BREAKING THROUGH

A Guide to Sexual and Reproductive Health and Rights

ICPD – the Foundation for the Millennium Development Goals

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Layout: Thomas Östlund Produktion AB
Printing: Norra Skåne Offset, Hässleholm
Acknowledgement: Funding from Sweden's Ministry for Foreign Affairs
Thanks to: Former Swedish Ambassador Lars-Olof Edström for important advice during course of the work

Stockholm, February, 2004
ISBN: 91-85188-30-1

The Swedish Association for Sexuality Education (RFSU)

The Swedish Association for Sexuality Education (RFSU), is a politically and religiously independent non-governmental organisation promoting an unprejudiced, tolerant and open approach to sexuality and partnership. RFSU comprises experts, member organizations, local societies and private members. The association also runs a clinic offering reproductive health services. RFSU is a member association of the International Planned Partenthood Federation (IPPF).

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Cairo ten years on – the struggle continues

IT IS TEN YEARS since the UN held its groundbreaking International Conference on Population and Development in Cairo. The needs and rights of women and young people were brought into focus. It became clear that the UN desired to abandon the top-down approach previously adopted by many governments and instead base discussions on the conditions of the individual.

It was an exciting experience for me to follow the process, from when it began long before the meeting to the nocturnal negotiations in Cairo. The first time I participated in a preparatory UN meeting, I was rather confused. I had difficulty understanding what was going on – and where! Decisions were drafted both in lengthy corridor discussions and long drawn-out meetings. I was used to the Swedish NGO system and I found it difficult to understand the point of killing time and of turning important issues inside out in everlasting discussions. "Can't we just vote and forget about those who don't agree?" I said sententiously to the leader of the Swedish delegation. He patiently explained that the point was to get as many as possible to agree, and to get governments to *work for change*, not simply to win a vote.

But there was a point to the long drawn-out process. To begin with, there was disagreement over 60 per cent of all the texts. But using all the tools of the UN trade, the outcome was a document with few reservations. The texts were presented through informal groups verbally and not on paper, so that nobody felt they were committing themselves to anything before everything was ready.

The UN has its own language. Well-known words change their meaning. The language is full of codes and references to what has been said previously and who has defined it. It was all difficult to understand – but useful, since it allowed countries to agree on certain terms that could be interpreted in several different ways. The struggle for the preferential right of interpretation was fought later on – and still continues.

Today, ten years on, vital components of the Cairo agreement are under attack. But many governments remain steadfast in their will to implement their pledges. This was obvious when the Asian countries met

to commemorate Cairo's tenth anniversary in 2002. In the face of strong opposition, the agreements were vigorously defended.

Cairo was also a conference at which NGOs increased their significance. The issues of sexuality education, youth guidance centres and abortion would never have been brought so much to the fore if they hadn't participated. Through debate and advocacy, at home, in the process prior to Cairo, and during the meeting, we influenced the final result.

Cairo gave us the tools with which to fight HIV. It established the right to good sexual health and safe childbirth. It strengthened the rights of women and young people. Insufficient light was shed on the man's role, however. But Cairo touched on sensitive issues, often highlighting the will of some to control the lives and values of others. This is why we have produced this material – to assemble knowledge, and to offer interpretations of words and facts that accentuate sexual and reproductive health as a human right. This material can be used by government officials and NGOs as a tool in the struggle to further strengthen our position on ICPD against the conservative forces that currently prevail.

Katarina Lindahl,
Secretary-General, Swedish Association
for Sexuality Education (RFSU).

ICPD – a new approach to population issues

This chapter discusses the important changes in the approach to population issues that emerged from the 1994 International Conference on Population and Development (ICPD) in Cairo.

THE INTERNATIONAL CONFERENCE on Population and Development (ICPD) that took place in Cairo, Egypt in 1994 has fundamentally changed the way the world views population issues. These questions had previously been tackled on the basis of demographic objectives. The use of terms such as "population explosion" and "overpopulation" resulted in countries wanting to reduce their birth rates.

But in the run-up to Cairo, the time was ripe for a new approach. During the 1980s, women the world over were starting to channel their demands through NGOs and political networks. At the same time, experts were beginning to doubt the efficiency of sticking to strict demographic objectives. Countries tried to reduce their birth rates by punishing or rewarding families who failed to, or succeeded in, achieving quotas – actions that were contrary to the rights and needs of the individual. As a result, experts and grassroots representatives laid down a requirement prior to the ICPD. The focus had to shift. The objective changed from primarily focusing on reducing fertility to the sexual and reproductive rights of the individual. This meant that couples and individuals should be able to decide the number and spacing of children and have access to information and reproductive health services. Gender equality, the empowerment of women and the rights of adolescents would bring about demographic change. The ICPD became the first international conference explicitly to recognize reproductive rights as human rights.

The preparatory work in the run-up to Cairo confirmed this approach in most parts of the world. Furthermore, consensus was reached on the fact that the threat against the world lay not in estimated

population growth but rather in over-consumption and mismanagement of resources only available to the rich. Empowering people to govern their own lives would alleviate poverty and suffering.

The fact that 179 countries reached consensus on this approach is a historic watershed. Even the Vatican sanctioned the document, albeit expressing substantial reservations about Chapter VII and parts of Chapter VIII, which deal with reproductive health and rights. Due to the increased participation of NGOs, the ICPD was the largest international conference on population and development.

How far have we come?

A large number of objectives were adopted in Cairo as part of the ICPD Programme of Action. From 1994, and for 20 years forward, countries pledged, among other things, to reduce maternal mortality, fight HIV/AIDS, and improve people's sexual and reproductive health and rights.

This year, 2004, marks the halfway point. The Cairo agenda is gradually being implemented. Over 90 per cent of the countries have introduced policies or programmes, or adopted legislation in order to achieve the objectives.[1] In Iran, for example, the authorities are providing information to young people, and men are being urged to take responsibility for their sexuality, while remaining within the laws of Islam.[2] Uganda has managed to reduce the number of new HIV/AIDS infections. South Africa has finally changed its approach and the government will now start providing anti-retroviral drugs to people living with HIV/AIDS. All over world, people now know more about how to protect themselves against sexually transmitted infections. In addition, contraceptive use has increased in the developing world from 10 per cent in the mid 1960s to almost 60 per cent today.[3]

The objectives of the ICPD clearly focus on the needs and rights of the individual. Having control over their sexuality and fertility allows people to choose how to live their lives. This freedom of choice must also apply to women and adolescents. Their lives must no longer be governed by men. But these objectives are far from being fulfilled. Voluntary sterilization, emergency contraception and safe abortion are often prohibited or difficult to access. Women die because they are denied knowledge and do not have access to ways of managing their reproduction. More than 350 million women currently have no access to safe and effective contraception.[4] Powerful forces deny women and young people the right to their sexuality. Those promoting women's and young people's rights are frustrated by how reproductive rights are constantly swept aside to accommodate religious and cultural traditions.

1 See *Report of the Secretary-General on the review and appraisal of the progress made in achieving the goals and objectives of the Programme of Action of the International Conference on Population and Development,* Commission on Population and Development, 37th Sess., 31, U.N. Doc. E/CN.9/2004/3 (2004).

2 Greene Margaret E, Zohra Rasekh et al. *In this Generation, Sexual & Reproductive Health Policies for a Youthful World*, Population Action International, 2002.

3 UNFPA. *Reproductive Health Essentials: Securing the Supply*, 2002.

4 Ibid.

Important goals in the ICPD Programme of Action (PoA)

The Programme of Action adopted at the International Conference on Population and Development (ICPD) in Cairo in 1994 stipulates a number of objectives and actions related to sexual and reproductive health and rights. This chapter highlights the most pivotal and controversial goals selected by RFSU, followed by a short elaboration.

THE ICPD PROGRAMME OF ACTION (PoA) was the first international document to explicitly affirm the concept of reproductive rights. It provides a 20-year plan of action, which 179 countries agreed to. In July 1999 there was a five-year review. The outcome document, *Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development* (ICPD+5)[1] reaffirmed the principles agreed to in 1994. Some objectives went even further and specific goals on HIV/AIDS prevention were added. Just before the new millennium, UN members reaffirmed their commitment to work toward sustainable development and the elimination of poverty. This came together under the Millennium Development Goals (MDGs), most of which are to be achieved by 2015. None of these MDGs explicitly mention sexual and reproductive health and rights (SRHR). It is undoubtedly so that SRHR is a foundation for achieving the goals, such as gender equality, maternal mortality, HIV/AIDS and poverty reduction. The list below contains a selection of what RFSU has interpreted as some of the most important goals of the PoA. Under each heading several relevant paragraphs of objectives and actions from the PoA are presented,

1 Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development, U.N. GAOR, 21st Special Sess., New York, United States, June 30-July 2, 1999, U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter ICPD+5 Key Actions Document].

together with relevant ICPD+5 paragraphs and MDGs, and also provisions from some other relevant international documents. The full names of the international documents can be found in the chapter *"Which conventions and declarations matter?"* .

The conservative forces against some of the objectives in the PoA are referred to collectively here as *the Opposition* (see the chapter *The Opposition – who are they?*).

The rights of adolescents

> "Recognizing the rights, duties and responsibilities of parents and other persons legally responsible for adolescents to provide – in a manner consistent with the evolving capacities of the adolescent – appropriate direction and guidance in sexual and reproductive matters, countries must ensure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse. In doing so, and in order to, inter alia, address sexual abuse, these services must safeguard the rights of adolescents to privacy, confidentiality, respect and informed consent, respecting cultural values and religious beliefs. In this context, countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents."
> (Paragraph 7.45 PoA.)

This article provides adolescents with the right to sexuality education, contraception, and abortion. Recognizing young people's rights to information, education and services to safeguard their sexual and reproductive health is groundbreaking. However, the paragraph is a compromise since it underlines respect for cultural values and religious beliefs, and restricts legal changes to where it is appropriate (see the chapter, *Controversial terms*). The PoA also restricts the rights of adolescents by recognizing parental rights, obligations and responsibilities. However, the paragraph still provides for young people to receive reproductive health services without the consent of their parents by safeguarding their right to privacy and confidentiality. Health clinic personnel must treat young people respectfully and be able to provide information empowering them to protect themselves against, for example, sexually transmitted infections (STIs) and unwanted pregnancy. The rate of teenage pregnancy is lower in countries where young people have access to sexuality education and reproductive health services than in countries where they do not. An Allan Guttmacher Institute study compares teenage pregnancy in France, Sweden, the UK, Canada and the US. The teenage pregnancy rate in the age group (15-19) in France and Sweden is 20 and 25 women per 1,000 respectively. This figure was twice as high in the UK, and four times as high in the US (84 per 1,000). These discrepancies cannot be explained only by different levels of sexual activity, since the countries in question show approximately the same figures for that indicator. The explanation is rather that young women in the US use contraception less than in the other countries.[2] Young people need access to information and counselling to be able to use contraceptives correctly and thereby reduce teenage pregnancies.

PoA: 6.11, 6.15, 7:41-48
Millennium Development Goals 3, 4, 5 and 6

Access to information and reproductive health services

> "The objectives are … to ensure that comprehensive and factual information and a full range of reproductive health-care services, including family planning are accessible, affordable, acceptable and convenient to all users."
> Paragraph 7.5 (a) PoA.
>
> "All countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015."
> (Paragraph 7.6 PoA.)
>
> "All countries should, over the next several years, assess the extent of national unmet need for good-quality family-planning services and its integration in the reproductive health context, paying particular attention to the most vulnerable and underserved groups in the population… and should, in all cases by the year 2015, seek to provide universal access to a full range of safe and reliable family-planning methods and to related reproductive health services which are not against the law."
> (Paragraph 7.16 PoA.)

Access to *services* means a complete range of reproductive healthcare services, including pregnancy-related care, prevention and treatment of sexuality transmitted infections (STIs), access to contraceptives, and safe abortion where it is legal.[3] Governments should ensure that women are included in the design and implementation of reproductive and sexual health programmes. It is also important that services are directed towards men, adolescents, migrants, and victims of sexual and physical violence.[4]

This is particularly important for young people who risk contracting diseases and having unwanted pregnancies because they do not know how to protect themselves. People with access to contraception, reproductive health services and quality maternity care can exercise control over their own sexuality, decide when and if they want to have children, how many and with whom, and can give birth in a safe setting. One of the objectives stipulated in ICPD+5 is that by the year 2005, 80 per cent of all babies should be delivered with the help of trained personnel. By 2015, this figure should reach 90 per cent. ICPD +5 also stipulates that the gap between contraceptive use and the need for family planning should be narrowed by 50 per cent by 2005, by 75 per cent by 2010, and by 100 per cent by 2015.

2 Darroch Jacqueline E. et. al., *Differences in Teenage Pregnancy Rates Among Five Developed Countries: The Roles of Sexual Activity and Contraceptive Use,* The Alan Guttmacher Institute, Family Planning Perspectives, Volume 33, Number 6, November/December 2001.

3 Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, ¶¶ 7.6, 7.23(f); 7.31-7.33, 8.8, 8.17, 8.25 U.N. Doc. A/CONF.171/13, (1994) [hereinafter *ICPD Programme of Action].*

4 Ibid.., ¶¶ 4.8, 4.9, 4.20, 7.7-7.9 and 7.11.

All this is necessary in order to achieve significant, measurable improvements in people's lives, including those set forth in the Millennium Development Goals.
PoA: 7.5, 7.6, 7.14 – 7.26
Millennium Development Goals 1, 2, 4, 5 and 6

Access to safe abortion

> "In no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions."
> (Paragraph 8.25 PoA)

This was the first time an international document of this standing pointed to unsafe abortions as a major contributor to maternal mortality. Every year, 20 million unsafe abortions are performed in the world, and one woman dies every minute from pregnancy-related causes. In some places, up to 50 per cent of maternal mortality is the result of unsafe abortion.[5] In total, an estimated 14 per cent of all maternal mortality in the world is due to unsafe abortion.[6] At the ICPD+5 conference, the text on abortion was expanded by adding that where abortions are legal, healthcare personnel should be trained and equipped to ensure that such abortion is safe and accessible.[7] Despite the fact that women are severely affected due to their lack of access to safe abortion, the issue of abortion is immensely controversial. At the Fourth World Conference on Women in Beijing in 1995, countries around the world agreed to *consider* reviewing laws which punish women for having illegal abortions.[8]

One of the Millennium Development Goals is to reduce maternal mortality by two-thirds by 2015.
PoA 8.25
ICPD+5 63(iii)
Millennium Development Goal 5
FWCW 106(k)

5 Oguttu Monica, Peter Odongo, *Midlevel Provider's Role in Abortion Care*, Kenya Country Report, A Paper for the Conference "Expanding Access: Midlevel Providers in Menstrual Regulation and Elective Abortion Care" South Africa, 2-6 December 2001.

6 UNFPA, *Fast Facts on Maternal Mortality and Morbidity.*

7 ICPD+5 Key Actions Document, supra note 1 ¶ 63(iii).

8 Beijing Declaration and the Platform for Action, Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, ¶ 106(k), U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Declaration and Platform for Action].

Men's responsibility

> "Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes. Principle 4 PoA.
>
> Special efforts should be made to emphasize men's shared responsibility and promote their active involvement in responsible parenthood, sexual and reproductive behaviour, including family planning … . Male responsibilities in the family must be included in the education of children from the earliest ages." (Paragraph 4.27 PoA.)

For the first time in a major international context, the PoA explicitly stipulates that men must take responsibility for their own sexual behaviour, their fertility, transmission of STIs and the health and well-being of their partner and children. But men's responsibility includes a great deal more. Men's efforts to control women's sexuality, through acts of domestic violence, rape and female genital mutilation (FGM), impacts on both women's sexual and reproductive health and their equal status within society. Gender equality is also part of men's responsibility and is a precondition for changing the lives of women and young people. Young men need to be targeted in sexuality education and educated about gender equality. They also need to have access to information and services, including access to male condoms. Shared responsibility between men and women is necessary to be able to achieve the MDGs. (see the chapter on *Political arguments*)

PoA: 4.24- 4.27, 4.29, 7.41, 8.22, 8.27
Millennium Development Goals 4 and 6

Violence against women

> "Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes. The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. …"
> (Principle 4 PoA.)

The PoA recognizes that gender-based sexual violence, and efforts to control women's sexuality, impact on both women's health and their equal status within society. Government should stop harmful practices such as female genital mutilation (FGM). They should also promote respect for women and girls through educational programmes. Victims of sexual abuse and violence should be supported and be able to prosecute those responsible.[9] The PoA recognizes that women who are raped and subjected to other forms of sexual violence have an increased risk of being infected with HIV or other STIs. Improving gender equality and eliminating violence against women is necessary for

9 ICPD Programme of Action, supra note 3, ¶¶ 4.1, 4.4, 4.9, 4.13, 4.18, 4.19 and 4.22-4.23; *See also*,¶¶ 7.34-7.35 and 7.39-7.40.

the empowerment of women, which is one of the MDGs.

PoA Principle 4, Principle 9, Paragraphs 4.1, 4.4(e), 4.5, 4.9, 4.10, 4.21, 4.22, 4.23, 4.27, 7.6, 7.11, 7.34, 7.35, 7.38-7.40

Millennium Development Goals 3, 4, 5 and 6

Reduce the spread and effects of HIV/AIDS

> "The AIDS pandemic should be controlled through a multisectoral approach that pays sufficient attention to its socio-economic ramifications, including the heavy burden on health infrastructure and household income, its negative impact on the labour force and productivity, and the increasing number of orphaned children. Multisectoral national plans and strategies to deal with AIDS should be integrated into population and development strategies."
> (Paragraph 8.30 PoA.)

This article calls upon all countries to make efforts to stop the spread of HIV/AIDS by providing information, counselling, condoms and drugs for the prevention and treatment of HIV/AIDS. The PoA also highlights the fact that women and girls are more vulnerable to STIs, including HIV/AIDS, and stresses the importance of meeting their needs. It also lays down the challenge to governments to eliminate discrimination on the grounds of HIV status and to safeguard the human rights of people who live with the virus. At ICPD +5, efforts to combat HIV were further emphasized. It was recognized that young people constitute a special target group who should have access to information, counselling and contraception.[10]

ICPD PoA calls for increased availability and affordability of condoms and drugs for the prevention and treatment of STIs.[11] Despite abstinence being promoted in many countries (see chapter on *Controversial terms*), humans are still sexually active and hence need comprehensive information and services on how to protect themselves.

Half of all new HIV infections occur in people aged 15 to 24 and a majority of them are girls.[12] WHO estimates that approximately 330 million new STIs occur every year, and about 111 million of these affect young people under the age of 25.[13] One of the goals of the ICPD+5 is, by 2005, for 90 per cent of all young women and men between 15 and 24 years old to have access to information, education and services to develop the life skills required to reduce their vulnerability to HIV (rising to 95 per cent in 2010). The goal is to reduce the number of HIV infected young people by 25 percent by the year 2010. This coincides with one of the MDGs.

PoA 7.29, 7.31-7.33, 8.28-8.35

Millennium Development Goals 1, 2, 3, 4 and 6

ICPD +5: 67-72

10 ICPD+5 Key Actions Document, supra note 1, ¶ 70.

11 ICPD Programme of Action, supra note 3, ¶ 8.35.

12 UNFPA, *State of the World Population*, 2003.

13 WHO Facts Sheet, *Young People and Sexually Transmitted Diseases*, 1997.

A comprehensive definition of sexual and reproductive health and rights (SRHR)

> "Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes."
> (PoA Paragraph 7.2)
>
> "Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents."
> (PoA Paragraph 7.3)

For the first time, the international community agreed on a broad definition of reproductive health. The definition includes the important recognition that reproductive health is not just about health but it is also a human rights issue which has already been recognized in international human rights documents, including legally binding treaties. The PoA recognized the right of individuals and couples to choose for themselves if, when and how often they want to have children. The definition also encompasses people's right to have access to "*reproductive health services*" (see also *Controversial terms*), including methods of fertility regulation where these are not against the law. This definition was reaffirmed at ICPD +5 where it was agreed that reproductive health cannot solely be measured in terms of how many people use contraception. Factors such as HIV/AIDS, STIs and maternal mortality, must also be considered.[14] At the Fourth World Conference on Women (FWCW) in 1995, 189 countries reaffirmed this broad definition of reproductive health and expanded on the issue of abortion by calling upon states to *consider* reviewing laws punishing women for undergoing illegal abortions.[15]

While the PoA does not recognize *sexual rights* countries did agreed to provide conditions for a safe sex life. However, in Bejing in 1995 the international community managed to recognize the existence of sexual rights without employing the exact term (see the chapter on *Controversial terms*). A definition of reproductive health and rights can not be fully comprehensive if it excludes sexual rights. Sexual rights include the rights for women, youth and LGBT-persons to take decisions regarding their own sexuality. (see sexual rights/orientation in the chapter on *Controversial terms*).

PoA: Principle 8, Paragraphs 7.2, 7.3 7.5-7.9, 7.11, 7.23, 7.30-7.33, 7.36-7.38, 7.45-7.48, 8.8, 8.17, 8.22-8.27
Millennium Development Goals 1, 2, 5, 6
ICPD +5: 3, 52
FWCW: 95, 106 (k)

14 ICPD+5 Key Actions Document, supra note 1 ¶ 52.
15 Beijing Declaration and the Platform for Action, supra note 8, ¶ 106(k).

Reservations expressed at the ICPD

This chapter discusses the reservations expressed by many countries about certain concepts and articles in the ICPD Programme of Action (PoA). Under each concept, you will find the relevant article of the PoA, the reasons for the reservations, and a list of the countries expressing them.

At the ICPD conference in Cairo in 1994, 179 countries reached consensus on a Programme of Action (PoA) that was intended to guide national-level policymaking on population and development for the next twenty years. Numerous discussions took place, and in the end, a number of countries chose to express reservations regarding some provisions and articles in the PoA.

The countries that expressed reservations were largely Catholic-majority countries from Latin America, Muslim countries, and the Vatican.[1] The Vatican is a state in its own right, and has observer status in the UN as the Holy See. Most reservations, were also the result of countries' discomfort with certain words and phrases related to sexual and reproductive health and rights issues. Some countries also felt that the wordings were in conflict with their national law, and thus unable to accept them. These countries referred to the Introduction in Chapter II of the PoA, which stipulates that each country retains sovereign rights when implementing the PoA, and that this should be done with full respect for different religions and cultures.

The list below indicates which countries expressed reservations on issues related to sexual and reproductive

1 Report of the International Conference on Population and Development, Cairo 5-13 September 1994, United Nations publication Sales No. 95 X111. 18 A/CONF.171/13, (1994).

health at Cairo.[2] In the ten years since the ICPD Programme of Action was adopted, many countries have changed positions on these issues. For example, many Latin American countries which expressed reservations endorsed even more progressive language on sexual and reproductive health and rights issues in New York during the five-year review of governments' implementation of the ICPD PoA in 1999. They also continue to take progressive stands on these issues. By contrast, the United States – a strong progressive voice at Cairo – has joined the most conservative states at international conferences since 2001.

A deeper explanation of the controversy surrounding some language can be found in the chapter on *"Controversial words and concepts".*

Abortion

Several countries noted that they did not consider certain terms, including "regulation of fertility," "reproductive health," "reproductive rights" or "family planning," as including abortion.

El Salvador, Honduras, Libyan Arab Jamahiriya, Nicaragua, Yemen, United Arab Emirates, Guatemala, Argentina, Dominican Republic, Ecuador, Holy See, Malta, Paraguay, Peru.

Family planning

The Holy See objected to the term "family planning", where it refers to modern methods of contraception or abortion, indicating that the only family planning methods acceptable to them were natural methods. Some other countries joined the Holy See in noting that they did not consider the term "family planning" to include abortion.

El Salvador, Honduras, Holy See, Nicaragua, United Arab Emirates.

Gender equality

Two countries expressed reservation on language on "inheritance rights" noting that their implementation of the PoA in relation to this would be inconsistent with Islamic Sharia.

Libya, United Arab Emirates.

Individuals

Several states entered reservations on the use of the term "individuals" in relation to reproductive decision-making, where this could include people who are not married.

Afghanistan, El Salvador, Jordan, Libyan Arab Jamahiriya, Dominican Republic, Djibouti, Egypt, Holy See, Islamic Republic of Iran.

Reproductive health and reproductive rights

Several countries expressed reservations on these terms noting that in their interpretation they did not include abortion. *Brunei Darussalam* noted that the concept of reproductive rights goes against Islamic Sharia.

El Salvador, Honduras, Nicaragua, Argentina, Dominican Republic, Ecuador, Holy See, Malta, Peru, Guatemala, Brunei Darussalam.

2 Ibid.

Right to life
The concept is interpreted as life starting at the moment of conception.

Argentina, Dominican Republic, El Salvador, Ecuador, Honduras, Nicaragua, Peru, Paraguay, Guatemala, Holy See.

Sexual behaviour
The concept "sexual behaviour" is considered not to be in line with Islamic Sharia Law.

Yemen.

Sexual health
Like reproductive health, states expressing reservations on this term, did not consider it to include abortion.

Honduras, Nicaragua, Dominican Republic, Guatemala, Holy See.

Sexual rights
Some states expressed reservations about this term if it could be interpreted to include abortion, although the term was never used in the ICPD Programme of Action.

Honduras, Nicaragua, Dominican Republic, Guatemala, Holy See.

Sexual/sexuality education,
Some countries felt that sexuality education should not be given outside the family.

Iran, Holy See and *Guatemala* entered a general reservation on the term.

Safe motherhood
The term "safe motherhood" was opposed by the *Dominican Republic*, on the grounds that it could be interpreted to include abortion. *Guatemala* entered a general reservation on the term.

Other unions, types of families, various forms of the family, couples
These concepts were felt to transgress the core family or to include people of the same sex.

Honduras, Nicaragua, Ecuador, Guatemala, Paraguay, Argentina, El Salvador, Dominican Republic, Holy See.

The Opposition – who are they?

This chapter briefly describes the fiercest opponents of SRHR in international negotiations.

Opposition at the United Nations (UN)

"I will do everything in my power to restrict abortions" George Bush said in The Dallas Morning News in 1994, thereby setting out his position on abortion in no uncertain terms.

Under President Clinton (1993-2001), the United States helped to move sexual and reproductive rights forward. But today, under President Bush (2001-), a different attitude prevails. The United States is one of the fiercest opponents of reproductive rights at home, in international conferences, and in its foreign assistance policies. For example, it attaches conditions to the money it allocates for foreign aid, including HIV/AIDS prevention programmes. A third of all HIV/AIDS prevention funding must go to financing abstinence projects. US aid money may not go to organizations that provide counselling or services on abortion, even in countries where it is legal. Nor are the organizations allowed to promote the right of women to have safe and legal abortions. This rule is known as the *global gag rule* since it prevents non-governmental organizations (NGOs) from advocating abortion. It is important to note that the global gag rule violates the freedom of speech which is embedded in the US constitution. President Bush has also put acknowledged anti-abortion supporters into key positions in his administration. At several recent international conferences, the United States has tried to amend documents and provisions that gained worldwide consensus in Cairo in 1994. Their attempts have been relatively unsuccessful, however.

The Vatican also conducts intensive lobbying against reproductive rights. The Vatican has diplomatic ties with several states and has observer status in the UN. The Vatican lobbies at UN conferences to try to convince countries to express reservations about

provisions on sexual and reproductive health and rights (SRHR). The present Pope, John Paul II, has clearly opposed the use of condoms. This has devastating effects on protection against HIV/AIDS and other Sexual Transmitted Infections (STIs). In addition the Vatican does not accept a widening of the family concept, and nor does it feel young people should have access to sexual education or safe abortions (see also *Controversial terms*).

Catholic countries from some Latin America and Muslim countries have also been strong opponents of SRHR. These countries feel that the provisions are incompatible with their religious laws or cultural norms, and do not accept that women and youth have such rights (see also *Reservations*).

Opposition in the European Union (EU)

Eight Catholic countries, supported by a few Protestant churches and the Vatican, also tried unsuccessfully to have a special clause inserted into the draft EU Constitution stating that the EU was based on fundamental Christian values. However, Article 51 of the draft Constitution still remains – calling on the EU to pursue a regular dialogue with churches as part of its decision-making processes. This will probably lead to the Vatican having more influence over individual rights.

There are several strong lobby groups in Europe, often supported by NGOs in the United States, against sexual and reproductive rights, which often proclaim that the traditional family, consisting of a husband and wife, is an unimpeachable ideal. They comprise organizations striving to change regulations and laws at local, national, regional and international levels. These include some churches or political parties, NGOs or other networks. Their endeavours may include help-lines where women are persuaded to pursue their pregnancy, writing letters to local newspapers, participating in the media, or raising issues in parliament. There are also churches in developing countries that promote a negative view of sexuality and reproductive rights in the course of development assistance projects.

Controversial terms

This chapter explains certain concepts and words that have been the subject of controversy in international negotiations. Certain concepts are important to safeguard so as not to lose ground in our efforts to promote and protect sexual and reproductive health and rights (SRHR). Other concepts are explained because they are important to avoid.

AN IMPORTANT PART OF IMPROVING people's rights in the world is negotiating the language in international agreements at UN conferences. The documents agreed on by the international community at these meetings are used to guide national policymaking. These documents are therefore a precondition for strengthening the rights of vulnerable groups. But the meanings of words are often charged by different interpretations and opinions. It is therefore important to know which terms raise controversy.

On several occasions, conservative forces have tried to change certain terminology and roll back the agreements formulated at the International Conference on Population and Development (ICPD) held in Cairo in 1994. It is important to safeguard these concepts so that we do not lose ground in our efforts to improve protection for human rights.

Below is a list of words and concepts, whose meanings have been interpreted differently by progressive and conservative forces. The forces that oppose reproductive rights are collectively referred to in this context as the "Opposition." (*see also The Opposition-who are they?*)

Some of the terms below are included in or were discussed during negotiations for the ICPD Programme of Action (PoA). Reference to the relevant articles is given where appropriate. Some newer terms are also listed.

Abortion

At all international conferences since Cairo, the Opposition has successfully blocked language on women's right to access safe abortions in consensus documents. Abortion is mainly discussed in the context of reducing the impact of unsafe abortions on women's health rather than as a rights issue. There is strong international consensus that abortion should not be used as a method of family planning. Instead, efforts should be made to reduce women's need to resort to abortion by increasing their access to contraception. The PoA also states that where abortion is legal, it should be safe. This was expanded during ICPD+5, where governments agreed that "health systems should train and equip health-service providers" to ensure that legal abortions are both safe and accessible.

The right to abortion is one of the most controversial issues for the Opposition. Since 2001 the Bush Administration has been one of its most vocal opponents at international level. Soon after taking office, President Bush issued an executive order known as the "global gag rule". This prohibits non-US organizations that receive funding for family planning activities from the United States Agency for International Development (USAID) from using their own money to provide abortion services, counselling or referrals. Nor may they advocate the liberalization of abortion laws or policies. (See also *Unsafe abortion*).

PoA: 8.25, 7.6
ICPD+5: 63
Beijing: 106 (k)

Abstinence

In Cairo, some Muslim countries and the Vatican opposed wording such as "responsible sexual behaviour" and "sexual activity" and other words that might imply people having extra-marital sex.[1] These states took the position that sexual activity is only acceptable within the bounds of marriage, and that abstinence should be exercised at all other times.

More recently, the Opposition has claimed that abstinence is the best, and only, way to prevent sexually transmitted infections (STIs), including HIV/AIDS, and unwanted pregnancies. They often refer, ill-advisedly, to the positive result of the ABC-model in Africa. Uganda is one of the countries often highlighted in this context. But abstinence is only one of three components that have reduced the spread of HIV/AIDS. The ABC-model stands for (a)bstinence, (b)e faithful and (c)ondom use. In reality, Uganda's success stems from a strong governmental commitment to preventing the spread of HIV. This is reflected in the investment of considerable resources in prevention and treatment programmes that stress the three components

1 Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, Part Two: Statements and Reservations on the Programme of Action - Holy See, Libyan Arab Jamahiriya and Yemen, U.N. Doc. A/CONF.171/13 (1994).

equally in order to promote safe sexual behaviour and provide clear information about condoms. The "ABC" campaigns in Uganda have led to an increase in condom use as well as people having fewer sexual partners. The number of adults afflicted with HIV dropped from 15 per cent in 1991 to 5 per cent in 2001.[2]

Since 2001, the Bush Administration has promoted "abstinence-only until marriage" education programmes for adolescents. This approach has been stressed in both the US and at international conferences.

Abstinence alone is not the answer. It is an insult to all women and young people who have no freedom to choose. In South Africa, for example, one in twenty women are raped each year.[3,4] Gender, age, class, poverty and violence are important factors that restrict freedom of choice. Young women are more exposed to risks, often because adult men have sex with them. Women, especially young women, are more susceptible to HIV/AIDS, not just physiologically, but because they lack social status to choose themselves when, where and how they have sex. Sixty-two per cent of all young people living with HIV /AIDS in 2001 were young women.[5]

The consensus agreed to at the ICPD recognized that the promotion of "voluntary abstinence" should be just one aspect of comprehensive sexual and reproductive health education programs for adolescents.[6] If abstinence is to be included in international agreements, sexuality education, or *comprehensive programmes* (meaning sexuality education and information) should be mentioned in the same sentence.

PoA: 8.35
ICPD+5: 67, 68
Beijing: 108(k)

Care vs. Services

The Holy See (the Vatican), some Muslim and some Latin American States (and the US since 2001) have opposed the use of the term reproductive health services, arguing that it could include abortion.[7] Instead, they advocate using the word care, meaning access to medical treatment. However, the PoA states that reproductive healthcare also includes abortion where it is legal as specified in Paragraph 8.25,[8] as well as a comprehensive range of information and services.

Although the definition of *care* and *services* are similar, the political impact is totally different. It is therefore very important to use the term *services*. Ten years of political negotiation has defined *services* as the most progressive term. It is now the common understanding that *services* represent the wider concept that includes the right to information, contraception and

2 AGI, *AB and C in Uganda,* 2003.
3 Jackson Helen, *AIDS Africa Continent in Crisis*, 2002.
4 Calculated from reported cases and estimated hidden statistics.
5 UNFPA, *State of the World Population,* 2003.
6 *ICPD Programme of Action, supra* note 1, ¶ 7.44.
7 IWHC, *Beijing Plus Five: IWHC's Analysis of Negotiations and Final "Further Actions"* Document 5, 2000.
8 *ICPD Programme of Action* ¶ 7.6.

counselling regarding sexuality and fertility. It also includes other methods of regulating fertility, including abortion where it is legal.[9] *Services* therefore emphasize having control over one's sexuality and fertility and not just being cared for when sick or bleeding to death.

If it is not possible to reach a consensus on using the term *services* instead of *care*, it is important that the definition of *care* refers back to the wording from PoA, para. 7.6.

PoA: 7.2, 7.6
ICPD+5: 52(e), 73(a)
Beijing: 94, 95 108(k)

Conscientious objection

At the ICPD and following international conferences, the Opposition have tried to introduce language on conscientious objection to abortion for healthcare personnel. In their proposed language at Beijing+5, for example, the clause would have allowed healthcare providers to refuse to: perform abortions, train others to provide abortions, provide women with information about abortion, or refer women to other providers for abortion procedures, even when their health or life is at risk. To date, all attempts to include language on conscientious objection in international consensus documents have been defeated. [10]

Couples and individuals

The Opposition objects to the use of the term "couples and individuals" in the context of reproductive decision-making, like access to contraceptives and counseling.[11] Using the word *individual* implies that unmarried people have a sexual life and, like couples, are in need of sexual and reproductive services. The phrase "couples and individuals" has been used in all international consensus documents on population and development issues since the World Population Plan of Action was adopted in Bucharest in 1974.[12] All attempts to remove references to individuals' reproductive rights have failed.

PoA: 7.24
ICPD+5: 3, 56
Beijing: 95

Cultural and religious practices

Cultural tradition and values have long been used as the basis for conservative states' denial of citizens' right in the sexual and reproductive arena. It is also a way of opposing women's rights to equality and non-discrimination

9 Singh, Jyoti Shankar, *Creating a New Consensus on Population*, 1998.

10 IWHC, supra note 7.

11 ICPD Programme of Action, supra note 1, Part Two: Statements and Reservations on the Programme of Action - El Salvador, Jordan,, Libyan Arab Jamahiriya, Dominican Republic, Egypt, Holy See, and Islamic Republic of Iran.

12 World Population Plan of Action, Report of the United Nations World Population Conference, Bucharest, 19-30 August 1974, ¶ 14(f), Sales No. E.75.XIII.3, 1974.

generally. By doing so, countries can avoid implementing controversial provisions. For example, at Cairo, a number of Muslim states entered reservations on terminology that may contravene Islamic Sharia and/or ethical values and cultural backgrounds.[13] During negotiations, Egypt, Tunisia, Jordan and others asked to delete language recognizing "inheritance rights."[14]

The Opposition has tried to include wording that would allow culture and religion to override women's human rights. So far, all attempts have been defeated.[15] International conference documents call for respect for cultural diversity and values – but this should not undermine gender equality and human rights.[16]

The phrase *"as appropriate"* is another watering-down "escape" phrase used by the Opposition in this context. For instance, in paragraph 7.45 PoA it says *"... countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents".*

There still remain many cultural practices based on fear of women's sexuality that need to be brought to the surface. This was done regarding female genital mutilation in Cairo when "the conspiracy of silence" was broken.[17] The PoA also recognized early marriages as harmful. In cultures where early marriage occurs, a girl's sex life begins as soon as she has reached sexual maturity, sometimes even earlier. But there are other examples that have not gained the same attention. The practice of drying out the vagina before intercourse (dry sex) and honour crimes are two examples.

PoA: 7.6, 7.40
ICPD+5: 42, 48
Beijing: 107(a)

Family-families

Protection of the family has been a central concern of the international community since the inception of the UN.[18] It has nevertheless been difficult to agree on a definition of "the family". The Opposition defines *family* as a traditional nuclear family – mother, father and children. This is the only family structure that the Opposition can tolerate. *Families or various forms of the family, different types of families* or *other unions* can be interpreted as homosexual/same-sex relations and are therefore not acceptable terms to the

13 ICPD Programme of Action, supra note 1, Part Two: Statements and Reservations on the Programme of Action – Afghanistan, Brunei Darussalam, Islamic Arab Jamahiriya, Islamic Republic of Iran, Yemen, Djibouti, Jordan, Kuwait, Syrian Arab Republic, United Arab Emirates.

14 ICPD, *Earth Negotiations Bulletin 06:35*, Sept. 8, 1994.

15 Center for Reproductive Rights, *Beijing+5: Assessing Reproductive Rights*, 2000.

16 *ICPD Programme of Action, supra* note 1, Ch. IV; *Further actions and initiatives to implement the Beijing Declaration and the Platform for Action*, U.N. GAOR, 23rd Special Sess., New York, United States, June 5-9, 2000, ¶ 95(i), U.N. Doc. A/Res/S-23 (2000) [hereinafter *Beijing+5 Further Actions Document*].

17 Singh, Jyoti Shankar, *Creating a New Consensus on Population*, Earthscan Publication Ltd, 1998.

18 Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217A (III), at 71, art. 23.

Opposition. The PoA states that various forms of the family exist in different social, cultural and political systems. A widened concept of "the family" may also include an African *extended family*, a family with a single, divorced parent, maternal and paternal grandparents or other adults who function as parents. It is therefore important never to accept the word *family* on its own as it inhibits the rights of all those people who live in different family structures.
PoA: 5.1
Beijing: 29

Gender

Gender is an important term that defines the biological sex in a wider context. In order to reach equality between men and women it is important to understand how gender roles are constructed. Gender is the social construction of both sexes, which moulds women and men into society's interpretation of what it is to be a man or a woman. For example, the perception of girls having to be virgins until they marry results in denying them access to reproductive health services. The conception of women, due to their biology, being the natural carers of children, and the household, leads to women being paid less than men and losing out on career opportunities. This also means that it is not socially accepted for men to want to stay at home with their children. To talk about gender is, of course, more threatening to those opposing women's rights, since it includes how power structures and lack of rights shape our sexuality and life conditions. Gender is also a word associated with feminism, a political ideology that parts of the Opposition do not approve of. Those opposing gender equality and women's right often refer to men and women as biological beings.

Fertility regulation

This concept is defined by WHO and includes family planning, contraceptive use, delayed child bearing, infertility treatment and the interruption of unwanted pregnancy or breast-feeding.[19] The opposition has therefore objected to the use of the term "fertility regulation" within the ICPD Programme of Action and other international conference documents.[20] At the ICPD the term was turned around to read *"regulation of fertility."* It was also emphasized that abortion in no way should be promoted as a method of family planning.[21] (see Reproductive health)
PoA: 7. 2
ICPD+5: 3
Beijing: 94

Parental rights

Parental rights are used by the Opposition to prevent young people gaining access to contraceptives, information and counselling at health clinics. The Opposition argues that parents have the ultimate power of decision-making regarding young people's sexual and

19 Singh, Jyoti Shankar, *Creating a New Consensus on Population*, Earthscan Publication Ltd, 1998.
20 ICPD Programme of Action, supra note 1, Part Two: Statements and Reservations on the Programme of Action – Nicaragua.
21 ICPD Programme of Action, supra note 1, ¶ 8.25.

reproductive health and rights. The balance between the rights of parents and the rights of children has long been an area of controversy. There was strong opposition at Cairo to recognizing adolescents' own sexual and reproductive rights. The language adopted was a compromise. The document recognizes the "rights, duties and responsibilities of parents" in providing guidance to adolescents on sexual and reproductive health matters. But it also requires the promotion and protection of adolescents' rights to education, information and care, and that access to such services is not restricted.[22]

It is important to stress that young people should have access to sexuality education, contraceptives, counselling and abortion without the consent of their parents. They should be able to visit clinics where personnel are bound by professional secrecy and – instead of burdening them with guilt – they should be supported and given the opportunity to protect themselves in the best way possible. Feelings of guilt about sexually transmitted infections (STIs) deter young people from contacting clinics for care and counselling. Instead, they might try to cure themselves by using unsafe traditional methods. A study in Hanoi in Vietnam shows that, out of the 259 women who had undergone abortion, 90 per cent were young, between the age of 15 and 24. They had never before been to a clinic because they were afraid of revealing that they were no longer virgins. Ninety-three per cent of these women said they would have used contraception had they been informed about it.[23] What is needed is to strengthen prevention of STIs and unwanted pregnancies through counselling, youth friendly services (YFS), and comprehensive sexuality education.

The Convention on the Rights of the Child (1990) recognizes that children and adolescents are capable of making decisions about their lives and that these decisions should be respected. It also recognizes children's right to privacy.
PoA: 7.45, 7.46, 7.48
ICPD+5: 73(a)
Beijing: 107(g)

Reproductive health

For more than 30 years, the World Health Organization has defined health as a state of complete physical, mental and social well being, and not merely the absence of disease. The ICPD PoA's definition of reproductive health is based on WHO's definition of health, and includes health in "all matters relating to the reproductive system and to its functions and processes." Reproductive health includes the entire reproductive process, at all stages of life. The definition includes the right of individuals to a safe and satisfying sex life, and the right to decide whether and when to have children, and how many. It also includes the right to have access to safe, effective, affordable and acceptable means to manage one's fertility, as well as all information and

22 ICPD Programme of Action, supra note 1, ¶¶ 7.45-7.46.

23 FHI, *Better Services Can Reduce Abortion Risk,* Network: 2000, Vol.20, No. 3 \o "Network 20.3" \o "Network 20.3" \o "Network 20.3" \o "Network 20.3".

counselling necessary to achieve these rights.

The working definition by the WHO does include the term fertility regulation, which is interpreted to include termination of unwanted pregnancy *(see fertility regulation)*. The Holy See (the Vatican) expressed reservation on the whole chapter on reproductive health, since they interpreted the ICPD definition to include abortion.
PoA: 7.2, 7.3
ICPD+5: 52
Beijing: 94

Reproductive rights

The definition of *reproductive rights* in Article 7.3 was one of the most difficult issues to resolve at Cairo.[24] This article states that reproductive rights are based on human rights that are "already recognized in national laws, international human rights documents and other consensus documents." Reproductive rights include the rights of men and women to have the highest standard of sexual and reproductive health; the right to decide the number and spacing of their children; the right to services and information on safe and effective methods of family planning; and the right to make decisions about their reproductive lives free from violence, coercion and discrimination. However, the definition falls short of fully embracing a broad concept of reproductive rights because it does not explicitly recognize safe and legal abortion as such a right. The issue was heavily targeted by the Opposition.
PoA: 7.3, 7.2
ICPD+5: 3
Beijing: 94-95

Safe motherhood

At Cairo, conservative governments opposed the use of the term "safe motherhood" because it could include access to safe abortion.[25] This was fuelled when the ICPD recognized the link between unsafe abortion to high rates of maternal mortality. Every year about 530,000 women die from causes related to pregnancy and childbirth. Young women's risk of dying during pregnancy and childbirth is twice that of women in their 20s, while the risk increases five-fold for girls under 15. As a result, pregnancy is the leading cause of death for women aged 15 to 19 worldwide.[26] Most maternal deaths occur in developing countries; the risk of an African woman dying in connection with pregnancy is 1 in 16, compared with 1 in 2800 in a developed country.[27] Reducing maternal mortality is also one of the UN's Millennium Development Goals (MDGs).
PoA: 8.19

24 ICPD, *Earth Negotiations Bulletin 06:36*, Sept. 9, 1994.

25 ICPD Programme of Action, supra note 1, Part Two: Statements and Reservations on the Programme of Action – Dominican Republic; ICPD, Earth Negotiations Bulletin 06:26, Apr. 18, 1994.

26 UNFPA, *State of the World Population*, 2003.

27 UNFPA, *Fast Facts on Maternal Mortality and Morbidity* .

Sexual orientation

Sexual orientation has been one of the most controversial issues at international conferences since Cairo. At Cairo there was strong opposition to references to the diversity of families, since it could include same-sex couples.[28] Most international treaties prohibit discrimination based on "other status",[29] which by many countries is interpreted as including sexual orientation. But there is still no international consensus document that explicitly addresses discrimination on the grounds of sexual orientation. Recently, the Human Rights Committee stated that discrimination based on sexual orientation is a violation of the rights to privacy and non-discrimination.[30]

It is important to acknowledge sexual orientation, since gay, lesbian, bisexual and transgender persons (LGBT) are persecuted in many countries. It is also vital for HIV prevention. Even though homosexuality is taboo in some places, one way forward is to talk about it in terms of *men who have sex with men.* This is a relevant concept since there are men who have sex with other men without identifying themselves as gay. Apart from being a rights issue it is important to highlight same-sex relations since they affect the spread of HIV/AIDS and STIs. At least 5-10 per cent of all those infected by HIV are men who have unprotected sex with men. This figure is estimated at around 70 per cent in north America, Australia, New Zealand and western Europe.[31] Ignoring men who have sex with men would be to disregard a large target group when it comes to preventing the spread of HIV/AIDS.

Sexuality education

The Opposition often interprets s*exuality or sexual education* as basically teaching young people to have sex. On the contrary, more information about sexuality leads to fewer partners, safer sex and young people delaying their sexual debut. A report compiled by UNAIDS 1997[32] scrutinized 68 different studies in the field of sexuality education and HIV prevention. The majority show that there is no connection between sexuality education and increased numbers of sexual partners. This is also the Swedish experience from 50 years of sexuality education.

The PoA supports sexuality education in schools while it also recognizes the role of parents in guiding their children in these issues.[33] Sexuality education must be coupled with values and attitudes, and focus

28 ICPD Programme of Action, supra note 1, Part Two: Statements and Reservations on the Programme of Action – El Salvador, Honduras, Nicaragua, Paraguay, Argentina, Guatemala; ICPD PrepCom III, Earth Negotiations Bulletin 06:23, Apr. 13, 1994.

29 Center for Reproductive Rights, *Bringing Rights to Bear: An Analysis of the Work of the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights 210-215,* 2002.

30 Human Rights Committee, Concluding Observations of the Human Rights Committee - United Kingdom of Great Britain–Northern Ireland—Crown Dependencies, ¶ 14, U.N . Doc . CCPR/C/79/Add.119 (March 27, 2000).

31 UNAIDS, *Technical Update, Aids and men who have sex with men*, May 2000.

32 UNAIDS, *Impact of HIV/AIDS and sexual health education on sexual behaviour of young people: a review update,* 1997.

33 ICPD Programme of Action supra note 1,. ¶ ¶7.37, 11.9.

on gender equality, as well as facts about anatomy and contraception. It is not possible for people to protect themselves against HIV/AIDS if they are not educated fully on the matter. In Zambia, the prevalence of HIV among 15-19 year-olds dropped from 28 per cent in 1993 to 15 per cent in 1998. The reasons were fewer partners and use of condoms.[34] This cannot be done without access to information.

A minority of states (led by the United States at conferences since 2001) have argued that sexuality education should be provided by parents or that "abstinence only" education should be emphasized.[35] The Opposition feels most comfortable with the concept of *"Family Life Education (FLE)"*. FLE focuses on traditional family relations, housework, parenthood, marriage preparations, etcetera.[36]

A compromise when negotiating on *sexuality education* can be to use the concept *sexuality and reproductive health education*.
PoA: 7.37
ICPD+5: 73(a)
Beijing: 107(a), 107(g)

Sexuality

Sexuality is an important aspect of all peoples' lives. Sexuality includes lust, behaviour and sexual orientation.[37] Many find the word objectionable, since it is often interpreted simply as lust and pleasure, which are seen as provocative. The word *reproduction* is often suggested instead. But just using the word reproduction is saying that the only reason people have sex is to have children. Using the term reproduction alone does not recognize aspects of sex and sexuality outside of conception; accordingly, the two concepts of sexuality and reproduction should be used in combination. Support for this may be found in the ICPD PoA where countries agreed on the right of individuals to a satisfying sex life and the right to determine the number and spacing of their children.
PoA: 7.2, 7.3,
ICPD+5: 52
Beijing: 96, 108(k)

Sexual rights

Sexual rights have not yet been defined in international documents. It is controversial because progressive forces want sexual rights to be included in the rights of women, youth and LGBT persons (see *Sexual orientation* above). The Opposition has argued that sexual rights are included in the terminology of reproductive rights. While the ICPD Programme of Action discusses the right to have a "satisfying and safe sex life" and notes that "the purpose of [sexual health] is the enhancement of life and personal relations," it does not

34 UNFPA, *State of the World Population*, 2003.

35 Center for Reproductive Rights, *UN Special Session on Children, Missed Opportunities and Neglected Realities FN 27*, 2002 [hereinafter Center for Reproductive Rights, UN Special Session on Children].

36 Irvin Andrea, *Taking Steps of Courage: Teaching Adolescents about Sexuality and Gender in Nigeria and Cameroun*, International Womens´s Health Coalition, 2000.

37 Jackson Helen, *AIDS Africa Continent in Crisis*, 2002.

explicitly mention "sexual rights."[38] The Beijing Platform for Action went further in providing that women's human rights include the right to "have control over and decide freely and responsibly on matters related to their sexuality…."[39] This paragraph is regarded as setting forth a definition of "sexual rights" without employing the terminology. No subsequent conference has gone further on this point.[40]
PoA: 7.2
ICPD+5: 3
Beijing: 96

Son preference

Son preference refers to cultural biases that favour sons over daughters. It implies not only the abortion of female foetuses, but also the discrimination of girls when it comes to nutrition, access to healthcare, etc. Consequently, girls have a higher infant mortality than boys. According to the statistics, there are areas of China and Korea where 110 boys are born for every 100 girls. In Asia, it is estimated that 60 million girls are "missing" because of the phenomenon.[41] The phenomenon of "missing girls" has been discussed in the Beijing Declaration and Platform for Action, which notes that "son preference" involves "curtailing the access of girl children to food, education and healthcare and even life itself."[42] The Platform for Action acknowledges the connections between female infanticide, sex-selective abortions and son preference. The governments at the ICPD made a commitment to fight son preference.
PoA: 4.15, 4.16(a), 4.23, 7.6
ICPD+5: 48
Beijing: 38-39, 108(a), 277(c)

Unsafe abortion

Around the world, one woman dies every minute in connection with a pregnancy, in many cases because the woman has undergone an unsafe abortion.[43] Of the 46 million abortions that are performed every year, 20 million are performed under unsafe conditions. According to WHO, 78,000 women die from the consequences.[44] Every year 15 million women are severely disabled due to pregnancy-related complications.[45] Up to 50 per cent of hospital budgets in developing countries are used to treat women suffering from the complications of unsafe abortions.[46] Since Cairo, the

38 ICPD Programme of Action, supra note 1, ¶ 7.2.

39 Fourth World Conference on Women, Beijing Declaration and Platform for Action, Beijing, China 4-15 September 1995, A/CONF.177/20, 17 October 1995, ¶ 96 [hereinafter Beijing Declaration and Platform for Action].

40 IWHC, supra note 7.

41 UNFPA, *State of the World Population*, 2000.

42 Beijing Declaration and Platform for Action, supra note 39, ¶ 38.

43 UNFPA, *Fast Facts on Maternal Mortality and Morbidity.*

44 WHO, *Unsafe abortion: Global and regional estimates of incidence of a mortality due to unsafe abortion with a listing of available country data 1995-2000 - Third edition*, (RHR).

45 Mirsky Judith, *New Approaches to Safe Motherhood*, PANOS, 2001.

46 WHO, *Abortion in the Developing World 3*, 1998.

conservative strategy led by the Vatican (and since 2001 by the United States), has been to block any effort to address the health impacts of unsafe, illegal abortions. Parts of the Opposition are willing to accept that unsafe abortions are a major public health problem. Others do not even accept the term unsafe abortion, claiming that all abortions are unsafe. The Opposition also refuses to acknowledge that ensuring women's access to safe, legal abortions would eliminate unnecessary deaths and injuries. They do not acknowledge the term "safe abortion" since they regard the rights of the foetus to override the rights of the woman.

There is a clear parallel between the legality of abortion and its safety. In Sweden, between 1946 and 1953 when abortion was still illegal, the abortion-related maternal mortality rate was 96.4 per 100,000 live births. Today, when abortion has been legal for three decades, there are between 30,000 and 33,000 abortions every year, without any deaths.[47]

At Cairo, Paragraph 8.25 was amongst the last to be agreed upon, with more than 85 states commenting on it.[48] The term "legal abortion" was ultimately excluded from the outcome document in order to reach consensus.[49] The final reading of Paragraph 8.25 says that abortion should be safe where it is legal. The ICPD +5 outcome document calls for ensurance that abortion is safe and accessible by training and equipping health-care providers.[50] The Beijing Platform for Action (1995) went further, calling on governments to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions."[51]

There is strong international consensus that abortion should not be promoted as a method of family planning.

The Opposition accepts the concept of *Post Abortion Care (PAC),* where women should have access to services for managing abortion-related complications, as stated in both PoA and ICPD+5.[52] It is a paradox that the Opposition are willing to care for women suffering from the consequences of unsafe abortion but refuse to grant them access to legal and safe abortion.

EMERGING ISSUES

Emergency contraception (EC)

There is a misconception that EC is the same as medical abortion. This is not true. However, abortion opponents claim that emergency contraceptive pills *are* the

47 Swedish National Board of Health and Welfare, Abortions 2002, Sveriges Officiella Statistik (Official Swedish Statistics).

48 ICPD, Earth Negotiations Bulletin 06:33, Sept. 6, 1994; ICPD, Earth Negotiations Bulletin 06:39, Sept. 14, 1994.

49 ICPD, Earth Negotiations Bulletin 06:36, supra note 25; ICPD, Earth Negotiations Bulletin 06:37, Sept. 12, 1994.

50 U.N. GAOR, 21st Special Sess., New York, United States , 1 July 1999 UN Doc. A/RES/S-21/2 *Key* Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development : Resolution / Adopted by the General Assembly ¶ 63(iii*)* [hereinafter ICPD+5 Key Actions Document].

51 Beijing Declaration and Platform for Action, supra note 39 ¶ 106(k).

52 ICPD Programme of Action, supra note 1, ¶ 8.25; ICPD+5 Key Actions Document, supra note 50 ¶ 63(i).

same as abortion. The World Health Organization (WHO) describes EC as a contraceptive method that prevents an unwanted pregnancy.[53] There are two methods of EC. A pill can be taken no later than three days after unprotected sex or a copper-T intrauterine (IUD) device can be inserted within five days. This stops or delays ovulation. Pregnancy is then prevented, since no fertilization occurs. The Opposition succeeded in preventing EC from being mentioned in the ICPD+5 Key Actions document.[54] Instead, countries agreed to ensure access to "the greatest possible range of safe, effective and acceptable methods of family planning and contraception, including new options and less well-known methods." This wording can be interpreted as including emergency contraception.[55]

Family planning

Family planning is an old term that creates no controversy. It means that people should have access to information and methods to decide the number and spacing of their children. However, it is worth questioning the term since it excludes issues of safe sex and sexuality, and persons not planning a family. It may exclude, for example, young people and singles. In a world with the largest generation of adolescents in history, 1.2 billion, it is important to take this into account. It is therefore better to talk about youth friendly services (YFS) and reproductive health services. These terms include the concept that sexual relationships should also be safe and enjoyable, and not only concerned with planning families. In the context of HIV/AIDS it is important to have a wider perspective than merely planning a family, and should also include preventive services for contraceptives, counselling and service for unwanted pregnancies as well as STIs.

Menstrual regulation

In some countries, menstrual regulation (MR) is seen as a method to induce a late period. This is done with a simple procedure in the form of manual vacuum aspiration. A pregnancy test is not performed. Having a late period does not necessarily mean that the woman is pregnant. This method can therefore be used in countries where abortion is prohibited. For example, in Bangladesh, where abortion is illegal, major pro-menstrual regulation campaigns are being conducted. Menstrual regulation is not seen as method of abortion, since it is considered to be a preventive method against pregnancy. The procedure is carried out in Bangladesh up to ten weeks after the start of a woman's menstrual cycle without any pregnancy test being performed.[56] Experiences in Bangladesh, South Africa and

53 WHO, Facts Sheet, *Emergency Contraception,* 2000.

54 Girard Françoise, *Cairo + Five: Reviewing Progress for Women Five Years After the International Conference on Population and Development,* Journal of Women's Health and Law, Vol 1, No1, Nov 1999.

55 ICPD+5 Key Actions Document, supra note 7, ¶ 57(a).

56 Caldwell Bruce and more, *Pregnancy Termination in a Rural Subdistrict Of Bangladesh: A Microstudy*, International Family Planning Perspective, Volume 25, Number 1, March 1999.

other countries show that training and equipping mid-level providers to deliver MR and/or abortion care can make an important difference to women's lives, and give them access to needed services.

Medical abortion

The World Health Organization considers medical abortions – abortions induced by drugs rather than surgically – to be a safe and effective method of terminating a pregnancy.[57] The most widely used method involves an initial dose of mifepristone, which blocks receptors of progesterone, a key hormone in the establishment and maintenance of pregnancy. It is followed by a dose of a prostaglandin about two days later, which induces uterine contractions and expels the pregnancy/*products of conception*. (This latter term is preferred internationally, rather than referring to embryos/foetus. The Opposition argues that the rights of the embryo/foetus start the moment of conception and these rights may override the right of the woman). Women who have used medical methods of abortion describe the process to be similar to menstruation or a natural miscarriage. Many also find that it is more private and less invasive than surgical abortions.[58] At the moment, mifepristone is not widely available in most developing countries. In countries where abortion is legal, including in the United States, the opponents of abortion are trying to stop medical abortions being available to women.

Partial birth abortion

In the United States, a group of abortion opponents have worked to prohibit an abortion procedure they refer to as "partial birth abortion", which they portray as a late-term abortion method. The term is not recognized in medical literature. The campaign to prohibit "partial birth abortion" relies upon scientifically inaccurate and misleading information that is designed to play on people's emotions. A law passed in November 2003 by the U.S. Congress to prohibit "partial birth abortions" – but which is currently blocked from implementation by the Federal Courts – has been written in such a way that it could be interpreted to prohibit all second trimester abortion methods. This would override *Roe v. Wade*, the case that brought about the legalisation of abortion in the US.

57 WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems,* 2003.
58 Center for Reproductive Rights, *Medical Abortion: An Alternative for Women*, 2003.

Political arguments

Sexual and reproductive health and rights (SRHR) are controversial and heavily disputed. This is due to conservative religious, cultural and political forces present in many parts of the world. This chapter provides facts and background for political arguments in support of some of the most controversial SRHR issues, such as abortion. These are coupled to relevant legally binding treaties and morally binding international agreements.

SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (SRHR) are controversial and questioned from several angles. It is therefore important to know the facts and background behind the issues. Below is a review of some of the most important arguments. These can be useful when discussions arise from those opposing advancement of SRHR. The arguments in support of safe abortion as a human right has been divided into three parts. The international documents listed below each argument can be found with their full names in the chapter *"Which conventions and declarations matter?"*.

Women have the right to decide whether or not to bring a pregnancy to term

When a pregnancy is unwanted, it can take a heavy toll on a woman's physical and emotional well-being. A woman's right to physical integrity entitles her to decide whether or not she will carry a pregnancy to term. A woman's *right to determine the number and spacing of her children* requires governments to make abortion services legal, safe, and accessible to all women. Women should have access to all safe, effective means of controlling their family size, including abortion. In addition, there are a number of circumstances in which abortion may be a woman's only means of exercising her right to plan her family.

If a woman who has been raped is denied an abortion, she is also denied the right to decide over her body and her reproduction. For women who live in settings in which contraceptive services and education are unavailable, access to safe abortion services may be the only means of controlling family size. The woman concerned is the only relevant decisionmaker. She knows what her life is like, and she is able to judge if

she will manage with an unplanned child. A woman's *right to privacy*, therefore, entitles her to decide whether or not to undergo an abortion without government interference.

ICCPR: arts. 9.1, 17; CEDAW: art. 16.1; CRC: art.16 ICPD PoA: Principle 8 , ¶¶ 7.3, 7.17, 7.45; Beijing Platform of Action: ¶¶ 96, 106(f), 106(g), 107(e), 223

Denying women access to abortion is a form of gender discrimination

It is discriminatory to force women to undergo unwanted pregnancies. It is also discriminatory that an act like abortion, which is only relevant to women, is criminalized. It prevents women from exercising their human rights, thus preventing them from being on an equal footing with men. Not being able to terminate a dangerous pregnancy also denies women healthcare that only women need, which is necessary for their right to health. Women are consequently exposed to health risks not faced by men.

The tendency to define women by their reproductive capacity remains common throughout the world. Laws that deny access to abortion, whatever their stated objectives, force women to stay in their traditional roles as nurturers and mothers. In general, women are the ones to suffer the physical, emotional and economic consequences of unwanted pregnancies. This makes it more difficult for women to participate in the areas of political, economic, social, cultural, and civil affairs. The right to gender equality and the right to be free from gender discrimination is a fundamental human right, guaranteed in international treaties and documents.

UDHR: art. 2; ICESCR: art 2.2; ICCPR: arts. 2.1, 26; CEDAW: arts. 1, 3, 11.2; ICPD PoA: ¶ 4.4; Beijing Platform for Action: ¶ 232(a)

Unsafe abortion is a public health problem that kills women

Women dying as a result of an unsafe abortion make up a considerable proportion of maternal deaths. In some places this figure is as high as 50 per cent.[1]

However, the link between unsafe abortion and maternal mortality needs to be emphasized more in international debate. In Latin America, 21 per cent of all maternal deaths are caused by unsafe abortions;[2] in Bolivia the rate is in the region of 25-30 per cent,[3] while in Kenya it is between 30 and 35 per cent of maternal deaths.

Unsafe abortions are performed in countries where women's access to safe abortion services is limited, forbidden or morally condemned. For example, in Romania, the number of deaths caused by unsafe abortions rose dramatically between 1975 and 1989, during which time abortion was banned. The last year in this period, the rate was as high as 142 women per 100,000. Just twelve months later, when most of the restrictions

1 Oguttu Monica, Peter Odongo, *Midlevel Providers' Role in Abortion Care, Kenya Country Report.* A Paper for the Conference "Expanding Access: Midlevel Providers in Menstrual Regulation and Elective Abortion Care" South Africa, 2-6 December 2001.

2 AGI, *Sharing Responsibility: Women, Society and Abortion, Worldwide.*

3 UNFPA, *Proposed Projects and Proposals, Bolivia 1998-2002.*

had been lifted, the figure had fallen by two-thirds.[4] Out of a total of 200 million pregnancies occurring each year, an estimated 75 million are unwanted.[5] There will always be unwanted pregnancies and hence abortions regardless of whether they are legal or not. Where abortion is not legal women have no choice but to seek abortions in secret and under conditions that are medically unsafe and life threatening. According to the World Health Organization (WHO), 78,000 women die every year as a result of unsafe abortion.[6] Countries that restrain women from accessing safe abortions violate women's rights to health and to life. Thus, governments should provide women with information and services, such as access to contraceptives that prevent unwanted pregnancies, and should guarantee the right to safe and legal abortion. Ensuring women's access to safe abortion services may result in lower medical costs for governments. In some low- and middle-income countries, up to 50 per cent of hospital budgets are used to treat the complications of unsafe abortions. The treatment of abortion complications consumes a disproportionate share of resources, including hospital beds, blood supplies, antibiotics, pain control and other medications, operating theatres and services, anaesthesia, and medical specialists. Treatment of unsafe abortion complications may require a hospital stay of up to 15 days.[7]

Women who have abortions performed in developing countries[8] run 100 times the risk of death compared with women having abortions in developed countries. This is due to a much greater shortage of materials and financial resources. The stigma attached in many countries to abortions forces women to seek them underground, often at very high financial cost. This, together with stigma, leads poor women to have an abortion in the latter stages of pregnancy because it takes time to gather the necessary money. Abortions performed in the latter stages become increasingly dangerous.[9] Rich women can always pay for safe abortion even if it is illegal or access is poor. This makes unsafe abortion an injustice that mainly affects the poor. Making women suffer from unwanted pregnancies is a major public health problem that affects the whole of society.
ICESCR: art. 12; CEDAW: art. 12; ICPD PoA: ¶ 8.25; Beijing Platform for Action: ¶¶ 106(j)-106(k)
Millennium Development Goal: 5

Control of one's own body and fertility is a basic human right

Taking control of one's own sexual and reproductive health, including one's fertility, is a right guaranteed in many international treaties and agreements. For

4 AGI, *Sharing Responsibility: Women, Society and Abortion, Worldwide.*

5 UNFPA, *State of Worls Population*, 1997.

6 WHO, *Unsafe abortion: Global and regional estimates of incidence of a mortality due to unsafe abortion with a listing of available country data 1995-2000. Third edition* (RHR).

7 *Ibid.*

8 Excluding China.

9 AGI, *Sharing responsibility: Women, Society and Abortion, Worldwide.*

example, the ICPD Programme of Action commits governments to "[E]nsur[ing] that women and men have access to the information, education and services needed to achieve good sexual health and exercise their reproductive rights and responsibilities".[10] Women, men and adolescents must be able to take control of their own fertility and decide themselves how many children they wish to have, how often they want them and with whom. They must also be able to protect themselves from sexually transmitted infections (STIs). To be able to do this, they need access to information on sexual and reproductive health and contraceptives, including comprehensive sexuality education, which leads to increased use of contraceptives and reduces the spread of STIs. The use of contraceptives has increased in developing countries from around 10 per cent during the 1960s to almost 60 per cent today. Despite this, about 350 million couples around the world still do not have access to modern contraceptives.[11]

ICESCR: arts. 10, 12; CEDAW: arts. 10(h), 12, 14.2(b); CRC: art. 24; CERD: art. 5(e)(iv); ICPD: 7.2, 7.5, 8.25; Beijing: 89, 92, 94-97

One billion of the world's population are young people – they have the right to take control of their own bodies

Today, over a billion of the world's population are young people between 10 and 24 years old,[12] and in most parts of the world, people become sexually active during their adolescent years. Should adolescents become sexually active, consensually or not, sexuality education and services are necessary in order to avoid unwanted pregnancy or STIs and HIV/AIDS.

The right of young people to reproductive health education and services is recognized in international treaties and agreements, for example, the Convention on the Rights of the Child.[13] In many countries young people's rights are still a controversial issue, and parents are considered to be responsible for informing their children about sex and personal relationships. However, many parents around the world are unable or unwilling to provide this information to their children. In addition, these are issues some children would prefer not to talk to their parents about.

Those opposed to sexuality education and services for adolescents often state that it increases the sexual activity of young people. However, WHO and UNAIDS surveys clearly indicate that there is no evidence for this. On the contrary, the studies show that young people protected themselves better, spoke to their parents more and were more tolerant towards others when they received accurate and appropriate information. Their self-confidence also increased when provided with such information, making it easier to make crucial decisions about their sexuality.[14] Swedish experiences indicate that access to contraceptives and sexuality

10 *ICPD Programme of Action, para. 7.36(b).*

11 UNFPA Facts Sheet: *Meeting the Demand for Reproductive Health Essentials.*

12 UNFPA, *State of the World Population*, 2003.

13 Convention on the Rights of the Child, Article 24.

14 UNAIDS, *Impact of HIV/AIDS and sexual health education on sexual behaviour of young people: a review update,* 1997.

education reduces teenage pregnancies and abortions. Sweden has increased the focus on sexuality education and reproductive health services since the 1970s, resulting in a reduction in both pregnancies and abortions among young women aged between 15 and 19. An example from a Swedish municipality shows that when the municipality subsidized contraceptives and disseminated more information, the number of abortions fell more than in the rest of the country.[15]

Governments should ensure that young people receive sexuality education in school and through other community settings. It should be accessible and non-judgemental. Information in community settings is especially important in developing countries where many primary school age children do not attend school and where primary education dropout rates are high.[16] Projects in Zambia and Tanzania have involved teenagers in teaching sexuality education to their peers. This has led to a rapid reduction in teenage pregnancy, a change in attitudes, less sexual harassment, and greater use of condoms.[17] It points to the importance of allowing young people to participate and influence decision-making.

CEDAW: Arts. 10(h), 12; CRC: Art. 24; ICPD:¶¶ 7.20. 7.37 7.41-7.48; Millennium Development Goal: 4

No-one should contract HIV because they don't know how to protect themselves

About 40 million people currently have HIV/AIDS, and around one quarter of these are between 15 and 24 years old. Half of all persons newly infected with HIV are young people.[18] Many of them have no idea how to protect themselves against HIV/AIDS or other STIs. A study in Mozambique indicated that 74 per cent of girls and 62 per cent of boys in the 15-19 age group did not know how to protect themselves against HIV/AIDS.[19] Young people are in many cases forced to be sexually active, especially poor girls who, because of their poverty and/or status as AIDS orphans, have no choice. Under the constraints of poverty, sexuality becomes a negotiation tool that can provide food for the family, schoolbooks, or even a ride to school. This makes them increasingly susceptible to HIV/AIDS and other STIs. Prevention initiatives, such as supplying sufficient information about sexuality (e.g. about condom use), must be developed and strengthened. In addition, it is crucial to address the gender inequalities and poverty dimensions that exacerbate the pandemic.

A country often mentioned as a success story when it comes to preventing the spread of HIV/AIDS is

15 Swedish National Institute of Public Health, *Handlingsplan för prevention av oönskade graviditeter för perioden 2002-2007 (Action Plan for the Prevention of Unwanted Pregnancies 2002-2007).*

16 UNFPA, *State of the World Population*, 2002.

17 RFSU *Young Men as Equal Partners, YMEP*, 2003.

18 A UNICEF *Fact Sheet, Young People and HIV/AIDS.*

19 UNAIDS, *Fact sheet preventing HIV/AIDS among young people,2001.*

Uganda. The percentage of people living with HIV/AIDS went down from 15 per cent in 1991 to 5 per cent in 2001. The success of the 1990s is often attributed to the country's ABC initiative, which is an informational campaign which promotes the equal importance of abstinence, being faithful to one's partner and condom use. In Uganda, the initiative has led to a higher use of condoms. For example, the proportion of women who had sex in the past four weeks and used a condom rose from 0 in 1989 to 8 per cent in 1995. The proportion of men in the same group rose from one to eleven per cent during the same time.[20]

ICPD PoA: 7.3, 7. 38, 7.47, 7.2
Millennium Development Goal: 6

Sexual rights apply to everyone

Individuals should have the right to a satisfying and safe sex life as long as they do not harm anyone else. People should have the right to love and have sexual relations with whomever they choose, no matter what sex the other person is. Lesbian, gay, bisexual and transgender (LGBT) persons are persecuted and ridiculed in many countries in the world. A recent Swedish study shows that young LGBT persons in Sweden were living under great psychological stress, resulting in unusually high numbers of suicide attempts. The study also shows that LGBT persons are submitted to violence and stigma due to their sexual orientation.[21] The death penalty is still enforced in a number of countries under Sharia law for those accused of same-sex relations, and there are several reports of the death penalty having been implemented in both Afghanistan and Iran for this reason. Cases of police abuse of LGBT persons have been reported from a number of countries all over the world, including India, Turkey, Argentina and Mexico.[22] It has also been reported that it is difficult for LGBT persons to be granted asylum on the grounds of being persecuted due to their sexual orientation.

Women and adolescents must also have the right to enjoy their sexuality and to say yes or no to sex. They must have the right to marry whom they want at appropriate age. Young women must have the right to demand that their male sexual partners use a condom during intercourse. This is often very difficult. If men don't want to wear a condom, girls are often powerless to do anything about it. Women's and men's sexuality is perceived differently. Women who recognize their own sexuality and lust are perceived as "bad women". Men who adopt the same behaviour are regarded as impressive and powerful. This is taken to the extreme in cultures where women accused of infidelity are stoned to death.

ICPD PoA: 7.2, 7.34; Beijing Platform for Action: 96

20 AGI, *A, B and C in Uganda,2003.*

21 Hanner Hans, *Psykisk hälsa och ohälsa hos ungdomar 16-24 år som attraheras av personer av sitt eget kön (Psychological health and ill-health of youths in the age 16-24 who are attracted to persons of the same sex.)*, 2002.

22 International Gay and Lesbian Human Rights Commission, *Sexual minorities and the Work of the United Nations Special Rapporteur on Torture,* 2001.

Men have a responsibility for women's sexual health

Men's attitudes and their sexual behaviour are key factors in reducing unwanted pregnancies, the spread of STIs and HIV/AIDS, and in promoting the freedom of both men and women to have a satisfying and safe sexual life. Prioritizing efforts to change the male gender role is therefore essential. Men should be given the opportunity to re-evaluate their values and actions. A change in male attitudes and behaviour could have a direct and positive impact on the sexual and reproductive health of both women and men.

A project in Zambia has led to boys changing their attitude from thinking it was "cool" to get a girl pregnant to seeing it as distinctly "uncool". Boys must learn about gender roles in order to understand how the life situations of girls and boys differ. If they do not understand this, they will fail as adults to see gender equality as an important goal and, as a result, women's sexual and reproductive lives will suffer.[23]

The current gender roles around the sexuality of women and men are however deeply rooted in most communities, making sexual equality difficult. For instance, the perception that girls should be virgins until they marry has supported harmful practices such as female genital mutilation (FGM). It also hinders girls and young women from access to sexuality education and sexual and reproductive health services because they are not considered appropriate. Also, girls who are married off at a young age lack basic knowledge of their bodies and are not yet biologically fully developed. When being forced into sexual activity, they have no means to protect themselves and are more vulnerable to unwanted pregnancies and STIs.

Approximately 11.8 million young people aged between 15 and 24 live with HIV/AIDS. Girls/young women make up 62 per cent of this number.[24] The fact that older men have sex with young girls is a contributing factor. Young girls are attractive since they are assumed not to be HIV-positive. This age difference, coupled with older men often having a superior financial status, reduces the ability of girls to take control of their own sexual life. Girls are also particularly vulnerable to sexual abuse, often by a man in their neighbourhood. Men's attitudes and their sexual behaviour are therefore key factors in enhancing young girls and women's sexual health.

PoA 4.25, 7.28; Millennium Development Goal: 3

Sexual violence must be seen from a gender perspective

Economic and political power in the world lies in the hands of men. This makes women dependent on men, and women are therefore vulnerable to sexual abuse. Women and adolescents must not be forced into sexual activity whether for commercial purposes or in their homes. Women in prostitution, or who are victims of domestic violence, are often more susceptible to STIs, including HIV/AIDS, unwanted pregnancy and unsafe abortion. Millions of women and young girls are

23 RFSU, *Young Men as Equal Partners, YMEP*, 2003.
24 UNFPA, *State of the World Population*, 2003.

currently being driven to sell their own bodies. A recent study shows that 500,000 Eastern European women may have been forced into commercial sex.[25] Prostitution carries major risks for physical and mental health and can even be life-threatening. The fact that young boys are sexually trafficked does not deflect from existing power structures which both uphold and propagate the superiority of men over women in the world.

Rape and other forms of gender-based violence, including domestic violence are unacceptable and must be forbidden by law. A recent report notes that women are not safe from domestic violence anywhere in the world. In Bangladesh, Colombia, India, Nigeria and Pakistan, every year thousands of women suffer from dowry-related deaths or are disfigured by acid thrown in their face by rejected suitors. In the United Kingdom 40 per cent of all female homicide victims are killed by their intimate partners.[26] Recently, many countries have passed laws and policies to prevent and punish trafficking and domestic violence. But many countries do not implement them and women and children are still not safe.

It is not acceptable that women are considered to consent to sex purely because men want it. Women must have the right make all decisions about their sexuality, and the right to take pleasure from their own sexuality. Efforts to change men's attitudes must be prioritized. Projects with this aim have proven successfully to reduce violence against girls.[27]

CEDAW, 5(a), 6; CRC: 19,1, 34; ICPD, 4.23 7.35. 7.39; Millennium Development Goal: 3

Preventive measures are economically profitable

Preventive measures for sexual and reproductive health benefit the economy. Instead of ignoring the problems, communities that invest in preventive measures at an early juncture will promote not only growth but also the sexual and reproductive health of the population.

Access to safe abortions and prevention of HIV/AIDS will lower the cost of healthcare. In the hardest hit African nations, 30 to 75 per cent of all hospital beds are occupied by AIDS patients. One out of ten infants are estimated to become orphans due to the AIDS pandemic.[28] Women who are healthy and have opportunities to enter paid employment will not only add income to their families but will also increase demand and supply in society at large. Violence against women and children are also a public health problem that costs society a lot of money. Access to reproductive health services is crucial to women's opportunities to support themselves and thereby to socio-economic growth.[29] If contraceptives were available to women that need them, 1.5 million lives would be saved.[30]

25 UNFPA, *Trafficking in Human Misery.*
26 UNIFEM, *Not a minute more, Ending Violence Against Women*, 2003.
27 RFSU, *Young Men as Equal Partners, YMEP*, 2003.
28 PAI, Factsheet: Number 14, *How Reproductive Health Services works to reduce poverty,* 2000.
29 UNFPA, *State of the World Population*, 2002.
30 AGI/UNFPA, *Adding it all up*, 2003.

Sweden and the ICPD

This chapter outlines the work that has been conducted regarding sexual and reproductive health and rights (SRHR) and ICPD, both at governmental level and in civil society. It also highlights the sensitive political environment of SRHR, domestically as well as in the international arena.

SINCE THE MIDDLE of the 20th century SRHR has been an issue of priority for Sweden. At an early stage, the government shifted focus from exclusively demographic objectives to the rights of the individual. Many of the current laws are based on SRHR, and these are well-accepted among the Swedish population. They cover access to contraception, sexuality education, abortion on demand, the right of homosexuals to enter into partnerships, the prohibition of rape inside marriage, and the prohibition of purchase of sexual services and the right to parental insurance.

The International Conference on Population and Development in Cairo (ICPD) in 1994 saw the advent of a new universal perspective on population issues that upheld Sweden's approach. The government has made efforts to highlight these issues in the international arena; for example, it wants young people to have better access to sexuality education and reproductive health services. The government is also pushing other issues, such as the man's role in gender equality. Towards the end of the 1990s, the HIV/AIDS pandemic was high on the international agenda, forcing countries to tackle previously difficult questions regarding sexuality and partnership. At the same time, "less attractive" political issues – such as maternity care and contraception – were being overshadowed.

Over the last two years, Sweden's strategy has been to highlight SRHR in global contexts. The Swedish Government continues to give financial assistance to UN organizations and NGOs – such as the International Planned Parenthood Federation (IPPF) – so that the ICPD Programme of Action can be implemented. SRHR and HIV/AIDS constitute a priority area in Sweden's 2004 development assistance budget. Sweden's

new policy for global development gives prominence to SRHR, and gender equality is one of its eight key elements.

But many people in the world still lack the power of self-determination over their reproduction and sexuality. Lesbian, gay, bisexual and transgender (LGTB) persons are still harassed and lack personal safety. Women are still forced to undergo unsafe abortions. This is also a problem within the European Union (EU). The issues are shrouded in controversy, and the question of abortion is considered to be a national health matter rather than a human-right concerns.

It is important that the Swedish Government finds partners within the European Union to drive forward SRHR – a task that should receive the same priority as government efforts to promote SRHR in the developing countries. Living up to the Cairo objectives is not simply a matter for the developing world. Sweden is also lacking in some respects. Accordingly, the Swedish Association for Sexuality Education (RFSU) has been pushing for foreign women to be allowed to come to Sweden to have an abortion at their own expense. This is prohibited under current legislation, although all other forms of medical care are available in return for payment. It is also important for sexuality education to be a compulsory subject for trainee teachers and to improve the standard of sexuality education in schools. Furthermore, the Swedish Marriage Code is still not gender-neutral, and society also leaves a lot to be desired regarding the protection of women and children against violence and sexual abuse.

SRHR efforts must be prioritized both nationally and internationally. This is a question of solidarity. Affording people the power to decide over their own sexuality and their bodies is to give them control over their own lives. It is ultimately a human right that must be recognized for all people.

The EU and ICPD

This chapter discusses the EU's position on the ICPD. It also presents a critical analysis of how sexual and reproductive health and rights (SRHR) are discussed within the EU and in the context of development cooperation.

THE EU HAS CONTINUOUSLY CONFIRMED its support for the ICPD Programme of Action (PoA) over the past decade. When the United States, in 2002, withdrew its financial support to the United Nations Population Fund (UNFPA), the European Commission continued to show complete faith in the work of UNFPA and awarded it an extra subsidy of EUR 32 million. UNFPA is the primary UN agency which helps to implement the ICPD Progamme of Action. In addition, the European Commission's annual budget for reproductive health is set to rise from EUR 13.5 million in 2003 to EUR 23 million in 2006.

Despite this official support, there are serious problems in the implementation of the PoA, both within the EU and with regard to its development cooperation. In a pre-meeting prior to ICPD+5, the UN recommended that at least four per cent of the development cooperation budget should go to sexual and reproductive health and rights (SRHR).[1] Only Luxembourg, the Netherlands, Denmark and Sweden complied with this in 2002.[2] In addition, attitudes to SRHR within the EU have toughened. Several countries have conservative governments, and ultra-conservative lobbyists from the US and the Vatican have gained a stronger foothold in Europe.

Whilst the EU supports the implementation of the

1 UNFPA, *Hague Forum background paper*, Chapter IV, Section 328.
2 PAI, *European Union Population and Reproductive Health Assessment Overall Assessment.*

Programme of Action in its development aid programmes, there is a discrepancy towards how the issue is addressed between the member states. The EU has placed demands on future member states regarding human rights. However, a woman's right to control her own body still remains a matter of internal national concern and it is not a human rights consideration. In a declaration accepted by the other countries, Poland has demanded that it should be able to retain its right to legislate on moral issues and the "right to life" even in the future. In Malta, some abortions are punishable by up to three years in prison and the country has established a binding agreement with the EU, as indeed Ireland has done, stipulating that Catholic laws will take precedence over any future laws on abortion. In Portugal, 17 women in 2001 were prosecuted and faced jail sentences for having an illegal abortion, and 26 other persons were accused of aiding the women. In France, children under 15 must have parental consent before partaking of sexuality education.[3] In Slovakia, Romany women have recently been subject to forced sterilization.[4] Women in many new accession states do not have access to medical abortion, and adolescents need parental consent to have an abortion. Access to modern contraceptives and sexuality education is also a problem.

Sexual and reproductive health and rights are not explicitly mentioned in the EU draft Constitution nor in the EU Charter for Human Rights. An important reason why SRHR is not highlighted in the internal EU debate is because it is considered to be a health issue, not a rights issue. In accordance with the principle of subsidiarity, health is still a matter for individual member states, and the EU is therefore not allowed to interfere. Despite this, all EU member states have undertaken to respect people's sexual and reproductive rights by being signatories to international conventions and action plans,[5] several of which are legally binding. SRHR is therefore not just a health issue but also a rights issue, the value of which should not vary from one country to the next.

3 Bergman Ylva, *Blindbockarnassammanslagning (Let's all play blind man's buff!)*, publ. in Ottar #1, 2003.

4 Center for Reproductive Rights, *Body and Soul, Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, 2003.

5 Including the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp.No. 16, at 52, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 171 (entered into force March 23, 1976)
Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).
Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, ¶ 7.3, U.N. Doc. A/CONF.171/13 (1994).

Which conventions and declarations matter?

This chapter reviews international conventions and declarations, the signatories to which have undertaken to promote sexual and reproductive health and rights (SRHR). Conventions are legally binding for states, whereas declarations are morally binding. Reference is made to the relevant articles under each agreement.

REPRODUCTIVE RIGHTS ARE ROOTED in international human rights law. The Programme of Action agreed to at the ICPD conference in Cairo in 1994 explicitly affirms that reproductive rights are human rights.[1] These rights include the right to life, liberty and security; the right to health, reproductive health and family planning; the right to decide the number and spacing of one's children; the right to consent to marriage and to equality in marriage; the right to privacy; the right to be free from discrimination; the right to modify traditions and customs that violate women's rights; the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; the right to be free from sexual violence; and, the right to enjoy scientific progress and consent to experimentation. National governments have a duty under international human-rights instruments to respect, protect and fulfil these rights.

At an international level, there are a number of legal and policy documents that impact on the recognition of and legal protection for reproductive and sexual rights. At the highest level are international treaties. Countries whose governments sign and ratify a treaty are bound under international law to comply with the provisions of the treaty. There are six major international treaties that address human rights, including

1 Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, ¶ 7.3, U.N. Doc. A/CONF.171/13 (1994) [hereafter referred to as the ICPD Programme of Action].

sexual and reproductive rights. Each of these treaties has a committee of independent experts, which monitors countries' compliance with the treaties. They issue general recommendations that interpret and provide guidance on implementation of the treaty. Sometimes, they issue legally binding decisions in response to the individual complaints that they are empowered to consider.

At a European level, the main regional human rights treaty is the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention's primary enforcement mechanism is the European Court of Human Rights. It has rendered judgments on reproductive and sexual rights issues in areas such as abortion, sexuality education, homosexuality, and rape.

The United Nations' General Assembly resolutions, declarations and international conference documents are another source of protection for reproductive and sexual rights at international level. The Universal Declaration on Human Rights is the only document in this category that is considered legally binding as customary international law, because of its wide acceptance and implementation. Customary international law applies to all countries worldwide, regardless of whether they have explicitly accepted or agreed to the document.

Other resolutions, declarations, and international conference documents do not legally bind governments. They function more like policy documents to which governments express a moral agreement and commitment to implement. In many cases, however, the treaty committees' interpretations of binding treaties use principles agreed upon in such non-binding agreements.

Here follows a brief summary of international human rights treaties and other international documents relevant to reproductive rights.

HUMAN RIGHTS TREATIES

Universal Declaration of Human Rights (UDHR)[2]

Adopted by the United Nations' General Assembly on December 10, 1948.

The UDHR has the status of international customary law, and all countries that are members of the United Nations are bound to uphold its terms. The UDHR protects the right to equality,[3] the right to life, liberty and security,[4] the right to be free from torture and other forms of cruel, inhumane or degrading treatment,[5] the right to privacy,[6] the right to marry and

2 Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948).
3 Ibid. art. 2.
4 Ibid. art. 3.
5 Ibid. art. 5.
6 Ibid. art. 12.

found a family,[7] the right to health and well-being,[8] and the right to education.[9] The UDHR also accords special protection for "[m]otherhood and childhood."[10]

European Convention for the Protection of Human Rights and Fundamental Freedoms[11]

Entered into force on September 3, 1953
Ratified by 44 countries

The European Convention for Human Rights lays down a catalogue of rights and freedoms, relevant to reproductive rights, such as the right to private life,[12] the right to marry and found a family,[13] the right to life,[14] the right to be free from inhuman and degrading treatment,[15] and the right to receive and impart information.[16] Brief summaries of some relevant decisions from the European Court of Human Rights and European Commission on Human Rights, which are the Convention's primary enforcement mechanisms, follow.

- Irish governmental ban on counselling and circulation of information with regard to where one might find legal abortions in Britain violated the right to impart and receive information.[17]
- The right to life protection is compatible with law authorizing abortion.[18] A woman's right to respect for private life in her decision to have an abortion has priority over her husband's right to respect for his family life and the birth of his child.[19]
- The Court's jurisprudence generally characterizes rape either as a form of "inhuman treatment" under Article 3 or as a breach of the right to privacy, under Article 8. Additionally, the right to privacy guarantees victims of rape the right to adequate legal redress. Where rape

7 Ibid. art. 16.
8 Ibid. art. 25.
9 Ibid. art. 26.
10 Ibid. art. 25.2.
11 Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953, as amended by protocols. 3, 5, 8, 11, which entered into force Sept. 21 1970, Dec. 20, 1971, Jan. 1, 1990, and Nov. 1, 1998).
12 Ibid. art. 8.
13 Ibid. art. 12.
14 Ibid. art. 2.
15 Ibid. art. 3.
16 Ibid. art. 10.
17 Case of Open Door Counselling Ltd; Dublin Well Woman Centre and others v. Ireland, May 15, 1990 http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1 ().
18 Case of H v. Norway, May 19, 1992.
19 Case of Paton v. UK, App. No. 8416/78, Eur. Comm. H.R., 13 May 1980, 3 EHRR 408 (1981), Dec. paras. 7-9, 1981 (also cited as X v. UK).

is performed to obtain information from a victim or to punish or intimidate the victim, it is considered a form of torture.[20]

• Proposed deportation of a drug carrier dying of AIDS would deny the applicant vital medical treatment and shorten his life, thus violating the prohibition of inhuman or degrading treatment. [21]

• The concept of family life employed by the Court extends beyond traditional nuclear constructs to include extended relations, illegitimate parenthood and other close and personal ties.[22]

• Laws criminalizing consenting adult private homosexual conduct violates respect for private life.[23] Discharge from the armed forces on the grounds of homosexuality constitutes a direct interference with the right to respect for private life.[24]

• Information in a compulsory sex education course taught in state schools that was conveyed in an objective and pluralistic manner does not constitute indoctrination and does not disrespect parents' religious or philosophical views, and thus was held to be consistent with the right to family life.[25]

International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination – CERD)[26]

Entered into force on Jan. 4, 1969.
Ratified by 169 countries.

The Convention against Racial Discrimination discusses the measures states must take to eliminate discrimination on the bases of race, colour, descent, national or ethnic origin. It guarantees the rights to physical integrity and to be free from violence,[27] the right to marry and found a family, choose a spouse, inherit and own property,[28] and the right to public health, medical care, and education.[29] The Committee on the Elimination of Racial Discrimination has noted the links between gender and race discrimination in that women may be affected by discrimination in ways that

20 Case of Aydin v. Turkey, 1997-IV Eur. Ct. H.R., Sept. 25, 1997.

21 Case of D. v. United Kingdom (1997), Eur. Ct. H.R. , Ser, A, No., 24 E.H.R.R. 423, 1997.

22 Case of Kroon and Others v. The Netherlands, A297-C Eur. Ct. H.R., Oct. 27, 1994; Case of X, Y and Z v. The United Kingdom, 1997-II Eur. Ct. H.R., Apr. 22, 1997.

23 Case of Dungeon v. The United Kingdom Eur. Ct. H.R. Ser. A, No. 5; 4 E.H.R.R. 149, 1981; Case of Modinos v. Cyprus, A259 Eur. Ct. H.R., Apr. 22, 1993; Case of Norris v. Ireland, A142 Eur. Ct. H.R., Oct. 26, 1998.

24 Case of Perkins and R v. The United Kingdom, Oct. 22, 2002; Case of Smith and Grady v. The United Kingdom 2000-IX Eur. Ct. H.R. (July 25, 2000); Case of Lustig-Prean and Beckett v. The United Kingdom, July 25, 2000.

25 Case of Kjeldsen, Buck Madsen and Pedersen v. Denmark, A23 Eur. Ct. H.R. (Dec. 7, 1976).

26 Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, G.A. Res. 2106 (XX), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

27 Ibid. art. 5(b).

28 Ibid. art. 5(d).

29 Ibid. art. 5(e).

violate their reproductive and sexual rights, such as "pregnancy resulting from racial bias-motivated rape".[30] It has also recognized that forced sterilization, or women's inability to access reproductive healthcare services, because of women's race, ethnicity or national origin, are violations of the treaty.[31]

International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant (CESCR)[32]

Entered into force on Jan. 3, 1976.
Ratified by 148 countries.

The Economic, Social and Cultural Rights Covenant is the first human rights treaty to require states to recognize and progressively realize the right to health. It covers rights relating to an adequate standard of living, the highest attainable standards of physical and mental health,[33] social protection,[34] education,[35] and the enjoyment of the benefits of cultural freedom and scientific progress[36] and the right to work under just and favourable conditions.[37]

In its concluding observations to state parties, the CESCR has emphasized governmental responsibility to ensure that all women have access to affordable and comprehensive reproductive healthcare, especially contraception and family planning services and information. The Committee has asked states to include reproductive and sexual health education in school curricula so that adolescents can help protect themselves from HIV/AIDS and other sexually transmitted infections (STIs), reduce teenage pregnancy rates and abortion, and freely access reproductive healthcare services. In response to the HIV/AIDS pandemic, the CESCR has directed state parties to protect the rights of people living with HIV/AIDS in several ways: by improving their access to health services; by addressing the high cost of medicines; and, by ensuring non-discrimination in healthcare. The Committee has also emphasized the role of governments in preventing the spread of HIV/AIDS by asking states to take appropriate legislative and policy measures that address vulnerability to transmission.[38]

30 Committee on the Elimination of Racial Discrimination, General Recommendation XXV: Gender Related Dimensions of Racial Discrimination (56th Sess., 2000). In: Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 194, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

31 Center for Reproductive Rights. *Bringing Rights To Bear: An Advocate's Guide to the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights,* 2003.

32 International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

33 Ibid. art. 12.

34 Ibid. arts. 9, 10.

35 Ibid. art. 13.

36 Ibid. art. 15.1(b).

37 Ibid. art. 7.

38 Center for Reproductive Rights, *supra* note 31.

International Covenant on Civil and Political Rights (Civil and Political Rights Covenant – ICCPR)[39]

Entered into force on March 23, 1976.
Ratified by 151 countries.

The Civil and Political Rights Covenant requires governments to protect the rights to life,[40] liberty,[41] security of the person[42] and the right to privacy.[43]

Because reproductive rights are an essential condition for women's equality, the articles on the right to life and non-discrimination give rise to a governmental duty to ensure the full range of reproductive health services, including the means for preventing unwanted pregnancy.[44] The Human Rights Committee, which oversees state compliance with the Civil and Political Rights Covenant, has deemed countries to be in violation of the treaty when women have difficulty accessing contraceptive methods to prevent unwanted pregnancies.[45]

The Human Rights Committee's mandate also explicitly addresses women's right to liberty, physical integrity and privacy. In its concluding observations, the Committee has urged states to promulgate laws providing effective protection from violence against women, including sexual violence. The Committee has stated that to require rape survivors to pursue charges against their aggressor, instead of the state independently prosecuting the crime, violates the Civil and Political Covenant. The Committee has also concluded that some countries' restrictive abortion laws violate women's right to life, and has acknowledged the discriminatory, disproportionate impact of restrictive abortion laws on poor, rural women. The Committee has criticized legal provisions that exempt a rapist from punishment if he marries his victim, as well as laws that do not consider marital rape an offence. It has further commented that acts of discrimination, such as sexual harassment in the workplace, should be criminalized.[46]

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture – CAT)[47]

Entered into force on June 26, 1987.
Ratified by 57 countries.

The Convention Against Torture establishes that torture is "severe physical or mental pain or suffering,

39 International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp.No. 16, at 52, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 171 (entered into force March 23, 1976) [hereinafter referred to as the Civil and Political Rights Covenant].
40 Ibid. art. 6.
41 Ibid. art. 9.
42 Ibid. art. 7.
43 Ibid. art. 17.
44 Ibid. arts. 3, 26.
45 Center for Reproductive Rights, supra note 31.
46 Ibid.
47 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987).

inflicted intentionally by or with the acquiescence of a public official for such purposes as . . . any reason based on discrimination of any kind."[48] The Convention against Torture codifies the ongoing commitment to eradicate all forms of torture and to ensure adequate protection for all persons against torture and other cruel, inhuman or degrading treatment or punishment, including gender-based violence.

The CAT considers violence against women, especially rape and other forms of sexual violence, as gender-based acts of torture. In recent concluding observations, the CAT has recognized trafficking of women as a form of violence against women within its mandate. It has also discussed the withholding of medical care in detention as a form of torture.[49]

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[50]

Entered into force on Sept. 3, 1981.
Ratified by 174 countries.

The CEDAW provides the strongest legal protection for women's sexual and reproductive health and rights. CEDAW addresses discrimination against women in all spheres of women's lives. It broadly defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".[51] It explicitly requires countries that are party to the Convention to ensure that women and men have equal access to healthcare services, including family planning services, and to decide on the number and spacing of their children and to have the information necessary to enable women to exercise these rights.[52] It includes provisions that require governments to ensure women's equal access to education, including to education on family planning,[53] provide women with pregnancy-related healthcare,[54] prevent discrimination against pregnant women by employers,[55] provide maternity leave and benefits,[56] and eliminate discrimination in relation to marriage and within the family.[57]

The CEDAW Committee has issued strong

48 Ibid. art. 1.

49 Center for Reproductive Rights, *supra* note 31.

50 Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

51 Ibid. art. 1.

52 Ibid. arts. 12(1), 16 (1)(e).

53 Ibid. arts. 10(a), 10(h).

54 Ibid. art. 12.

55 Ibid. art. 11(2).

56 Ibid.

57 Ibid. art 16.

recommendations on a wide range of reproductive and sexual health issues, noting in particular that "access to health care, including reproductive health, is a basic right" and that states should "[e]nsure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health."[58] The CEDAW Committee has urged states to ensure that all women and adolescents have access to safe and affordable methods of contraception, confidential family planning counselling and services, and sexuality education. The Committee has also requested state parties to review restrictive abortion laws – because of their link to high maternal mortality rates – and to ensure that abortion is safe and accessible where it is legal. The Committee *could* consider holding countries responsible for any failure to ensure safe and legal abortion services to women facing an unwanted pregnancy in circumstances where abortion is illegal but has not to date done so. The CEDAW Committee has instructed state parties to enact laws criminalizing all forms of violence against women and to strictly enforce existing laws. The Committee has also stipulated that governments enact measures to change social norms that perpetuate traditional practices that are harmful and discriminate against women and girls.[59]

Convention on the Rights of the Child (Children's Rights Convention – CRC)[60]

Entered into force on Sept. 2, 1990.
Ratified by 191 countries.

The Children's Rights Convention – the most widely ratified human rights treaty –provides strong protection for young peoples' sexual and reproductive health and rights and explicitly requires governments to "develop family planning and education services". [61] It prohibits discrimination against children and adolescents on various grounds, including sex and other status[62] and recognizes the rights to life,[63] information of all kinds,[64] privacy,[65] education,[66] healthcare,[67] and

58 Committee on the Elimination of Discrimination against Women, General Recommendation 24: Women and Health (20th Sess., 1999), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 244, U.N. Doc. HRI/GEN/1/Rev.5, 2001.

59 Center for Reproductive Rights, *supra* note 31.

60 Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, UN GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (*entered into force* Sept. 2, 1990).

61 Ibid. art. 24.2(f).

62 Ibid. art. 2.

63 Ibid. art. 6.

64 Ibid. art. 13.

65 Ibid. art. 16.1.

66 Ibid. art. 28.

67 Ibid. art. 24.

liberty and physical integrity.[68] The Convention also recognizes that sexual violence, exploitation and abuse,[69] and certain practices which are harmful to women (such as female circumcision/female genital mutilation) violate the rights of girls and young women.[70]

In its general comments and concluding observations to state parties, the CRC has pressed for adolescents' equal access to all relevant HIV/AIDS services in a manner that respects their right to privacy and confidentiality, access to sexual education, family planning information and confidential counselling, and comprehensive reproductive healthcare services. The Committee has also asked states parties to take steps to eliminate practices that are harmful to young girls, particularly female circumcision/female genital mutilation (FC/FGM).[71]

DECLARATIONS AND CONFERENCE DOCUMENTS

At several international conferences, over the past decade, governments around the world have made groundbreaking commitments to reproductive health and rights. The outcome documents from these conferences have laid the groundwork for and build upon the gains of the ICPD. The international conference documents do not legally bind governments- but they have committed to implement the provisions in these documents.

Vienna Declaration and Programme of Action[72]

Adopted by the World Conference on Human Rights in June 1993, Vienna.
Agreed to by 171 countries.

The World Conference on Human Rights in Vienna in 1993 strongly reaffirmed that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights," and called for the elimination of all forms of gender-based discrimination, including gender-based violence and sexual harassment and exploitation.[73] The negotiations focused more pointedly on women's rights as human rights than previous UN human rights conferences. In particular, governments agreed that women's human rights should not be subordinated to cultural or religious traditions.[74] Its Programme of Action calls

68 Ibid. art. 37.
69 Ibid. arts. 19, 34.
70 Ibid. art. 24.3.
71 Center for Reproductive Rights, *supra* note 31.
72 Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, Austria, June 14-25, 1993, UN Doc.A/CONF.157/23 (1993).
73 Ibid. ¶ 18.
74 Ibid. ¶ 38.

for integrating gender perspectives into human rights mechanisms and practices.[75] It notes that human rights should be applied to sexuality and reproduction, recognizing "a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels."[76]

Programme of Action of the International Conference on Population and Development (PoA)

Adopted by the International Conference on Population and Development (ICPD), Cairo 1994.
Agreed to by 179 countries.

The PoA was the first international conference document to explicitly affirm the concepts of reproductive and sexual rights. It provides a comprehensive 20-year plan of action including several time-bound goals for governments to follow in order to ensure that individuals' reproductive rights are fulfilled. It was a major turning point in the development of reproductive rights in that it rejected population policies focusing primarily on reducing fertility, and focused instead on empowering women and meeting their sexual and reproductive health needs as the critical ways to bring about demographic change. The PoA considers reproductive health a cross-cutting issue that both "affects and is affected by the broader context of people's lives".[77] As a result, it recognizes that improving reproductive health requires: addressing inequities within societies; eliminating gender-based discrimination and empowering women and girls; ensuring sustained and sustainable economic growth; protecting the environment; guaranteeing all individuals' access to education; and improving all peoples' living conditions; in addition to improving reproductive health information and service provision.[78] The ICPD Programme of Action noted for the first time that reproductive rights are included in existing human rights principles.[79]

Beijing Declaration and Platform for Action[80]

Adopted by the Fourth World Conference on Women, Beijing 1995.
Agreed to by 189 countries.

The Beijing Declaration and Platform for Action extends the ICPD by recognizing that the protection of women's reproductive and sexual health and rights is essential for their ability to participate equally and fully within all spheres of society.[81]

75 Ibid. ¶¶ 37, 40-44.

76 Ibid. ¶ 41.

77 FCI, *Meeting the Cairo Challenge: Progress in Sexual and Reproductive Health 12*, 1999.

78 *ICPD, Programme of Action, supra* note 1.

79 Ibid. ¶ 7.3.

80 Beijing Declaration and the Platform for Action, Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF.177/20, 1995.

81 Ibid. ¶ 92.

It focuses on governments' obligations to fulfil the right to health by creating the social and economic conditions that enable women to exercise this right.[82] It recognizes for the first time that "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health free of coercion, discrimination and violence".[83] This terminology also paves the way for a recognition of "sexual rights", but without using that term explicitly. It also recognizes a woman's right to control her sexuality and sexual relations on an equal basis with men: "…equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.".[84]

The Beijing Platform for Action also contains key gains in the areas of HIV/AIDS, sexual and gender-based violence and abortion, including an important recommendation that governments review laws punishing women who have undergone illegal abortions.[85] Finally, it stipulates that ensuring women's sexual and reproductive rights is crucial to women's and girls' equality and ability to participate fully in all spheres of society.[86]

Key Actions for the Further Implementation of the ICPD Programme of Action (ICPD+5)

Adopted by consensus at the United Nations General Assembly Special Session (UNGASS), July 1999, New York.
The outcome document of this conference reaffirms the principles agreed to at the ICPD and establishes crucial strategies for dealing with the sexual and reproductive health needs of young people – this despite difficult negotiations. But it also went "further" than the ICPD in some areas, including maternal mortality and morbidity and their connection to unsafe abortion, and the impact of HIV/AIDS on women and young people.[87] Governments agreed that in order to reduce the health impact of unsafe abortion, health systems *should train and equip* healthcare providers and take other *measures to ensure* that abortion is safe and accessible where it is legal.[88] The consensus document also recognizes that more needs to be done to prevent new HIV/AIDS infections, while providing appropriate care and treatment for those living with HIV/AIDS and fully protecting their human rights.[89] To this end, it calls upon governments to ensure that by 2005, 90 per cent, and by 2010, 95 per cent of young men and women aged 15 to 24 have access to

82 Ibid. ¶¶ 215-219; See also Ibid. ¶ 106(a), 220-222.
83 Ibid. ¶ 96; and ICPD Programme of Action.
84 Ibid.
85 Ibid. ¶ 106(k).
86 Ibid. ¶ 92.
87 Ibid. ¶¶ 62-72.
88 Ibid. ¶ 63 (iii).
89 Ibid. ¶ 67.

the information, education and health services necessary to develop the life skills needed to reduce their vulnerability to HIV infection.[90] ICPD+5 also sets new benchmarks to meet the unmet need for contraceptives, calling on governments to "ensure that by 2015 all primary healthcare and family planning facilities are able to provide, directly or through referral, the widest achievable range of safe and effective family planning and contraceptive methods".[91] Where there is a "a gap between contraceptive use and the proportion of individuals expressing a desire to space or limit their families," the document calls upon governments to "attempt to close this gap by at least 50 per cent by 2005, 75 per cent by 2010 and 100 per cent by 2050".[92] It specifically notes that targets and quotas should not be used to reach these benchmarks, reaffirming the ICPD Programme of Action.[93] However, the strong opposition by a small delegation of conservative states kept other reproductive and sexual rights issues – such as female-controlled contraceptive methods – from being fully addressed.[94]

Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action

Adopted by consensus at the United Nations General Assembly Special Session: Women 2000 Gender Equality, Development and Peace for the 21st Century (Beijing +5), June 2000, New York.

At the five-year review of the Beijing Platform for Action, the international community reaffirmed the principles of the Beijing Platform for Action, as well as the ICPD Programme of Action and ICPD+5, and made some new commitments. More progressive measures to ensure sexual and reproductive health and rights were agreed to in the areas of the reduction of maternal mortality and morbidity, adolescent reproductive rights, and HIV/AIDS, despite women's sexual and reproductive rights continuing to be targeted by right-wing delegations.

In addressing gender-based violence, governments significantly strengthened their past commitments. The outcome document became the first international

90 Ibid. ¶ 70.
91 Ibid. ¶ 53.
92 Ibid. ¶ 58.
93 Ibid.
94 Center for Reproductive Rights, *ICPD+5: Gains for Women Despite Opposition*, 1999.

consensus document to call upon governments to eradicate "early and forced marriage and so-called honour crimes", and recognize such crimes as human rights violations.[95] Language addressing other forms of violence, such as marital rape, was strengthened by calling for the adoption of legislation and other mechanisms to combat such practices[96] and to "treat all forms of violence against women…as a criminal offence punishable by law. . . ."[97] It also encourages ratification of the Rome Statute of the International Criminal Court and increased awareness of gender-based war crimes, including rape, sexual slavery, and forced pregnancy, and also measures to prevent and prosecute such crimes.[98]

In other areas relating to reproductive rights, it uses strong language in affirming reduction of maternal mortality as a health sector priority.[99] The relatively progressive language on abortion found in the Beijing Platform is reaffirmed, while recognizing that the measures agreed upon at Beijing five years earlier to reduce the health impact of abortion have not been fully implemented.[100] The provisions go beyond Beijing in putting strong emphasis on the gender aspects of the HIV/AIDS pandemic and STIs, pointing out their disproportionate impact on women's and girls' health. and calling for proper policies and measures to address these challenges. The document also explicitly addresses the situation of the girl-child affected by HIV/AIDS.[101]

Declaration of Commitment on HIV/AIDS

Adopted by consensus at the United Nations General Assembly Special Session (UNGASS) on HIV/AIDS June 2001, New York.

A major achievement of the Declaration of Commitment of the UNGASS on HIV/AIDS is its link between upholding human rights and curtailing and managing the spread of HIV/AIDS. It requires governments to respect and promote human rights when developing and implementing strategies for combating HIV/AIDS,[102] when enacting laws to eliminate discrimination against people living with AIDS[103] and

95 UN, Further actions and initiatives to implement the Beijing Declaration and the Platform for Action, U.N. GAOR, 23rd Special Sess., New York, United States, June 5-9, 2000, ¶ 69(e), U.N. Doc. A/Res/S-23 (2000) [hereinafter referred to as the Beijing+5 Further Actions Document].

96 Ibid. ¶¶ 96 (a) and 69(d). Center for Reproductive Rights, *Beijing+5: Assessing Reproductive Rights* 2000.

97 Beijing+5 Further Actions Document, supra note 20, ¶ 69(c).

98 Ibid. ¶ 96(b).

99 Ibid. ¶ 72(b).

100 Ibid. ¶¶ 107(i), 12.

101 Ibid. ¶¶ 33, 44, 103(b), 103(c).

102 UN, Declaration of Commitment on HIV/AIDS, U.N. GAOR, 26th Special Sess., New York, United States, June 25-27, 2001, ¶ 37, U.N. Doc. A/Res/S-26/2 (2001) [hereinafter Declaration of Commitment].

103 Ibid. ¶ 58.

when establishing and strengthening monitoring systems to protect people living with HIV/AIDS.[104] Although the Declaration of Commitment fails to identify specifically vulnerable groups to the epidemic – such as sex workers and their clients, men who have sex with men, and injecting drug users – it makes critical recognitions of the rights of women and girls in the context of HIV/AIDS, establishing clear links between women's empowerment and gender equality and the ability of women and girls to protect themselves from HIV infection.[105] While prevention of new infections is prioritized,[106] the Declaration of Commitment fails to call for broad reproductive health services aimed at preventing *all* sexually transmitted infections (STIs), thus isolating HIV/AIDS from interrelated reproductive health concerns. The absence of this broader approach is dangerous, especially in light of the high correlation between the incidence of HIV and other STIs.[107]

United Nations Millennium Development Goals

Adopted by consensus at UN General Assembly Millenium Summit September 2000, New York.

At the Millennium Summit, the leaders from 189 nations reaffirmed their commitment to working toward a world in which sustaining development and eliminating poverty would have the highest priority. The Millennium Development Goals (MDGs) focus the efforts of the world community on achieving significant, measurable improvements in people's lives. They establish yardsticks for measuring results, not just for developing countries, but for donor countries that fund development programmes and for the multilateral institutions that help countries implement them. The goals note that reducing maternal mortality, addressing the HIV/AIDS pandemic, promoting gender equality and universal education are vital steps in fighting poverty and improving individuals' quality of life.[108] It also sets forth goals to address these concerns by 2015. In the area of safe motherhood, the goal to improve maternal health calls upon governments to "have [r]educed maternal mortality by three quarters . . . of [its] current rates" by 2015". [109] Other reproductive rights issues, however, were sidelined, and their importance to the achievement of these goals was not acknowledged.

A World Fit for Children

Adopted by consensus at the United Nations General Assembly Special Session on Children, May 2002, New York.

The Children's Summit was a follow-up to the 1990

104 Ibid. ¶ 96.

105 Ibid. ¶¶ 14, 59-61.

106 Ibid. ¶ 47.

107 Center for Reproductive Rights, *UNGASS on HIV/AIDS: Women's Empowerment Embraced, Reproductive Rights Slighted*, 2001.

108 UN, United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR 55th Sess., New York, United States, Sept. 18 2000, ¶¶ 19-20, U.N. Doc. A/55/L.2, 2000.

109 Ibid. ¶ 19.

World Summit on Children which catalyzed support for the Convention on the Rights of the Child, the most widely ratified treaty in history, and which includes provisions encompassing the reproductive rights and health of adolescents. The Children's Summit was a landmark event, setting new levels for adolescents' involvement and participation in decision-making by calling upon governments and other stakeholders to partner with children and adolescents, respect and promote their rights to speak freely and to take their views into account in all decision-making processes that impact on their lives.[110] However, taking concrete actions to protect young people's sexual and reproductive health and rights continued to remain controversial. Due to a strong US-led opposition, which sought to undercut past international consensus on adolescents' right to access comprehensive reproductive health services, little was accomplished to address the sexual and reproductive health rights of adolescents. The outcome document lacks a specific call for the provision of services, information and education adolescents need to protect themselves from HIV/AIDS, unwanted pregnancy, sexual violence and exploitation. However, the vast majority of participants defended the commitments made at prior UN conferences, including the ICPD, and to recognition of reproductive rights as human rights.[111]

Fifth Asian and Pacific Population Conference

(UN Economic and Social Commission for Asia and the Pacific – ESCAP), May 2002, Bangkok.

At the ministerial-level meeting of the fifth Asian and Pacific Population Conference in December 2002, the US (a member due to its status as a former colonial power) was a vocal opponent of the principles of the ICPD Programme of Action and attempted to prevent reaffirmation of the agreement.[112] They were ultimately unsuccessful and completely marginalized in their position, but they did prevent important debate on sexual and reproductive health and rights issues pertinent to the region, and possibly further advancement on these issues. Importantly, the Plan of Action on Population and Poverty strongly reaffirms ICPD and ICPD+5 and calls upon governments to "promote reproductive rights, make intensive efforts to eliminate gender discrimination, ensure voluntary decision-making and promote informed choices and informed decisions through comprehensive reproductive health education".[113]

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112 Population Action International, Press Release. "*U.S. Stance Roundly Rejected by Delegations to Bangkok Population Conference*", Dec. 17, 2002, UNESCAP News Services, Press Release, "Fifth Asian and Pacific Population Conference adopts Plan of Action on Population and Poverty" Dec. 17, 2002.

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BREAKING THROUGH

The coming together of the international community in Cairo in 1994 at the International Conference on Population and Development (ICPD) signalled a radical change in the approach to population issues. Sexual and reproductive health and rights (SRHR) replaced the narrower, demographically oriented perspective. The right of the individual to information and reproductive health services in order to take control of his/her own sexuality was brought into focus, as was the importance of gender equality at all levels of society. Objectives and an action plan to achieve them were adopted by 179 countries in the ICPD Programme of Action (PoA). Five years later, countries met again at a follow-up conference, called ICPD+5, to evaluate the progress of implementing the ICPD Programme of Action.

To mark the tenth anniversary of the Cairo conference, the Swedish Association for Sexuality Education (RFSU) has published this ICPD guide. The guide is for all those wanting to better acquaint themselves with the political debate surrounding sexual and reproductive health and rights (SRHR). It is a useful tool for those who negotiate and advocate on these issues. The reader is provided with a general picture of the PoA, an explanation of controversial SRHR terms, "the opposition", political arguments, and a summary of international treaties and documents relevant to our efforts to reinforce SRHR as a fundamental human right.

The book is published by RFSU. The Center for Reproductive Rights in New York assisted in drafting certain sections of the text.