATION DIVISION, UNITED NATIONS DEPARTMENT FOR ECONOMIC AND SOCIAL DEVELOPMENT, *ABORTION POLICIES: A GLOBAL REVIEW, VOL I: AFGHANISTAN TO FRANCE* 70 (1992).

**181** Guyana, Act. No. 7 of 1995, June 14, 1995, *translated in* 46 *INTERNATIONAL DIGEST OF POPULATION LAW* 479

(1995), art. 5.

**182** *Id.*, art. 6.

**183** POPULATION DIVISION, UNITED NATIONS (UN) DEPARTMENT FOR ECONOMIC AND SOCIAL INFORMATION AND POLICY ANALYSIS, ABORTION POLICIES: A GLOBAL REVIEW, VOL. II: GABON TO NORWAY 43 (1993).

**184** South Africa, Choice on Termination of Pregnancy Act, Act No. 92, art. 2 (1996).

**185** South Africa, Abortion and Sterilization Act (1975), reprinted in INTERNATIONAL ADVISORY COMMITTEE ON POPULATION AND LAW, ANNUAL REVIEW OF POPULATION LAW 48 (1975).

**186** El Salvador, Decreto No. 1030, arts 133-137 (1998).

**187** POPULATION DIVISION, UNITED NATIONS (UN) DEPARTMENT FOR ECONOMIC AND SOCIAL INFORMATION AND POLICY ANALYSIS, ABORTION POLICIES: A GLOBAL REVIEW, VOL. I: AFGHANISTAN TO FRANCE 120 (1992).

**188** Political Constitution of the Republic of El Salvador, with all its reforms, entry into effect Dec. 20, 1983, amended by Decree No. 541, Feb. 16, 1999, art. 1(2).

**189** Poland, Ruling of the Constitutional Tribunal of May 28, 197, sign. of the records K 26/96, sect. 4.3 (unofficial translation).

**190** *Id.*

**191** Poland, Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination amended as of Dec. 23, 1997, translation sponsored by Federation for Women and Family Planning (Warsaw, Poland).

**192** *Id.* art. 4a.1 (1-3).

**193** *Constitution Watch: Hungary*, E. EUR. CONST. REV., Vol. 8, No. 1-2, Winter/Spring 1999 (visited Mar. 27, 2000) <<http://www.law.nyu.edu/eecr/vol8num1-2/constitution-watch/hungary.html>>.

**194** Draft Law: "On the Legal Principles and Implementation Guarantees of Bioethics", art. 9, Russian Duma, 1999.

**195** See, for example, CRLP, *Special Report: "Partial-Birth Abortion" Bans — Unconstitutional, Deceptive, Extreme* (visited April 12, 2000) <<http://www.crlp.org/special.html>>.

## Notes for Chapter 4

**196** This chapter is focused primarily on HIV/AIDS as a reproductive health and rights concern. Most of the principles discussed are equally applicable to sexually transmitted infections (STIs). In addition, STIs may be discussed in the descriptions of national-level initiatives, which may be defined broadly enough to encompass STIs.

**197** *Beijing Platform for Action*, *supra* note 1, para. 98.

**198** General Recommendation on Health, *supra* note 11, para 18.

**199** UCSF, *HIV InSite* (visited March 30, 2000) <<http://HIVInSite.ucsf.edu/social/un/2098.44d3.html>>.

**200** *Id.*

**201** UNAIDS, EPIDEMIC UPDATE: DECEMBER 1999 5, 16 (1999).

**202** JUDITH SENDEROWITZ, WORLD BANK DISCUSSION PAPERS, ADOLESCENT HEALTH: REASSESSING THE PASSAGE TO ADULTHOOD 20 (1995).

**203** UNAIDS, 1998 WORLD AIDS CAMPAIGN BRIEFING PAPER 3 (1998).

**204** Sofia Gruskin, *The Impact of Reproductive Subordination on Women's Health: Negotiating the Relationship of HIV/AIDS to Reproductive Health and Reproductive Rights*, 44 AM. U.L. REV. 1191, 1196 (1995).

**205** Universal Declaration, *supra* note 3, art. 3; Civil and Political Rights Covenant, *supra* note 3, art.6.

**206** Economic, Social and Cultural Rights Covenant, *supra* note 5, art. 12(1).

**207** *Beijing Platform for Action*, *supra* note 1, para. 37.

**208** *Id.* para. 98

**209** *Id.* para. 107(a)

**210** *Id.* para.93.

**211** CRLP & GREFELS, *supra* note 48, at 18.

**212** *Beijing Platform for Action*, *supra* note 1, para. 93.

**213** TECHNICAL AND POLICY DIVISION, UNITED NATIONS POPULATION FUND (UNFPA), THE SEXUAL AND REPRODUCTIVE HEALTH OF ADOLESCENTS: A REVIEW OF UNFPA PROGRAMME EXPERIENCE (Draft) 25 1998.

**214** CEDAW, General Recommendation No. 15 on Avoidance of Discrimination against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency syndrome (AIDS), A/45/38, Feb. 2, 1990 [hereinafter General Recommendation on AIDS].

**215** *Id.*

**216** Gruskin, *supra* note 204, at 1196.

**217** *Id.*

**218** Commission on Human Rights, *Res. on the Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)*, art. 2, Resolution 1999/49.

**219** General Recommendation on AIDS, *supra* note 214.

**220** CRLP & F.I.D.A. - K., *supra* note 49, at 166.

**221** CRLP & DEMUS, *supra* note 55, at 197.

**222** *Id.* at 116.

**223** CRLP & F.I.D.A. - K, *supra* note 49, at 165.

**224** *Id.*

**225** HUMAN RIGHTS INTERNET, HUMAN RIGHTS AND HIV/AIDS: EFFECTIVE COMMUNITY RESPONSES 18. (1998).

**226** *Id.*

**227** *Mutare: AIDS Figures Soar*, ZIMBABWE STANDARD, Oct. 8, 1998 (pg. unavail.)

**228** CRLP & OPEN DIALOGUE FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS OF YOUNG GIRLS AND ADOLESCENTS IN RUSSIA: A SHADOW REPORT 9 (1999).

**229** HUMAN RIGHTS INTERNET, *supra* note 225, at 11.

**230** *Id.*

**231** CRLP & DEMUS, *supra* note 55, at 42.

**232** *Id.*

**233** CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *supra* note 50.

**234** CRLP & DEMUS, WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, LATIN AMERICA

AND THE CARIBBEAN, UPDATE 2000 (draft) (forthcoming) [hereinafter WOMEN OF THE WORLD LAC UPDATE].

**235** Daniel Gatti, *Health-LatAm: Region's Efforts to Deal with AIDS Still Weak*, INTERPRESS NEWS SERVICE, Dec. 1, 1997

**236** *Beijing Platform for Action*, *supra* note 1, para. 108(b).

**237** *Id.* para. 108(b); *ICPD Programme of Action*, *supra* note 1, para. 8.34.

**238** *ICPD Programme of Action*, *supra* note 1, paras. 7.6, 7.30, 7.31, 7.32, 7.33, 8.31.

**239** *Id.* para. 8.31.

**240** *Beijing Platform for Action*, *supra* note 1, para. 108(g).

**241** *Id.* para. 109(h).

## Notes for Chapter 5

**242** *Beijing Platform for Action*, *supra* note 1, para. 224.

**243** Women's Convention, *supra* note 10, art. 5(a).

**244** Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, submitted to Commission on Human Rights*, U.N. Doc. E/CN.4/1996/53, Feb. 6 1996, para. 100.

**245** While the term "Female Genital Mutilation" is the term most commonly used by advocates of women's rights and health who wish to emphasize the damage caused by the procedure, it can be offensive to women in communities in which the practice is prevalent. Out of respect and sensitivity, many organizations have opted to use local terminology or more neutral terms such as "female circumcision" or "female genital cutting." In recognition of these two approaches, CRLP uses the dual term FC/FGM.

**246** Halima Embarek Warzazi, *Third Report of the Special Rapporteur on Traditional Practices affecting the Health of Women and the Girl Child*, para. 20, submitted to Sub-Commission on the Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1999/14, July 9 1999.

**247** The information in this chapter is drawn primarily from ANIKA RAHMAN & NAHID TOUBIA, *FEMALE GENITAL MUTILATION, A GUIDE TO LAWS AND POLICIES WORLDWIDE* (2000), a forthcoming book prepared by CRLP and Research, Action and Information Network for the Bodily Integrity of Women (RAINB<sup>9</sup>), published by Zed Books, U.K.

**248** NAHID TOUBIA, *FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION* 9 (1995).

**249** *Id.* at 5.

**250** NAHID TOUBIA, *CARING FOR WOMEN WITH CIRCUMCISION* 25-26 (1999).

**251** Women's Convention, *supra* note 10, art. 1.

**252** Because both men and women undergo types of circumcision, it is necessary to distinguish them in order to classify FC/FGM as a distinction based on sex. While male circumcision and FC/FGM have certain features in common, what distinguishes them is both the severity of most forms of FC/FGM and the social message that is generally associated with the practice. In most situations, FC/FGM is more severe and it results in a more extensive removal of a

critical sexual organ. Furthermore, justifications for FC/FGM often relate to societal control of women's sexuality. RAHMAN & TOUBIA, *supra* note 247.

**253** Women's Convention, *supra* note 10, art. 2(f).

**254** *Id.* art. 5(a).

**255** Economic, Social and Cultural Rights Covenant, *supra* note 5, art. 12; WHO, *Definition of Health*, *supra* note 6.

**256** *ICPD Programme of Action*, *supra* note 1, para. 7.2.

**257** General Recommendation on Health, *supra* note 11, para.12(b).

**258** Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 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].

**259** *Id.* art. 1.

**260** African Charter on the Rights and Welfare of the Child, *adopted* 1991, art. 21, OAU Doc. CAB/LEG/24.9/49 (1990) [hereinafter African Charter].

**261** L'O.U.A. *exhorte les gouvernements à ratifier la Charte africaine des enfants*, INTERPRESS NEWS SERVICE, Dec. 2, 1999.

**262** African Charter, *supra* note 260, art. 21.

**263** Penal Code of the Republic of Guinea (1965), art. 265, Conakry: Republic of Guinea (unofficial translation).

**264** Central African Republic, Ordinance No. 66/16 of Feb. 22, 1966, JOURNAL OFFICIEL DE LA RÉPUBLIQUE CENTRAFRICAINE, March 15, 1966, p. 158 (unofficial translation).

**265** Michel Allaix, *L'excision: approche juridique nationale, internationale et pratiques judiciaires*, in L'IMMIGRATION FACE AUX LOIS DE LA RÉPUBLIQUE 133, 135 (Edwige Rude-Antoine ed., 1992); Code Penal (1992), art. 222-9, Paris: Editions Techniques - Juris-Classeurs (unofficial translation).

**266** Sweden, The Act Prohibiting the female genital mutilation of women (1982:316, as amended in July 1998) (unofficial translation).

**267** United Kingdom, Prohibition of Female Circumcision Act, 1985, ch. 38.

**268** CONSTITUTION OF THE REPUBLIC OF GHANA (1992), art. 26(2), Ghana Publishing Corp.

**269** CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, art. 35(4), (1994), *translated in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gisbert H. Flanz ed., 1996).

**270** Ghana, Criminal Code (Amendment) Act, 1994, *reprinted in* 47 INTERNATIONAL DIGEST OF HEALTH LEGISLATION 30, 31 (1996).

**271** *Id.*

**272** In addition to these 12 national-level developments, in 1999, FC/FGM was prohibited in the Edo State, Nigeria, one out of 36 states and territories in Nigeria. *FGM Banned in Edo State, Nigeria*, IAC NEWSLETTER (Inter-African Committee on Traditional Practices Affecting the Health of Women and Girls, Addis Ababa, Ethiopia), No. 26, Jan. 2000 at 14.

**273** Australian Capital Territory, Crimes Amendment Act

(No. 3) 1995, No. 50 of 1995, sect. 5, 92V-92Z; Northern Territory, Criminal Code Act (RECP033), 1997, Division 4A, No. 186; New South Wales, Crimes (Female Genital Mutilation) Amendment Act 1994, No. 58, sect. 45; South Australia, Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995, sects. 33-33B; Victoria, Crimes (Female Genital Mutilation) Act 1996, sects. 3243A; Tasmania, Royal Australian College of Obstetricians and Gynecologists (RACOG) (1997) Female genital mutilation: Information for Australian health professionals, East Melbourne: RACOG, p. 21.

**274** Burkina Faso, Law No. 43/96/ADP of Nov. 13, 1996 on the Penal Code, art. 380, JOURNAL OFFICIEL DU BURKINA FASO, Jan. 27, 1997 (unofficial translation).

**275** Canada, Criminal Code, art. 268, Consolidated Statutes of Canada.

**276** Côte d'Ivoire, Loi no. 98-757, Dec. 23, 1998, portant répression de certaines formes de violences à l'égard des Femmes, JOURNAL OFFICIEL DE LA RÉPUBLIQUE DE CÔTE D'IVOIRE, Jan. 14, 1999, p.25.

**277** Djibouti, Penal Code, promulgated by Law 59/AN/94 of Jan. 5, 1995 (unofficial translation).

**278** *Id.*, art. 333.

**279** Egypt, AWAKEN (Equality Now, N.Y.), Dec. 1997, at 5.

**280** New Zealand, Crimes Act Amendment 1995 049, §§ 204A and B.

**281** Norway, Law No. 74 of 15 December 1995 prohibiting female genital mutilation. (Norsk Lovtidend, Part 1, 9 January 1996, No. 25, pp. 1619-1620) translated in 47 INTERNATIONAL DIGEST OF HEALTH LEGISLATION 173 (1996)

**282** Senegal, Proposed Law Modifying Certain Provisions of the Penal Code, Art. 299Bis (adopted January 1999).

**283** Tanzania, The Sexual Offences Special Provision Act, 1998, Sec. 169A.

**284** Togo, Loi No. 98-016 of Nov. 17, 1998 concerning the prohibition of female genital mutilations in JOURNAL OFFICIEL DE LA RÉPUBLIQUE TOGOLAISE, Nov. 21, 1998, at 2-3.

**285** *Id.* at art. 7

**286** United States, 18 U.S.C.A. § 116.

**287** See CAL. PENAL CODE § 273.4 (West 1996); CALHEALTH & SAFETY CODE § 124170 (1996); COL. CRIMINAL LAW AND PROCEDURES, ch. 216, Senate Bill 99-096; DEL. CODE ANN. Tit. 11, § 780 (1996); ILL. COMP. STAT. ANN. § 5/12-34 (1997); An Act Concerning Health-Female Genital Mutilation, ch. 128, 1998 MD. Laws 128, § 1 (to be codified at MD. CODE ANN., Health §§ 20-601-20-603); MINN. STAT. §§ 609.2245(l) & 144.3872 (West 1996); NEV. REV. STAT. ANN. §200.5083 (Michie 1999); 1997 N.Y. ADV. LEGIS. SERV. 618; N.D. CENT. CODE § 12.1-36-01 (1996); Oregon House Bill 3608 (1999); CRIMINAL OFFENSES ACT OF RHODE ISLAND 1996 R.I. PUB. LAWS ch. 8 1 § 1, RHODE ISLAND GEN. LAWS § 11-5-2(1996); The Prohibition of Female Genital Mutilation Act of 1996, TENN. ACTS ch. 857 §3, TENN. CODE ANN. §39-13-110 (1996); TEXAS HEALTH AND SAFETY CODE, ch. 166; CODE OF WEST VIRGINIA, ch. 6 1, art.8D; and WIS. STAT. § 146.35 (West 1995).

**288** CONSTITUTION OF UGANDA, art. 33(6) (1995), reprinted

in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gisbert H. Flanz ed., 1996).

**289** United States, Pub. L. 104-134, Title I, § 101(d) [Title V § 520] Apr. 26, 1996, 110 Stat. 1321-250; renumbered Title I Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327 (see 42 U.S.C.A. § 241, Historical and Statutory notes (1998 Supp.))

**290** United States, Pub. L. 104-208, § 644, 110 Stat. 30009-546 (1996).

**291** For an in-depth discussion of recommendations for government and NGO action see RAHMAN & TOUBIA, *supra* note 247.

## Notes for Chapter 6

**292** *Beijing Platform of Action*, *supra* note 1, para. 113.

**293** *Id.*, at Para. 145(d), (e).

**294** In 1999, the U.N. Special Rapporteur on Violence Against Women issued a report, particularly focused on the link between violence against women and reproductive health. Special Rapporteur's Report on Violence and Reproductive Rights, *supra* note 82; see generally, CENTER FOR HEALTH AND GENDER EQUITY (CHANGE), POPULATION REPORTS, ENDING VIOLENCE AGAINST WOMEN, Vol. XXVII, No. 4, at 3, 5 (Dec. 1999) [hereinafter CHANGE REPORT]

**295** *Beijing Platform of Action*, *supra* note 1, para. 13; See also Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Convention of Belém Do Pará, art. 2 (1994).

**296** UNFPA, LEGISLATIVE COMMITMENTS TO SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS: A FIVE-YEAR REVIEW OF THE CAIRO AND BEIJING CONFERENCES IN LATIN AMERICA AND THE CARIBBEAN 25-28 (Prepared for the Eighth Regional Conference on Women of Latin America and the Caribbean, 8-10 February (Lima, 2000), and the UN Beijing plus Five Review Process, Dec. 1999), [hereinafter UNFPA, LEGISLATIVE COMMITMENTS]

**297** CEDAW, General Recommendation No. 19 on Violence Against Women, 11th Sess., para. 1, U.N. Doc. C/1992/L.1/Add.15 (1992) [hereinafter General Recommendation on Violence].

**298** See e.g., Universal Declaration, *supra* note 3, art. 2; Civil and Political Rights Covenant, *supra* note 3, art. 3; Economic, Social and Cultural Rights Covenant, *supra* note 5, art. 2; African Charter, *supra* note art. 2; American Convention, *supra* note 13, art. 1; European Convention, *supra* note 13, art. 14.

**299** Women's Convention, *supra* note 10, art. 1.

**300** See General Recommendation on Violence, *supra* note 297.

**301** Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, Convention of Belém Do Pará, 1994.

**302** See e.g., Prosecutor v. Akayesu, 1998 I.C.T.R.-96-4-T (Sept. 2).

**303** Rome Treaty, *supra* note 32, arts. 7, 8.

**304** *Beijing Platform of Action*, *supra* note 1, para. 145.

**305** *Vienna Declaration and Programme of Action*, UN

Doc. A/CONG.157/21 (12 July 1993), p. 18.

**306** Bedont & Hall-Martinez, *supra* note 33, at 70-71.

**307** THE WOMEN'S CAUCUS FOR GENDER JUSTICE, THE INTERNATIONAL CRIMINAL COURT: THE BEIJING PLATFORM IN ACTION: PUTTING THE ICC ON THE BEIJING+5 AGENDA 12 (2000) [hereinafter WOMEN'S CAUCUS, BEIJING PLATFORM IN ACTION].

**308** *Special Rapporteur's Report on Violence and Reproductive Rights*, *supra* note 82, para. 17.

**309** *Id.*

**310** *Id.*

**311** *Id.*

**312** See generally, Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 971, 973 (1991).

**313** EQUALITY NOW, WORDS AND DEEDS: HOLDING GOVERNMENTS ACCOUNTABLE IN THE BEIJING+5 REVIEW PROCESS, 26-27 (1999) [hereinafter EQUALITY NOW, WORDS AND DEEDS].

**314** CRLP & DEMUS, *supra* note 55, at 156.

**315** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 23 citing Penal Code, art. 93.

**316** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 24 citing Penal Code, art. 599 (1957).

**317** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 25 citing Penal Code, art. 522.

**318** CRLP & DEMUS, *supra* note 55, at 119.

**319** CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *supra* note 50.

**320** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 26 citing Penal Code, art. 116.

**321** CRLP & DEMUS, WOMEN'S REPRODUCTIVE RIGHTS IN PERU: A SHADOW REPORT 7 (1998).

**322** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 29 citing Penal Code, art. 340, No. 16 (1960).

**323** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 30 citing Penal Code, art. 548.

**324** Human Rights Watch, *Reports on Women's Human Rights 2000* (visited April 17, 2000) <http://www.hrw.org/hrw/worldreport/women/index.html>.

**325** Richard Valdmanis, *Pak Women Seek Refuge from Forced Marriages*, ETHNIC NEWSWATCH, Aug. 27, 1999.

**326** *Id.*

**327** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 14 citing the Offences of Zina (Enforcement of Hudood) Ordinance, § 8 (1979).

**328** CRLP & F.I.D.A.-K, *supra* note 49, at 105.

**329** *Id.*, at 144.

**330** Ecuador, Law No. 105 (1998). For a discussion of Ecuador's 1995 Law Against Family Violence and its application to sexual violence against adolescents, see CRLP, IMPLEMENTING ADOLESCENT REPRODUCTIVE RIGHTS THROUGH THE CONVENTION ON THE RIGHTS OF THE CHILD 16-17 (1999).

**331** POLITICAL CONSTITUTION OF ECUADOR, art. 23.2 (Aug. 11, 1998).

**332** CRLP & DEMUS, *supra* note 55, at 82.

**333** *Id.*

**334** CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *supra* note 50.

**335** *Id.*

**336** For an analysis of many of these laws, see the appropriate chapter in CRLP & DEMUS, *supra* note 55; see also UNFPA, LEGISLATIVE COMMITMENTS, *supra* note 296, at 26.

**337** CRLP & DEMUS, *supra* note 55, at 82.

**338** CRLP & CORPORACIÓN CASA DE LA MUJER, WOMEN'S REPRODUCTIVE RIGHTS IN COLOMBIA: A SHADOW REPORT 18 (1998).

**339** Patricia Viseur Sellers & Kaoru Okuizumi, *Prosecuting International Crimes: An Inside View: Intentional Prosecution of Sexual Assaults*, 7 TRANSNAT'L L. & CONTEMP. PROBS. 45, 51-53 (1997).

**340** *International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991: Rules of Procedure and Evidence*, U.N. Doc. IT/32/Rev.17, Rule 96 (1994).

**341** Patricia Viseur Sellers, *supra* note 339.

**342** Prosecutor v. Dragan Gagovic et al., 1996 I.C.T.Y. No. IT-96-23-I (June 26).

**343** Prosecutor v. Akayesu, 1998 I.C.T.R.-96-4-T (Sept. 2).

**344** Prosecutor v. Dusko Tadic and Goran Borovnica, 1995 I.C.T.Y. No. IT-94-1-T (Feb. 13).

**345** Prosecutor v. Anto Furundzija, 1998 I.C.T.Y. No. IT-95-17/1-T (Dec. 10).

**346** Prosecutor v. Zejnir Delalic et al., 1998 I.C.T.Y. No. IT-96-21-I (Nov. 16).

**347** See WOMEN'S CAUCUS, BEIJING PLATFORM IN ACTION, *supra* note 307, at 28-29.

## Notes for Chapter 7

**348** *Beijing Platform for Action*, *supra* note 1, para 274 (e).

**349** *Id.* para 274 (d).

**350** Women's Convention, *supra* note 10, art. 16.

**351** Universal Declaration, *supra* note 3, art. 16; Civil and Political Rights Covenant, *supra* note 3, art. 23; Economic, Social and Cultural Rights Covenant, *supra* note 5, art. (10)1.

**352** Universal Declaration, *supra* note 3, art. 16; Civil and Political Rights Covenant, *supra* note 3, art. 23.

**353** Women's Convention, *supra* note 10, art. 16 (1)(a-c).

**354** *Id.* art. 16 (1)(g).

**355** *Id.* art. 16 (1)(h).

**356** CRLP & WOMEN'S CENTRE FOR PEACE AND DEVELOPMENT (WOPED) WOMEN'S REPRODUCTIVE RIGHTS IN NIGERIA: A SHADOW REPORT 10 (1998).

**357** CRLP & GREFELS, *supra* note 48, at 61.

**358** CEDAW, General Recommendation on Equality in Marriage and Family Relations, Recommendation 21, para. 36, April 2, 1994 [hereinafter General Recommendation on Marriage]; Children's Rights Convention, *supra* note 258, art. 1.

**359** Women's Convention, *supra* note 10, art. 16(2); General Recommendation on Marriage, *supra* note 358, para. 36.

**360** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD,

*supra* note 149, at 15.

**361** *Id.*

**362** *Id.*

**363** *Id.*

**364** CRLP & GREFELS, *supra* note 48, at 118.

**365** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 17.

**366** *Id.*

**367** *Id.*

**368** CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, *supra* note 50.

**369** *Id.*

**370** CRLP & DEMUS, *supra* note 55, at 29.

**371** CRLP & F.I.D.A.-K, *supra* note 49, at 22.

**372** CRLP & GREFELS, *supra* note 48, at 65.

**373** CRLP & DEMUS, *supra* note 55, at 45.

**374** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 8, citing Civil Code, art. 152

**375** Mali, Code of Marriage and Guardianship (1992), art. 32, RECUEIL DES CODES ET TEXTES USUELS DE LA RÉPUBLIQUE DU MALI 1959-1992.

**376** CRLP & GREFELS, *supra* note 48, at 202; CRLP & F.I.D.A. - K, *supra* note 49, at 167.

**377** CRLP & GREFELS, *supra* note 48, at 202.

**378** GIULIA TAMAYO (CLADEM), DERECHOS HUMANOS DE LAS MUJERES, VIOLENCIA CONTRA LA MUJER Y PAZ EN LA REGION 33 (2000).

**379** General Recommendation on Marriage, *supra* note 358, para. 21.

**380** CRLP & GREFELS, *supra* note 48, at 174.

**381** CRLP, THE WORLD'S ABORTION LAWS, *supra* note 156.

**382** EQUALITY NOW, WORDS AND DEEDS, *supra* note 313, at 18 citing Mulaki Ain, No. 10 of the Chapter on Partition.

**383** CRLP & GREFELS, *supra* note 48, at 85.

**384** CRLP & F.I.D.A. - K, *supra* note 49, at 84.

**385** *Id.*

**386** CRLP & WOMEN'S LEGAL AID CENTER, WOMEN'S REPRODUCTIVE RIGHTS IN TANZANIA: A SHADOW REPORT 14 (1998).

**387** CRLP & F.I.D.A. - K, *supra* note 49, at 168.

**388** CORPORACIÓN DE LA MUJER, LA MORADA ET AL., WOMEN'S RIGHTS IN CHILE: A SHADOW REPORT 19 (1999); *Philippine Speaker says Congress Likely to Pass Divorce Bill*, DEUTSCHE PRESSE-AGENTUR, Jan. 30, 2000.

**389** CRLP & ASSOCIATION CAMEROUNAISE DES FEMMES JURISTES (ACAFEJ), WOMEN'S REPRODUCTIVE RIGHTS IN CAMEROON: A SHADOW REPORT 11 (1999).

**390** CRLP & CORPORACIÓN CASA DE LA MUJER, WOMEN'S REPRODUCTIVE RIGHTS IN COLUMBIA: A SHADOW REPORT 14 (1998).

**391** *Id.* at 15.

**392** WOMEN OF THE WORLD LAC UPDATE, *supra* note 234.

**393** *Id.*

**394** Susan Sachs, *Egypt Makes it Easier for Women to Divorce Husbands*, N.Y. TIMES, Jan. 28, 2000, at A1.

**395** *Id.*

**396** Women for Women's Human Rights (WWHR), *The New Law on Domestic Violence in Turkey*, *Legal Research*

*and Resource Center for Human Rights Pages* (visited April 25, 2000). <<http://www.geocities.com/~rlrc/Women/turkeylaw.htm>>.

**397** Turkey, Law on the Protection of the Family, sect. 1(1-6), *Legal Research and Resource Center for Human Rights Pages* (visited April 25, 2000) <<http://www.geocities.com/~rlrc/Women/englishturkey.htm>>.

**398** See note 336 and accompanying text.

**399** Venia Magaya v. Nakayi Shonhiwa Magayavenia, Supreme Court of Zimbabwe (Harare, November 2, 1998 & February 16, 1999).

**400** *Id.* at 5.

**401** *Id.* at 15.

**402** General Recommendation on Marriage, *supra* note 356, para 36.

**403** Women's Convention, *supra* note 10, art. 15(1); General Recommendation on Marriage, *supra* note 358, para. 7.

## Notes for Chapter 8

**404** *Beijing Platform for Action*, *supra* note 1, para. 267.

**405** Children's Rights Convention, *supra* note 258, art. 24.

**406** CRLP, ADOLESCENT REPRODUCTIVE RIGHTS: LAWS AND POLICIES TO IMPROVE THEIR HEALTH AND LIVES 1 (1999) [hereinafter ADOLESCENT REPRODUCTIVE RIGHTS].

**407** *Id.*

**408** *Id.*, at 2.

**409** TECHNICAL AND POLICY DIVISION, UNFPA, THE SEXUAL AND REPRODUCTIVE HEALTH OF ADOLESCENTS (draft) 2, (1998).

**410** Children's Rights Convention, *supra* note 256, art. 1.

**411** *Id.* art 1.

**412** *Id.* art. 24.

**413** *Id.* art. 24(f).

**414** *Id.* art. 5.

**415** *Id.* arts. 3(1) and (2), 14(2), 18(1).

**416** *Id.* arts. 19 & 34.

**417** *Id.* art. 16.

**418** *Id.* art. 12(1)

**419** The human right to determine the number, timing and spacing of one's children was first recognized at the U.N. International Conference on Human Rights in Teheran in 1968. See also *ICPD Programme of Action*, para. 7.3 and *Beijing Declaration and Platform for Action*, para. 89.

**420** *ICPD Programme of Action*, *supra* note 1, at chs. IV, VII, & VIII; *Beijing Platform for Action*, *supra* note 1, at chs. IV(C), (L).

**421** *ICPD Programme of Action*, *supra* note 1, at ch.VII(E); *Beijing Platform for Action*, *supra* note 1, at ch. IV(C).

**422** Concluding Observations of the Committee on the Rights of the Child: Belize, U.N. Doc. CRC/C/15/Add.99, at para. 25 (1999).

**423** *Id.*

**424** Concluding observations of the Committee on the Elimination of Discrimination Against Women: Chile, U.N.



Doc. A/50/38, at para. 138 (1995).

**425** Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Australia, U.N. Doc. A/49/38, at para. 404 (1994).

**426** *Id.* para. 405.

**427** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 32.

**428** UNFPA, STATE OF THE WORLD POPULATION 1999 43 (1999).

**429** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 5.

**430** CHILD CARE ACT No. 74 OF 1983, §39(4).

**431** MEDICINES AND RELATED SUBSTANCES CONTROL ACT No. 101 of 1965.

**432** *Id.* §22A(4).

**433** Rahman, Katzive & Henshaw, *supra* note 158, at 59. Note that in the United States, such restrictions are determined at the state level and are not universal throughout the country.

**434** UNFPA, LEGISLATIVE COMMITMENTS TO SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS: A 5 YEAR REVIEW OF THE CAIRO AND BEIJING CONFERENCES IN LATIN AMERICA AND THE CARIBBEAN (1999) *citing* Código de la Niñez y la Adolescencia, Costa Rica, 1998.

**435** CRLP & F.I.D.A. — K, *supra* note 49, at 46.

**436** *Id.*

**437** UNFPA, STATE OF THE WORLD POPULATION 1997 37 (1997).

**438** ADOLESCENT REPRODUCTIVE RIGHTS, *supra* note 406, at 5.

**439** Peru Law No. 26941, April 16, 1998, art. 14.

**440** *Id.*

**441** CORPORACIÓN DE LA MUJER (LA MORADA) AND CRLP, ET AL., WOMEN'S RIGHTS IN CHILE: A SHADOW REPORT 14 (1999).

**442** Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Third and fourth periodic reports of States parties - Bangladesh, CEDAW/C/BGD/3-4, April 1, 1997.

**443** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 14.

**444** Panama, Family Code, Law No. 3 of 1994 (*supra* 3 Jan. 1995) arts. 671 and 703.

**445** *Id.*

**446** Panama, Law No. 34 of 1995.

**447** ADOLESCENT REPRODUCTIVE RIGHTS, *supra* note 406, at 7. The Children's Rights Convention considers children persons under the age of 18. Children's Rights Convention, *supra* note 258, art. 1.

**448** UNFPA, STATE OF THE WORLD POPULATION 1997 39 (1997).

**449** See generally Fact Sheet No. 23, *Harmful Traditional Practices Affecting the Health of Women and Children*, U.N. High Commissioner for Human Rights (Dec. 18, 1979); See also United Nations Press Release: *Cultural Patterns Hinder Zimbabwe's Efforts to Implement Covenant on Civil, Political Rights, Human Rights Com-*

*mittee Told; Education Programme Seeks to Raise Awareness, Break Stranglehold of Outdated Customs*, HR/CT/507 (March 25, 1998); See also ASGHAR ALI ENGINEER, THE RIGHTS OF WOMEN IN ISLAM, Ch. 5 on Marital Rights of Women in Islam, 98 (1992).

**450** Women's Convention, *supra* note 10, art. 16(2); Economic Rights Covenant art. 10(1); Covenant on Civil and Political Rights, *supra* note 3, art. 23.

**451** ADOLESCENT REPRODUCTIVE RIGHTS, *supra* note 406, at 9, *citing* World Health Day, 7 April 1998, Delay Childbearing, (visited April 30, 1998) <<http://who.ch/whday/1998/whd98-04.htm>>.

**452** ADOLESCENT REPRODUCTIVE RIGHTS, *supra* note 406, at 9, *citing* UNFPA *Adolescent Reproductive Health in Sub-Saharan Africa* (viewed on June 23, 1998) <<http://www.cedpa.org/addfact.html>>.

**453** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 32.

**454** *Id.* at 31.

**455** For a discussion on emergency contraceptives see Chapter 2 on Contraceptives.

**456** Suzanne Daly, *France Provides Morning-After Pill to School Girls*, N.Y. TIMES, Feb. 8, 2000 at A-1; France, National Protocol on the Organization of Emergency Care in Schools and Local Public Educational Institutions, OFFICIAL BULLETIN OF NATIONAL EDUCATION, HS No 1, Jan. 6, 2000 (visited April 14, 2000) <[www.education.gouv.fr/bo/2000/hs1/texte.htm](http://www.education.gouv.fr/bo/2000/hs1/texte.htm)>.

**457** Daly, *supra* note 60, at A-1.

**458** *Id.*

**459** *Id.*

**460** Safe Motherhood Factsheet: Address Unsafe Abortion 1-2 (1998), *citing* *Care for Postabortion Complications: Saving Women's Lives*, 24(2) POP REPORTS (Sept. 1997).

**461** THE CENTER FOR POPULATION OPTIONS, INTERNATIONAL CENTER ON ADOLESCENT FERTILITY, ADOLESCENTS AND UNSAFE ABORTION IN DEVELOPING COUNTRIES: A PREVENTABLE TRAGEDY 3 (1992).

**462** Rahman, Katzive & Henshaw, *supra* note 158, at 59.

**463** ALAN GUTTMACHER INSTITUTE, HENRY J. KAISER FAMILY FOUNDATION AND NATIONAL PRESS FOUNDATION, EMERGING ISSUES IN REPRODUCTIVE HEALTH FACT SHEET: SEXUALLY TRANSMITTED DISEASES IN THE U.S. (1998).

**464** UNAIDS, 1998 WORLD AIDS CAMPAIGN BRIEFING PAPER 3 (1998).

**465** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 34.

**466** D.A. Verkuyl, *Practicing Obstetrics and Gynecology in Areas with High Prevalence of HIV Infection*, 346 LANCET 293-96 (1995).

**467** CRLP & F.I.D.A.—K, *supra* note 49, at 42, *citing* MINISTRY OF HEALTH, NATIONAL REPRODUCTIVE HEALTH SERVICE POLICY AND STANDARDS iv, at §2.4 (Apr. 1996).

**468** ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, *supra* note 149, at 38.

**469** UNFPA, STATE OF THE WORLD POPULATION 1997 37 (1997).

---

470 *Id.* at 45.

471 NAHID TOUBIA, *FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION* 9 (2nd ed. 1995)

472 RAHMAN & TOUBIA, *supra* note 247.

473 See Chapter 5 for further discussion of FC/FGM as a violation of girls' human rights.

474 RAHMAN & TOUBIA, *supra* note 247.

475 See Chapter 5 for further discussion of laws and policies addressing FC/FGM.

476 Republic of Senegal, Proposed Law Modifying Certain Provisions of the Penal Code, Art. 299Bis (*adopted* January 1999).