

Reproductive Rights of Young Girls and Adolescents in Mali: A Shadow Report

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REPRODUCTIVE RIGHTS OF YOUNG GIRLS AND ADOLESCENTS IN MALI: A SHADOW REPORT

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Introduction

The purpose of this report is to supplement, or “shadow,” the report of the government of Mali to the Committee on the Rights of the Child (hereinafter the Committee) during its 22nd session. It has been compiled and written by the Center for Reproductive Law and Policy (CRLP) and the Association of Jurists of Mali (AJM).

Non-governmental organizations (NGOs) such as CRLP and AJM can play an essential role in supplying the Committee with information that is credible, accurate, and independent concerning the legal status and the real-life situation of young girls and adolescents, as well as the efforts being made by the governments that ratified the Convention on the Rights of the Child (hereinafter Children’s Convention). Furthermore, if the Committee’s recommendations can be firmly based on the real-life experience of young girls and adolescents in Mali, then NGOs can use them as a means of pressuring their governments to promulgate or implement legal and policy changes.

Discrimination against girls and women is widespread in all societies. Clearly, this discrimination violates numerous human rights and requires urgent action. Nonetheless, this report is primarily concerned with the reproductive health and rights of young girls and adolescents, the laws and policies linked to these rights, and the realities that affect these rights in Mali. Under the terms of Article 1 of the Children’s Convention, its provisions apply to any person under 18. Young girls and adolescents face questions about sexuality, gender equality, and reproductive health on a daily basis. Their reproductive health and rights are therefore an integral part of the Committee’s mandate.

“Reproductive rights embrace certain human rights already recognized in national laws, international human rights documents, and other consensus documents,” including the Children’s Convention. This principle was articulated during the International Conference on Population and Development held in Cairo in 1994, as well as at the Fourth World Conference on Women held in Beijing in 1995. Paragraph 7.46 of the Cairo Programme of Action stated that “[c]ountries, with the support of the international community, should protect and promote the rights of adolescents to reproductive health education, information and care.” Reproductive rights are fundamental to the health and equality of young girls and adolescents, and it is therefore essential that States Parties’ commitment to ensuring them receives serious attention.

This report links various fundamental reproductive rights issues to the relevant provisions of the Children’s Convention. Discussion of each issue is divided into two distinct sections. The first section, which is shaded, addresses the relevant laws and policies of Mali, linking them to the corresponding provisions of the Children’s Convention under discussion. The information in the first section is drawn primarily from the chapter on Mali in the forthcoming report entitled *Women of the World: Laws and Policies Affecting Their Reproductive Lives—Francophone Africa*. This report is one in a series of reports covering various regions of the world, and is currently being compiled by CRLP in collaboration with national-level NGOs. The AJM drafted the chapter on Mali, which was edited by CRLP and the Groupe de recherche femmes et lois au Sénégal (GREFELS). The second section focuses on implementation and enforcement of laws and policies—in other words, on the reality of the lives of young girls and adolescents. AJM supplied most of the information in this section.

The report was coordinated and edited by Kathy Hall Martinez and Maryse Fontus of CRLP, with the assistance of Sophie Lescure and Sarah Netburn, as well as by Maitre Djourté Fatimata Dembelé, of the Association of Jurists of Mali.

Mali's population is young: approximately 46% is under the age of 15.¹ Births to adolescent girls between the ages of 15 and 19 account for 14% of the national fertility rate.² The 1995-1996 Demographic and Health Survey found that 42% of adolescents had begun their reproductive lives: 34% had already given birth to one child and 8% were pregnant for the first time.³ It is therefore particularly important to be responsive to the reproductive health needs of adolescents in Mali.

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Principal points of concern

1. Access to Medical Care for Reproductive Matters and Family Planning (Articles 6 and 24)

It is essential that adolescents be better informed about access to family planning services. The inaccessibility of these services and the lack of information are primarily responsible for the high rate of adolescent pregnancy. Early pregnancies are a significant risk factor in maternal and infant mortality; indeed, the infant mortality rate is 25% to 53% higher when a mother is under 20 years of age.

Lacking information on family planning, many people associate use of contraceptives with promiscuity. Such pervasive views lead adolescents to engage in sexual activity in secrecy. In cases of unwanted pregnancy, adolescents must often resort to illegal abortions, as the procedure is prohibited in Mali. These clandestine abortions occur in deplorable and unsanitary conditions.

Article 24 obligates Mali to offer adolescents a means of exercising their right to family planning services. Government efforts to ensure access to these services have been unsuccessful, in part because budgetary allocations to the health sector have been insufficient.

2. Abortion (Articles 6 and 24)

Mali must clarify the legal status of abortion and better inform, educate, and communicate with adolescents in order to curb the rising numbers of clandestine abortions and cases of infanticide. There is a contradiction between the Penal Code, which prohibits abortion altogether, and national policy, which permits it for therapeutic reasons. The law's lack of clarity in the area of abortion has serious consequences for women's health. In Mali, unsafe abortion is the cause of one out of every 20 maternal deaths.

3. HIV/AIDS and Sexually Transmissible Infections (STIs) (Article 24)

Article 24(2) obligates Mali to ensure adolescents information and education in matters of sexual health. It is essential that sexual education include lessons on the manner in which AIDS and other STIs are transmitted. Although 79.8% of women aged 15 to 19 are aware of the AIDS epidemic, one in two women admits that she has not changed her sexual behavior by using condoms. As a result, AIDS is spreading at an alarming rate and only aggressive action can avert a public health disaster. In spite of the government's efforts through its National Program Against AIDS (PNLS), the transmission rate continues to increase.

4. Education (Articles 17, 24, 28, and 29)

It is essential that women have the same access to education as men. The enrollment rate in elementary school for school-aged girls is 27%, as opposed to 41% for boys. In secondary school, it is 6% and 12% for girls and boys respectively. Government measures to raise young women's education level have not succeeded. The problems specific to women must be considered. Because of the persistence of traditional family roles, young wives must sacrifice their educations to perform domestic duties and raise children. These traditional roles are thus a source of discrimination against women in the area of education.

5. Marriage (Article 2)

In Mali, law and custom permit women to marry at a very young age. The minimum age of marriage for girls is 15, as opposed to 18 for boys. This practice is discriminatory and violates girls' rights to education and health care, as well as those rights stipulated in Articles 6, 17, 24, 28, and 29 of the Children's Convention.

Moreover, although forced marriage is prohibited, it occurs frequently.

6. Sexual Assault (Articles 19 and 34)

In Mali, there is no law prohibiting marital rape, which is not considered a crime. The legal means for preventing sexual assault are inadequate to address the sensitive situation in which victims find themselves. Victims are often plagued with a sense of shame, causing them to abandon legal action. Women rarely report incidents of rape or sexual assault. If they do, social pressure often causes them to drop charges before obtaining results.

7. Female Circumcision/Female Genital Mutilation (Articles 19 and 34)

There is no law specifically prohibiting female genital mutilation (FGM) in Mali. However, recognizing the negative health impact that FGM has on women's health, the government has begun to undertake actions aimed at stopping the practice. Thus, the National Committee for the Eradication of Harmful Practices to the Health of Women and Children was created. In June 1997, a national conference to define a strategy for eliminating FGM led to the elaboration of a five-year plan of action covering 1998 to 2002. Nevertheless, the government should consider the possibility of enacting a criminal law to sanction those who refuse to cease performing FGM.

In Mali, 94% of women of reproductive age have undergone genital mutilation. FGM is deeply rooted in Mali's culture: indeed, 80% of women who have undergone FGM support the continuation of this practice. Mali has never prohibited FGM and courts have never heard a complaint, even where the practice has resulted in death.

Reproductive Rights of Young Girls and Adolescents in Mali

A. Rights of Adolescents Regarding Reproductive Health (Articles 6 and 24 of the Children's Convention)

Introduction

Article 6 of the Children's Convention stipulates that each child has an inherent right to life. Moreover, the State must do everything in its power to guarantee the survival and development of the child. Article 24 expands these rights by recognizing children's right to enjoy the highest attainable standard of health.

These clauses obligate the government to ensure adolescents' access to reproductive health services. In the absence of these services, adolescent girls may experience unwanted pregnancies, possibly resulting in death or illness due to the girls' physical immaturity and the lack of adequate maternal health care.

The Committee has declared its concern over young women's access to reproductive health services.⁴ It has also noted that governments have a duty to provide for adequate maternal health care and to address the problems of pregnancy and HIV/AIDS among adolescents.⁵

1. Teenage Pregnancy and Adolescent Access to Reproductive Health Care, Including Family Planning and Safe Motherhood

Laws and Policies

Article 17 of the Constitution guarantees all citizens the right to health.⁶

Mali's Health Policy is founded upon this principle of universality, which makes health a fundamental right for all citizens and lays joint responsibility for health promotion with the State, the community, and the individual.⁷ In order to fulfill this principle, the state must realize the following intermediary goals: improve the health of the population by reducing maternal and infant mortality; expand health care coverage; and strengthen the health care system by effectively integrating health policy into broader socio-economic development strategies.⁸ The Ministry of Health, Solidarity, and the Elderly oversees implementation of the national health policy. Within this Ministry, the Division of Family and Community Health is charged with prioritizing maternal and child health, making family planning an element of health care, and building institutional capacity to reduce significantly maternal and infant mortality and morbidity.⁹

In 1990, the Government, through the Ministry of Public Health and Social Affairs, established a pilot project to distribute contraceptives in rural communities and engage in social marketing in the urban and rural zones. In addition, family planning services are available in the eight administrative regions, as well as in the district of Bamako. The Ministry of Health, Solidarity and the Elderly and the Ministry for the Promotion of Women, Children and the Family undertake and support Information, Education, and Communication (IEC) activities that raise awareness of contraceptive methods and the harmful consequences of early pregnancy.

In 1991, Mali adopted a National Population Policy that sets forth the following principles: respect for and protection of the family; respect for the right of couples and individuals to decide freely and responsibly the number and spacing of their children; respect for the fundamental rights of children; and recognition of the need to integrate women into the process of development.¹⁰

In order to achieve these objectives, the government lays out several strategies, including: raising public awareness about the harmful effects of early marriages; facilitating access to family planning in order to raise the contraceptive prevalence rate to 60% by the year 2020; protecting adolescents against early and unwanted pregnancies; combating traditional practices with harmful effects upon young girls, such as female genital mutilation, and proposing laws to protect children against all forms of exploitation.¹¹ On the subject of health and reproduction, the government's policy is to provide prenatal, childbirth, and postnatal care to both mother and infant.

A key element of Mali's National Population Policy is fertility control. In order to achieve this goal, the government has adopted the following strategies: raising public awareness about the harmful effects of early marriage; facilitating access to contraceptives; protecting adolescents against early pregnancy by both reinforcing and expanding education for young girls and by teaching students about population issues in school and extracurricular activities; raising public awareness about the value of responsible parenting; raising men's awareness about the benefits of family planning; and maintaining the ban on abortion as a method of family planning, while allowing it in extreme cases, such as when maternal or fetal health is threatened.¹²

The National Population Policy creates an institutional and organizational structure that provides for planning and follow-up, implementation, and program development and coordination.¹³ The bodies charged with planning and follow-up are (1) the Regional Development Committee, (2) the National Planning Commissions, particularly the National Commission for Human Resources and Population, (3) the Committee for Planning Oversight, (4) the Economic and Social Council, and (5) the Superior Council of Planning.¹⁴

The French colonial law of 1920 prohibiting incitement to abortion and contraceptive "propaganda" was repealed in 1972. It was replaced by an ordinance permitting contraceptive advertising. No method of contraception is prohibited in Mali. In 1971, a presidential ordinance authorized the provision of contraceptives as a method of family planning. In the past, married women could not use contraceptives without the permission of their husbands. However, as a result of a regulation adopted on January 25, 1992, women in Mali now have the right to obtain contraceptives without the consent of their husbands.¹⁵

Reality

Although Mali's government has made universal health care a fundamental policy objective, there are many constraints on achieving this objective. These include: the government's limited budget for health; the fact that the population in the northern part of the country is widely dispersed; and the high proportion of the population that is at risk.¹⁶

Since the adoption of the primary health care strategy in 1978, family planning services have been integrated into maternal and child health services.¹⁷ However, according to the 1995-1996 Demographic Survey, only 18% of women had ever used contraceptives,¹⁸ and only 8% were using contraception at the time of the survey: 3% were using a traditional method and 5% were using a modern one.¹⁹

The high rate of adolescent pregnancy is due primarily to the inaccessibility of services and the lack of family planning information.²⁰ Studies reveal that only 21% of young women know where to obtain modern contraceptives. This percentage differs dramatically in urban and rural areas: 49% of young women in urban areas know where to obtain modern contraceptives, as opposed to only 10% in rural areas.²¹ An analysis of health care conditions in Mali shows not only that the number of health professionals is insufficient to respond to the health needs of the population, but that these providers are not adequately trained to respond to the special needs of adolescents. Furthermore, for individuals from disadvantaged backgrounds, inadequacy of follow-up care and the high cost of services pose serious obstacles to obtaining health care.

Pregnancy for women in Mali occurs very early. From the age of 15, about 10% of women have begun their reproductive lives. This proportion rises rapidly with age, so that by the age of 17, 46% of women already have had one child or are pregnant. At 19, more than two thirds of women (69%) have begun their reproductive lives, with the great majority of them already having one child (63%).²² Early pregnancy is much more prevalent in rural areas than in urban zones. Forty-nine percent of rural adolescents have begun their reproductive lives and 40% of those are already mothers. In urban areas, only 30% of adolescent girls are mothers.²³

The pregnancy rate for adolescent girls aged 15 to 19 is 199 per thousand.²⁴ The great majority of early pregnancies occur within marriage. Only 4-6% of teenage pregnancies occur outside of marriage.²⁵ Early pregnancy prevents many girls from pursuing higher levels of education. Some teachers, who regard themselves as guardians of traditional values, marginalize pregnant girls, discouraging them until they finally leave school. After giving birth, some have the courage to resume their studies, but the great majority choose to abandon their education. Early pregnancy, along with marriage, is one of the principal reasons for young women's failure in school.

Early pregnancies also entail a higher risk of mortality for the young mothers and their children. The infant mortality rate for children born to mothers younger than 20 years old tends to be 25% to 53% higher than for those born to mothers aged 20 or older.²⁶

The government encourages certain modes of distributing information on contraception. The media (radio and television) play an important role in disseminating information on family planning in general, as well as on various methods of contraception. Young girls who take part in IEC campaigns or have access to the media, may learn about different family planning methods. However, the uneven diffusion of information, as well as the difficulty young women have in gaining access to this information, leave them with only fragmented knowledge about contraception.

Community development workers conduct information campaigns in rural areas. Often, however, adolescents are not well-received by these workers, some of whom adopt a disapproving attitude, offering only lessons in morality.

Adolescent use of contraceptives is often associated with promiscuity. In general, contraception is regarded only as a means of spacing births for married couples. IEC programs are not well-suited to meet the needs of adolescents. For example, IEC meetings are held during the work or school day, making them inaccessible to adolescents in need. Also, IEC workers who operate in rural areas do not sufficiently target the needs of adolescents.

Non-governmental organizations (NGOs) play a significant role in disseminating information on family planning and contraception. They help implement government strategies primarily through the use of radio and television.

2. Abortion

Laws and Policies

Mali's Penal Code defines abortion as an act entailing "the use of means or substances to cause the premature expulsion of the fetus, regardless of the stage of pregnancy at which this expulsion occurs."²⁷ The text specifies that abortion involves a child who has not yet been born. Under these provisions, penalties may be imposed even if the fetus is born alive, having survived an attempted abortion.²⁸

The Penal Code permits no consideration of a person's reasons for obtaining an abortion. The Code prohibits abortion without exception, regardless of the circumstances and conditions in which the pregnancy occurred and its likely consequences for the woman. Any activity to advertise abortion is a violation of the law and therefore subject to punishment.

Nevertheless, the medical and paramedical Codes of Ethics, as well as certain passages of the National Population Policy, support an interpretation of the Penal Code that would permit abortion when a woman's life is at risk. The Penal Code assigns no liability to persons who commit crimes or offenses—such as homicide and other acts of violence—out of immediate necessity or in defense of the life of oneself or another.²⁹

The National Population Policy notes the increase in recent years of clandestine abortions and other practices that constitute a social crisis of growing proportions.³⁰ In addition, one of the core elements of the Population Policy is the promotion of family planning in order to reduce unwanted pregnancy and induced abortion and to promote family welfare. One strategy endorsed in the Policy is to permit abortion when the health of the woman or fetus is in danger, while at the same time maintaining the prohibition of the procedure as a method of family planning.³¹ The government provides financial support for programs aimed at preventing clandestine abortion through awareness-raising about early and unwanted pregnancies. The Ministry for the Promotion of Women, Children, and the Family has sponsored several round-table discussions on radio and television, as well as conferences, debates, skits, and performances.

There is therefore a contradiction between the Penal Code, a legal text, which prohibits abortion under any circumstance, and the National Population Policy, which permits abortion for therapeutic reasons.

Reality

Adolescent sexual activity occurs in secrecy. When young women become pregnant, the great majority opt for a clandestine abortion, often with the aid of close family members. Abortion is generally practiced in deplorable, unsanitary conditions. Because abortion and attempted abortion are so strictly prohibited by law, young women who experience complications have recourse only to self-medication or clandestine health care in order to escape criminal procedures or social sanction. Only in the case of dire emergencies do they consent to go to competent health clinics, which are often unable to provide the necessary care. According to a 1982 study of hospitals in Mali, women who suffered complications from abortion represented only 0.5% of obstetric admissions; however, they constituted at least 4% of maternal deaths.³²

According to UNICEF, unsafe abortion is the cause of one out of every 20 maternal deaths in Mali.³³ In spite of this high mortality rate and the existence of very repressive laws, there have been few prosecutions for abortion, even when a woman's death results. This lack of enforcement is due to

the fact that abortions are rarely reported to the authorities.

Government policy must address the problem of unsafe abortion, at least in part through IEC activities. Moreover, reforming existing laws to clarify the legal status of therapeutic abortion will have a direct impact on reducing the mortality rate.

To date, there have been no efforts to liberalize the law regulating abortion.

3. HIV/AIDS and Sexually Transmissible Infections (STIs)

Laws and Policies

At present, Mali has no laws regarding HIV/AIDS. There are no laws or policies aimed at treating, curing, protecting, or sanctioning carriers of sexually transmissible infections (STIs).

A special Support and Counseling Center for carriers of HIV/AIDS disseminates information and advice to persons infected with the virus. Medical services also treat the opportunistic diseases suffered by patients with AIDS. Minors who visit health facilities may benefit from these services.

Reality

In Mali, early sexual activity exposes adolescents to the risks of pregnancy and other consequences such as STIs. According to the most recent report by UNAIDS, the prevalence of AIDS in the entire population is 1.67%.³⁴ Thus, Mali is not yet among the most affected countries. However, since its first appearance in 1984, the growth of the epidemic has been highly troubling.

The number of adults who are HIV-positive is estimated at 84,000, of which 42,000 are women.³⁵ The number of HIV-positive children is estimated at 4,800 and the number of children orphaned because of AIDS is roughly 33,000.³⁶ Since the beginning of the epidemic, the government has compiled a register of 44,000 AIDS cases among adults and children.³⁷ In spite of the government's efforts in the National Program Against AIDS (PNLS), the rate of increase of AIDS is alarming. Models projecting the progress of the disease in Mali over the next five years indicate that the number of cases of infection will double. Unless vigorous action is taken, the health care system will be burdened with an increasing number of people infected with the disease.³⁸

Young people in Mali are well aware of the existence of AIDS. Seventy-nine point eight percent of women and 89.6% of men aged 15 to 19 say that they know or have heard about this disease.³⁹ However, this relatively high level of awareness has had little impact on the use of condoms. Indeed, one in two women claims that she has not changed her sexual behavior since learning about the disease.⁴⁰

Awareness of STIs is not as high as that of AIDS. Only 46.5% of women aged 15 to 19 state that they know about or have heard about at least one type of STI.⁴¹ In light of the reported cases of STIs among young people in Mali, this percentage is very low. In the 12-month period prior to the survey, 1.2% of women and 6% of men aged 15-19 reported that they had had some type of STI.⁴² Despite an improvement in the quality of reproductive health services, the rate of STIs has increased significantly among young people over the past few years. Because they do not receive sufficient information on the problems associated with sexuality, adolescents are the most at risk. When they contract STIs, they choose to forgo health care intervention for fear of social repudiation and isolation.

Aware of the seriousness of the AIDS epidemic, Mali's government has put into place the National

Program Against AIDS (PNLS). The PNLS is aimed at reducing the spread of STIs and AIDS through such measures as: the improvement of diagnostic techniques; safer blood transfusions; development of intersectoral collaboration in the fight against AIDS; and mobilizing public support for AIDS prevention.⁴³

To implement the PNLS strategy, a special Support and Counseling Center for HIV carriers was created. In cooperation with PNLS, NGOs and private associations are very active in AIDS and STI prevention, focusing their strategies almost exclusively around IEC.

The government's policy on HIV is focused on caring for and monitoring the health of individuals infected with HIV. The government plans to make essential generic drugs available at reduced cost in remote health care centers to treat the opportunistic infections that affect those with AIDS and to treat other STIs. In addition, the government will make counseling available for HIV-positive individuals in locations throughout the country. These counseling centers will guarantee anonymity and respect for human dignity.⁴⁴ However, patients do not yet benefit from this type of care, in part because the lack of medical facilities providing services and the high cost of treating opportunistic diseases prevent patients who do not have sufficient financial resources from gaining access to services.

Although Mali's Constitution protects the rights of individuals infected with HIV, it does not protect adolescents and children at school. There, lack of information, intolerance, and social prejudice result in discrimination. This discrimination leads to physical and psychological isolation.

B. The Right to Education (Articles 17, 24(2)(e), 28, and 29 of the Children's Convention)

Introduction

Article 28 of the Children's Convention recognizes children's right to education on the basis of equal opportunity. Article 29 provides that the purpose of education is to promote the development of the child to his or her fullest potential. Article 24(2) guarantees children's right to be informed and to have access to health education. In addition, Article 17 recognizes the important role of the media and states that children must have access to information and materials from diverse sources. Together, the Articles establish the link between education, the right to be free from discrimination on the basis of sex, and the right to reproductive health.

The Committee has noted that young women represent two thirds of the world's millions of children who lack basic education, and that the literacy rate of adolescent girls is much lower than that of adolescent boys.⁴⁵ Consequently, the Committee cites education as an indispensable tool for improving the future prospects of young girls. It recommends that governments adopt and implement laws and policies to remove obstacles to their education.⁴⁶ Moreover, the Committee urges governments to ensure that young girls have access to basic education, as well as sex education, in order to fulfill their obligations under the terms of the Convention.⁴⁷ Adolescents must therefore have access to sex education programs in order to allow them to exercise their rights in the area of sexual and reproductive health as provided in Article 24.

1. Access to Basic Education without Discrimination

Laws and Policies

The Constitution recognizes the right to education. It states: “Every citizen has the right to education. Public education is mandatory, free and secular. Private education is recognized and shall be practiced under conditions defined by the law.”⁴⁸

Soon after winning independence, Mali adopted a comprehensive educational reform in 1962 to respond to the new demands of being a sovereign state. The reform had several objectives, including providing universal, quality education and making school more relevant to everyday life.

The National Plan of Action for the Survival, Development, and Protection of the Child cites the following objectives for the year 2000:⁴⁹

- Increase the rate of pre-school enrollment for children aged three to six years to 10%;
- Increase the primary school enrollment rate to 60% by the year 2000;
- Increase the primary school enrollment of girls to 50%;
- Reduce the illiteracy rate to 50% by the year 2000;
- Increase the literacy rate of young women to 40% by the year 2000.

In 1990, the government, concerned by the problem of under-enrollment of girls, began a “Girls’ Education” campaign within the primary schools. This project was extended to the rest of the territory beginning in 1995. The project’s activities have permitted a greater focus on the educational situation of girls in rural areas.

In 1992, decree No. 0882/SECEB created the National Division for Educating Young Women, which is under the supervision of the National Directorate of Basic Education. The Division is responsible for formulating and implementing national policies with regard to educating young women.

Reality

Government efforts to increase the school enrollment rate for children have achieved the desired result: from 1980 to 1996, the enrollment rate in primary schools increased from 26% to 45%, and in secondary schools from 8% to 10%.⁵⁰

However, the rate of increase was not equal for boys and girls. The enrollment rate for girls is declining, relative to that of boys. The enrollment rate in primary school for girls was 27%, as opposed to 41% for boys.⁵¹ For secondary school, it was 6% for girls and 12% for boys.⁵²

This gap is due primarily to the fact that women do not have the same access to education as men. The literacy rate is 23% for women, while it is close to 39% for men.⁵³ Cultural norms regarding gender roles help to explain this phenomenon: married men carry on the family name, while women leave their family of origin when they marry to “serve” another family. Because of this, money spent on girls’ education is considered a lost investment. Moreover, girls’ role is to help their mothers, who are often over-burdened with domestic chores. Finally, families are suspicious of education that promotes values that have little or nothing to do with social reality; in their view, if girls are to be the future guardians of socio-cultural values, then their education should reflect this reality.

Policies aimed at expanding access to primary education across the population are necessary, but they are an insufficient means for improving girls' access to education. Policies should take into account the specific needs of girls. The educational system itself still does not encourage parents to make their daughters' education a priority. At present, educational facilities are insufficient and of poor quality. School curricula is not always well-suited to the needs of the community, nor does it conform to the reality of everyday life. Given the rise of disturbances in school settings, many families conclude that educating girls is a waste of time.

Over the past few years, the government, through the Ministry of Education, has developed a Department of Education for Girls. The department's primary goal is to reduce the educational gap between boys and girls. In 1990, it initiated a new educational project for girls with the following objectives:

- Raising the primary school enrollment rate of girls, while improving the quality of their education and the content of their courses;
- Reducing the drop-out and grade repetition rate for girls;
- Raising the percentage of female instructors in primary school.

In reality, however, education is not free, and girls born in disadvantaged areas have very little access to school because of the high cost of enrollment and school supplies.

The recently enacted decennial program of education must take the lead in addressing the problems associated with education, particularly those faced by girls in rural and disadvantaged areas.

Many NGOs now promote girls' education as their primary objective, particularly targeting girls in rural and suburban areas where they are often heavily relied upon for domestic chores. In these households, families are reluctant to part with their daughters. NGOs who work in these areas bring material support to the family and provide for costs of education and school supplies. Some NGOs help to ensure that girls remain in school by conducting after-school tutorial sessions. In addition, they disseminate messages and songs through the radio and television that urge families to send their daughters to school.

2. Access to Sex Education

Laws and Policies

Policies in this area are aimed at raising teenage awareness about the problems associated with early and unwanted pregnancy. The primary means for doing so is by introducing population issues into school curricula as early as preschool.

Reality

There are no formal sex education programs in Mali. The fragmented information that is available is not adapted to meet the needs of adolescents. Most of the messages promote abstinence for adolescents. Teachers themselves have not received training that would enable them to conduct IEC effectively in this area. Only young women who are highly educated learn even the most rudimentary facts about reproductive health, including early and unwanted pregnancy.

The great majority of adolescent girls who are not in school are left out. Moreover, many families are reluctant to allow their daughters to take sex education courses, which they fear will lead to promiscuity. NGOs working in this area therefore face significant obstacles, making their activities not only difficult but ineffective. Some adolescents have access to information through government and NGO-run awareness campaigns. These campaigns, however, are conducted through audiovisual media, and therefore are not accessible to the great majority of young women.

The Minister of Education has introduced courses on family life and population into the curriculum.⁵⁴ Some efforts have also been extended to children who do not attend school. The strategies recommended to reach them include: educating the media on population and family planning issues; training women and cooperatives on family life; organizing seminars on population-related issues; and developing audiovisual materials and literacy programs.⁵⁵

NGOs are also involved in this effort. Thus, Mali's Association for Family Welfare (AMPPF) offers its services through IEC activities. These include: distributing t-shirts, bags, and posters; producing radio and television commercials; organizing activities for teenagers; sponsoring educational dialogues; offering free counseling; and visiting peoples' homes.⁵⁶

C. Marriage and Adolescents (Article 2 of the Children's Convention)

Introduction

Article 2 of the Children's Convention guarantees all children the rights set forth in the Convention without discrimination. However, in many countries, the minimum age of marriage is very low. This discriminatory practice serves to undermine young women's rights to education and health.

The early age of marriage in many cultures, which is codified in either law or custom, constitutes a source of gender discrimination. Young wives often sacrifice their education to assume traditional family roles, including domestic work and early child-bearing.⁵⁷ The Committee has noted that young women cannot be emotionally or physically prepared for marriage at such an early age.⁵⁸ It has therefore concluded that early marriage is a source of discrimination against young women because it infringes upon rights guaranteed by Articles 6, 17, 24, 28 and 29. As a result, the Committee recommends that the minimum age of marriage be raised, and that it be the same for men and women.

1. Minimum Age of Marriage

Laws and Policies

According to the provisions of the Code of Marriage and Guardianship, young men of less than 18 years of age and young women of less than 15 cannot enter into a marriage contract without permission from the Minister of Justice.⁵⁹

The Code of Marriage prohibits forced marriage, which states: "There is no marriage if there is no consent."⁶⁰

The Code of Marriage and Guardianship requires that a couple publish an announcement of their intent to marry and that the marriage ceremony be publicized. This permits any person knowing of any irregularities to inform the competent authorities. The law also requires the future spouses to pre-

sent a form of identification, permitting the registry office official to refuse to perform the marriage of individuals who have not reached the required age.

In addition, the Code of Marriage and Guardianship provides for the sanction of any registry office official who carries out a marriage ceremony when the couple has not reached the required age. A parent who objects to the marriage of his or her under-age child may file a complaint with the registry office official who must immediately suspend the ceremony. If the marriage proceeds, the parent may bring a complaint to the office of the national prosecutor. IEC activities are also led by various government ministries in order to sensitize parents on the dangers of early marriage.

Reality

The results of the 1995-1996 Demographic and Health Survey (DHS) showed that women in Mali marry very young. A high percentage of women married at 15 years of age (22%). Ninety-three percent of women aged 25 to 49 were already married by the age of 22. At 25, almost all women in Mali (96%) are married.⁶¹ Among women aged 25-49, one in two were already married at age 16 (average age).⁶²

Nevertheless, there is some indication that the age of first marriage has been rising, albeit gradually, in recent years. According to the survey, the average age of first marriage increased from 15.8 years of age for the generation of women currently 45-49 years old, to 16.3 years of age among women currently aged 20-24.⁶³ There also seems to have been a recent drop in the number of very early marriages: for women aged 45-49, 23% were married at the age 15; this compares to 19% of women currently aged 20-24, and 16% for women currently aged 15-19.⁶⁴

Although forced marriage is prohibited, it still occurs. The victims of this practice are usually young girls. Although such marriages are illegal and the mutual consent of both partners is required, very often girls are pressured into marrying by their families. In fact, the registry office official responsible for enforcing the law against forced marriage is sometimes an accomplice in this situation. Customary marriage itself has no legal standing. In urban areas, most customary marriages are conducted to circumvent the provisions in the marriage laws that pose an obstacle. In rural areas, the community is often not fully aware of the content of the marriage law, which requires a civil ceremony to validate a marriage. Socially, a customary marriage is still viewed as legitimizing the union, and the couple may begin their wedded life immediately after this celebration.

D. Sexual and Physical Violence Against Young Girls and Adolescents (Articles 19 and 34 of the Children's Convention)

Introduction

Article 19 of the Children's Convention provides that States Parties must take all appropriate measures to protect the child against all forms of abuse and violence. In addition, Article 34 obligates States Parties to take all appropriate measures to protect the child against all forms of exploitation and sexual violence. When young girls are victims of sexual assault, domestic violence, sexual or commercial exploitation, and female genital mutilation, their rights under these clauses are violated. Moreover, these acts infringe upon young women's right to health, as provided in Article 24.

Most victims of sexual assault are young women.⁶⁵ Thus, the Committee has expressed its concern about the prevalence of all forms of sexual violence against minors.⁶⁶ It considers questions of

domestic violence, sexual exploitation, child pornography, and rape relevant to sexual violence. More specifically, the Committee emphasizes the need to eliminate the practice of female genital mutilation (FGM) and other traditional practices that are harmful to the health of young women⁶⁷ because these practices violate their right to bodily integrity and health, as well as their right to be free from violence.⁶⁸

1. Sexual Violence

Laws and Policies

Sexual violence involving children is prohibited and punishable under criminal law. Crimes and offenses include: indecent assault, rape, and incitement to immoral behavior.

Indecent assault against a child under 15 years of age, either consummated or attempted, with or without violence, is punishable by five to 10 years of hard labor, with the possibility of one to 20 years of exile from the community.⁶⁹

The Penal Code states: “If the crime was committed against a child of 15 years of age or younger, the offender will be sentenced to five to 20 years of hard labor, and may be subject to exile from the community for one to 20 years.”⁷⁰ When the assault is committed without violence against a minor between 15 and 20 years of age by a relative who is responsible for the child’s education or guardianship, or a hired servant, the punishment is three months to two years of imprisonment and/or a fine of 20,000 to 200,000 francs.⁷¹

Rape is punishable by five to 20 years of hard labor and may include one to five years of exile from the community. The law provides for two types of aggravating circumstances: rape committed by several persons and rape committed against a child of less than 15 years of age. When rape is committed under either of these two conditions, the punishment is a sentence of hard labor for life.⁷²

The Penal Code provides: “The individual who has had, or attempted to have, sexual relations with a young girl under 15 years of age will be punished by one to five years of imprisonment, notwithstanding the penalty which he will incur for crimes or offenses committed after completion of this act.”⁷³ In addition, the law regards any individual, including relatives, who aided or facilitated the sexual offense as accomplices.⁷⁴

Incitement of minors to engage in immoral behavior, with or without their consent, is punishable by six months to three years of imprisonment, as well as a fine of 20,000 to 100,000 francs. It may also include one to 10 years of exile from the community.⁷⁵

The crime of incest is not explicitly mentioned in the Penal Code. However, indecent assault committed by a relative against a child under 15 years of age or against a minor over 15 but under 21, is punishable by law as described above.⁷⁶ Punishment for committing such crimes may not be suspended when the act is committed by a relative or by a person having authority over the child.⁷⁷

Under the Penal Code, the abduction of a child under 15 years of age, without use of fraud, threats, or violence, is punishable by five to 10 years of hard labor, with the possibility of five to 20 years of exile from the community.⁷⁸

The Penal Code also prohibits and punishes intra-country or cross-border trafficking of a woman.⁷⁹ Commission of this offense against a child under 15 years of age is an aggravating

circumstance.

The government, aware of children's vulnerability, has drafted a Social Protection Code for Children, which it will soon present to the National Assembly for adoption. The Code will address the need for special measures to ensure the well-being of adolescent girls.

Domestic violence is prohibited in Mali and, under civil law, constitutes grounds for divorce. These acts of violence may also be punished under the Penal Code's provisions relating to intentional assault and battery.

Reality

Despite increasing public discussion of rape, reliable statistics on rape of minors do not exist. The same is true of indecent assault and other kinds of sexual violence against minors, with the exception of female genital mutilation. Victims and their families rarely file complaints out of concern for the family's honor and dignity. From 1998 to 1999, only about 10 cases of rape or sexual assault were reported to the Center for Information, Consultation and Legal Assistance, which is directed by the Association of Jurists of Mali.

The procedures for reporting sexual offenses do not adequately address the difficult circumstances in which the victims often find themselves. While the proceedings are held in closed chambers, the judge often conducts them in a manner that makes the victims feel as if they have committed a crime. There is no specific mechanism to allow children to report cases of sexual violence committed against them. The parents or guardian of the child represent him or her in these proceedings, and precautions are taken to safeguard the interests of the child, who may be privately interviewed by the judge at an appropriate time during the investigation. In most cases, where there is sufficient evidence against the accused, he or she is prosecuted.

When women seek legal recourse in cases of domestic violence, rape, or sexual assault, judges apply the law if the charges are justified. Nevertheless, it should be noted that women rarely file complaints. If they do, social pressure often leads them to abandon the effort before the perpetrator is convicted. Moreover, marital rape is not a crime under the Penal Code.

2. Female Circumcision /Female Genital Mutilation (FC/FGM)

Laws and Policies

Mali has no law that explicitly prohibits female genital mutilation/female circumcision (FGM). However, certain legal provisions can be interpreted to prohibit this practice. The Constitution, for example, states that "the human being is sacred and inviolable. Each individual has the right to life, liberty, security, and integrity of person."⁸⁰ Moreover, acts of torture and inhuman, cruel, degrading, or humiliating treatment are prohibited. "Any individual or agent of the state who is guilty of such acts, either through his own initiative or under another's influence, will be punished in accordance with the law."⁸¹

The Penal Code states that "any individual who strikes or wounds another or who commits any other act of violence resulting in injury or disability causing inability to work for more than 20 days, will be punished by imprisonment of one to five years and a fine of 20,000 to 500,000 francs . . ."⁸² Where there is premeditation, the sentence is five to 10 years of hard labor.⁸³ When violence, injury, or wounding are followed by mutilation or amputation, the penalty is five to 10 years of hard labor.⁸⁴ In the case of premeditation, the penalty is increased to five to 20 years of hard labor.⁸⁵

Article 171 punishes acts or practices that inflict pain and cause injury. It states that “anyone who intentionally administers substances or engages in violent acts against another individual, without the intent to murder, will be punished by six months to three years of imprisonment, with the possibility of a fine of 20,000 to 200,000 francs and one to 10 years of exile from the community.⁸⁶ If this crime results in a permanent injury or disability, the penalty will be five to 10 years of hard labor, and the possibility of five to 10 years of exile from the community.⁸⁷ If death results, the penalty will be five to 20 years of hard labor, with the possibility of one to 20 years of exile from the community.”⁸⁸

Some jurists maintain that these articles are not applicable in the case of female genital mutilation because an element of intent to injure is necessary. Striking and wounding must be deliberate, and the perpetrator must know he is causing damage to the bodily integrity of the victim. Moreover, the act must be intentional, meaning that the individual must have acted with the goal of harming the victim.⁸⁹

However, these same jurists have contended that Article 168 of the Penal Code is applicable to FGM because it does not require the element of intent. It states that “Anyone who, by inadvertence, imprudence, inattention, negligence or failure to observe applicable regulations, unintentionally strikes, wounds or inflicts injuries upon another individual shall be punished by imprisonment of three months to two years and/or a fine of 20,000 to 300,000 francs.”⁹⁰

Reality

The practice of female genital mutilation is widespread in Mali. It affects 94% of women of reproductive age.⁹¹ It is practiced in all regions of Mali, with prevalence rates virtually equal in urban and rural areas (95% in Bamako, 96% in rural areas).⁹² Only the communities of Timbuktu and Gao have a low prevalence rate (9%). Religion does not seem to play an important role, since the great majority of women are circumcised regardless of their religion.⁹³ However, ethnic membership appears to be relevant: only 17% of Tamachech women are circumcised as opposed to 48% for Sonrhai women.⁹⁴

Circumcision is deeply rooted in Mali's culture: 80% of circumcised women support continuing the practice.⁹⁵ When asked why, 61% of women referred to custom and tradition and 26% of these women thought it was a worthwhile tradition. Sixteen percent thought that FGM was a religious necessity, 6% cited hygiene, and 5% thought the practice preserved virginity and morality.⁹⁶

Among all circumcised women, 13% thought the practice should be stopped.⁹⁷ This number increased to 53% when uncircumcised women were polled: 45% of this sample cited medical complications, 30% thought it was an unhealthy tradition, 14% said that the practice could have negative effects on sexual desire, 13% thought the experience painful, 5% found it an affront to the dignity of women, and 9% did not give a reason as to why this practice should be stopped.⁹⁸

Another cause for concern is the declining age of girls undergoing FGM: this age has fallen from 8.8 years for women currently aged 45–49 (only 4% were circumcised after the age of 15) to 6.7 years for girls being subjected to this practice today. Among the older daughters of the women participating in this survey, 72% of whom were circumcised, the age of circumcision was between 0 and 4 years of age.⁹⁹

Although individuals responsible for performing FGM could be prosecuted and punished under the Penal Code, there has never been a conviction for FGM in Mali and the courts have never heard a complaint, even in the case of a victim's death.¹⁰⁰ Although FGM is not legally permitted, this practice, which so endangers the health of young girls and women, is so deeply rooted in custom that legal prosecution seems highly unlikely.¹⁰¹

Aware of the negative impact of this practice on women's health, the government of Mali has indi-

cated a desire to take action to eliminate it.¹⁰² It is in this context that the Commission for the Promotion of Women created the National Committee for the Eradication of Practices Harmful to the Health of Women and Children.¹⁰³ In June 1997, the Committee organized a national seminar to develop a strategy for eradicating FGM. This strategy has expanded into a five-year plan of action from 1998-2002.¹⁰⁴

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- ¹ Declaration of Population Policy in Mali, at 9 (8 May 1991).
 - ² Division of Planning and Statistics, Ministry of Health, Solidarity and the Elderly, National Department of Statistics and Computers and Macro International Inc., Demographic Health Survey 1995-1996, at 57 (1996) [hereinafter DHS 1995-1996].
 - ³ *Id.*
 - ⁴ UN Doc. CRC/C/62 at 617; UN Doc. HR/CRC/99/17 (1999); UN Doc. HR/CRC/99/13 (1999).
 - ⁵ UNICEF, Implementation Handbook for the Convention on the Rights of the Child 611, et. seq. (1998) [hereinafter, Implementation Handbook].
 - ⁶ Constitution of the Republic of Mali (1992), art. 17, translated in Constitutions of the Countries of the World (Gisbert H. Flanz, ed., 1997) [hereinafter Mali Const.].
 - ⁷ Ministry of Health, Solidarity and the Elderly, Declaration of Health and Population Sector Policy at 1 (1995) [hereinafter Health Sector Policy].
 - ⁸ *Id.* at 21.
 - ⁹ Ministry of Health, Solidarity and the Elderly, National Director of Public Health, Division of Family and Community Health, Statement on Reproductive Health by Dr. Madina Sangare, at 4 (Sept. 1, 1997).
 - ¹⁰ Minister of Economy, Planning and Integration, Declaration of National Policy on Population in Mali, at 22 (May 8, 1991) [hereinafter, National Population Policy].
 - ¹¹ *Id.* at 24-43.
 - ¹² *Id.* at 27-28.
 - ¹³ *Id.* at 45.
 - ¹⁴ *Id.*
 - ¹⁵ Circular No. 005 MSP-AS/CAB (Jan. 25, 1992).
 - ¹⁶ National Population Policy, *supra* note 10, at 3.
 - ¹⁷ Communication of Dr. Arkia Toure, The ONG and Family Planning, Seminar of the Pivot Group and Survival of the Child (Sept. 27-29, 1993).
 - ¹⁸ DHS 1995-1996, *supra* note 2, at 66.
 - ¹⁹ *Id.* at 68.
 - ²⁰ UNFPA Proposed Projects and Programs: Recommendation by the Executive Director, Assistance to the Government of Mali, DP/FPA/CP/130, at 7 (April 2, 1992).
 - ²¹ Alan Guttmacher Institute, Into a New World: Young Women's Sexual and Reproductive Lives, at 54 (1998) [hereinafter Into a New World].
 - ²² DHS 1995-1996, *supra* note 2, at 57.
 - ²³ *Id.*
 - ²⁴ United Nations Population Fund (UNFPA), The State of World Population 67 (1998).
 - ²⁵ Into a New World, *supra* note 21, at 52.
 - ²⁶ National Population Policy, *supra* note 10, at 26.

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²⁷ Penal Code, art. 170.

²⁸ *Id.* art. 170(2).

²⁹ *Id.* art. 176.

³⁰ National Population Policy, *supra* note 10, at 26.

³¹ *Id.*

³² WHO, Maternal Mortality: A Global Factbook 154 (1991) WHO/MCH/MSM/91.3.

³³ Republic of Mali, UNICEF, Analysis of the Situation of Women and Children in Mali 30 (1997).

³⁴ UNAIDS, Report on the Global HIV/AIDS Epidemic 65 (June 1998).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 68.

³⁸ *Id.*

³⁹ DHS, *supra* note 2, at 212.

⁴⁰ *Id.* at 223.

⁴¹ *Id.* at 208.

⁴² *Id.* at 209.

⁴³ The Decennial Plan of Health and Social Development, 1998-2007, at 46.

⁴⁴ *Id.*

⁴⁵ Implementation Handbook, *supra* note 5, at 375.

⁴⁶ UN Doc. HR/CRC/99/10 (1999).

⁴⁷ Implementation Handbook, *supra* note 5; UN Doc. HR/CRC/99/11 (1999).

⁴⁸ Mali Const., *supra* note 6, Title 1, art 18.

⁴⁹ UNICEF, Analysis of the Situation of Children and Women in Mali, 85 (1997).

⁵⁰ World Bank, World Development Indicators 79 (1999).

⁵¹ UNICEF, The State of the World's Children: Education 107 (1999).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ UNFPA Proposed Projects and Programs: Recommendation by the Executive Director, Assistance to the Government of Mali, DP/FPA/CP/130, at 6 (2 April 1992).

⁵⁵ *Id.*

⁵⁶ Country Profile: Mali, International Planned Parenthood Federation (visited June 23, 1999) <<http://www.ippf.org/regions/countries/mli/index.htm>>.

⁵⁷ Implementation Handbook, *supra* note 5.

⁵⁸ HR/CRC/99/17, *supra* note 4; UN Doc. HR/CRC/99/4 (1999).

⁵⁹ Code of Marriage and Guardianship, Title 1, chpt. 2, art. 4.

⁶⁰ *Id.* chpt. 5, art. 10.

⁶¹ DHS 1995-1996, *supra* note 2, at 92.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ UNFPA, State of World Population 1997 37 (1997).

⁶⁶ HR/CRC/99/17 *supra* note 4; HR/CRC/99/13 (1999).

⁶⁷ HR/CRC/99/17, *supra* note 4; *Rights of the Child*, CHR res. 1997/78 para. 5(a), 5(b), 5(c).

- ⁶⁸ *Convention on the Rights of the Child*, art. 24, 19, 34 opened for signature Nov. 20, 1989, G.A. Res. 44/25, UN G.A.O.R., 44th Sess., Supp. No. 49, UN Doc. A/44/49 [hereinafter, *Convention*].
- ⁶⁹ Penal Code, art. 180(3).
- ⁷⁰ *Id.* art. 180(4).
- ⁷¹ *Id.* art. 180(6).
- ⁷² *Id.* art. 181(4).
- ⁷³ *Id.* art. 182(1).
- ⁷⁴ *Id.* art. 182(2).
- ⁷⁵ *Id.* art. 183 (1).
- ⁷⁶ *Id.* art. 180.
- ⁷⁷ *Id.* art. 181.
- ⁷⁸ *Id.* art. 188.
- ⁷⁹ *Id.* arts. 180 and 190.
- ⁸⁰ Mali Const., *supra* note 6, at Title 1, art. 1.
- ⁸¹ Mali Const., *supra* note 6, at Title 1, art. 3.
- ⁸² Penal Code, art. 166.
- ⁸³ *Id.* art. 166(2).
- ⁸⁴ *Id.* art. 166(3).
- ⁸⁵ *Id.* art. 166(4).
- ⁸⁶ *Id.* art. 171(1).
- ⁸⁷ *Id.* art. 171(2).
- ⁸⁸ *Id.* art. 171(3).
- ⁸⁹ Soyata Maiga Daillo, Support Group for Legal Reform at 6.
- ⁹⁰ *Id.*
- ⁹¹ Ministry of the Promotion of the Woman, Child and Family, National Plan for the Eradication of Excision by the Year 2007 at 3 (July 29, 1998).
- ⁹² *Id.*
- ⁹³ *Id.*
- ⁹⁴ *Id.*
- ⁹⁵ *Id.*
- ⁹⁶ *Id.*
- ⁹⁷ *Id.*
- ⁹⁸ *Id.*
- ⁹⁹ *Id.* at 4.
- ¹⁰⁰ *Id.* at 5.
- ¹⁰¹ *Id.* at 6.
- ¹⁰² *Id.* at 2.
- ¹⁰³ *Id.* at 3.
- ¹⁰⁴ *Id.*

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