

CHAPTER I: Using Legal Advocacy to Advance Reproductive Rights

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

Programme of Action of the International Conference on Population and Development, Cairo, Egypt, September 5–13, 1994, para. 7.3, U.N. Doc. A/CONF.171/13/Rev.1 (1995).

Reproductive rights are guaranteed in international and regional human rights treaties. If not recognized and given force at the national level, however, such guarantees are empty promises. The experiences and legal developments of countries around the world can provide advocates with examples of laws and policies that, in some cases, can bolster advocacy for reform. These examples of laws and policies can also provide indications of regional and worldwide trends and give specific content to more abstract human rights principles.

This introductory chapter discusses what is meant by “reproductive rights,” the advantages of using a reproductive rights framework, and how laws and policies can be employed to advance reproductive rights. This discussion is followed by an overview of some of the barriers frequently encountered when advocating for reproductive rights on a national level. It concludes with a brief discussion of the role of advocates following successful law reform.

1. WHAT ARE REPRODUCTIVE RIGHTS?

Reproductive rights are firmly rooted in the most basic human rights principles. The interests that are protected by these rights are diverse. Broadly speaking, however, reproductive rights encompass two principles—the right to reproductive health care and the right to reproductive self-determination.

A. The Right to Reproductive Health Care

Reproductive health is a fundamental aspect of women’s well-being. Without regular access to safe and high-quality services, women become vulnerable to a host of negative consequences, which may include death or injury during childbirth, unwanted pregnancy, and sexually transmissible infections (STIs). The right to reproductive health care thus gives rise to a governmental duty to both ensure the availability of reproductive health services and remove legal barriers to that care.

Comprehensive reproductive health care should include measures to promote safe pregnancy and delivery; prevent and treat HIV/AIDS and other STIs; and offer abortion, infertility treatments, and a full range of quality contraceptive methods (including emergency contraception). These measures should be available to all women, including adolescents.

The right to reproductive health care is rooted in the provisions of international human rights instruments protecting life and health. The right to life is protected in most of the principal human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant).¹ The Human Rights Committee, the body that oversees compliance with the Civil and Political Rights Covenant, has interpreted this right to require governments to adopt “positive measures” aimed at preserving life, such as steps to “reduce infant mortality and to increase life expectancy... ”²

The right to health is recognized in article 12 of the International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant), which requires states to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”³ The World Health Organization (WHO) has defined health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”⁴ Echoing the WHO definition of general health, the International Conference on Population and Development (ICPD) Programme of Action defines “reproductive health” as total well-being “in all matters relating to the reproductive system and its functions and processes.”⁵

While the right to health does not guarantee perfect health for all people, it does encompass a governmental duty to ensure that health care is available. The Economic, Social and Cultural Rights Covenant requires states to create “conditions which would ensure to all medical services and medical attention in the event of sickness.”⁶

An obligation to provide reproductive health services, in particular, has support in the principles of nondiscrimination. States are bound to ensure the rights to life and health without discriminating on the basis of sex.⁷ To ensure equal enjoyment of the rights to life and health, states must take into account the particular health needs of both women and men. Because reproductive health care is fundamental to women’s well-being, states must take affirmative measures to ensure that reproductive health care is available and accessible to all women. This principle is explicitly recognized in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provides that states parties must take “appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”⁸ The Committee on the Elimination of Discrimination against Women (CEDAW Committee), the United Nations (UN) body that monitors compliance with CEDAW, has addressed governmental obligations pertaining to reproductive health care. In its General Recommendation on Women and Health (Recommendation on Health), it declares that states parties should “ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.”⁹

Governments are also bound to remove legal barriers to reproductive health care. In its Recommendation on Health, the CEDAW Committee states, “...barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures.”¹⁰ Among such legal barriers to reproductive health are laws that prohibit abortion and criminalize voluntary sterilization.

B. The Right to Reproductive Self-Determination

The right to reproductive self-determination has support in the right to physical integrity, the right to privacy, the right to plan one's family, and the right to be free from all forms of violence and coercion that affect a woman's sexual or reproductive life.

The right to physical integrity is given formal recognition in treaty provisions protecting the right to respect for human dignity and the rights to liberty and security of the person.¹¹ The right to physical integrity is also explicitly protected in article 4 of the African Charter of Human and Peoples' Rights (Banjul Charter) and article 5(1) of the American Convention on Human Rights.¹² Denying a woman the option of avoiding pregnancy or childbirth, for example, interferes with her right to decide on a matter with tremendous implications for her body and personal liberty. In addition, decisions one makes about one's body—particularly those that affect reproductive capacity—lie squarely in the domain of private decision-making and are thus protected from interference by the right to privacy.

The right to plan one's family has been defined in international instruments as the right to determine “freely and responsibly” the number and spacing of one's children and to have the information and means necessary to do so. This principle has been affirmed in numerous consensus documents adopted at UN conferences throughout the last three decades and was given legal force in CEDAW.¹³ The right to plan one's family gives rise to a governmental duty to ensure that men and women have equal access to a full range of contraceptive choices, as well as reproductive health information and services.

Reproductive self-determination also implies the right to be free from all forms of violence and coercion that affect a woman's sexual or reproductive life. The ICPD Programme of Action states that women are entitled to “make decisions concerning reproduction free of discrimination, coercion and violence.”¹⁴ The UN General Assembly, in its Declaration on the Elimination of Violence against Women, notes that “violence against women” encompasses gender-based violence that results in sexual harm or suffering to women.¹⁵ Violence is often directed specifically at a woman's sexual or reproductive capacity. Rape and other forms of sexual violence and forced or coercive sterilization are examples of the types of violence that infringe upon sexual and reproductive self-determination.

2. WHY A REPRODUCTIVE RIGHTS FRAMEWORK?

A reproductive rights framework helps advance women's reproductive health and empowers women to address the social conditions that jeopardize their health and lives. Many violations of reproductive rights—including unsafe abortion, maternal deaths, female genital mutilation, and child marriage—are widely tolerated and accepted as either natural and inevitable or customary and necessary. When viewed through a reproductive rights lens, however, these experiences are rights violations that governments have a duty to address. The recognition of governments' legal accountability opens the door for advocacy and legal and policy reform.

Further, governmental commitments—at major international conferences such as the Fourth World Conference on Women (Beijing Conference) in 1995,¹⁶ the ICPD in 1994,¹⁷ and the World Conference on Human Rights (Vienna Conference) in 1993¹⁸—have set the stage for transforming declarations of reproductive rights into a reality for women.

More recently, with the adoption of the UN Millennium Development Goals (MDGs) in 2000, governments have agreed that addressing women's reproductive health is key to promoting gender equality and the right to development. In the document produced at the 2005 World Summit, leaders from around the world redefined these goals by recognizing their commitment to achieve universal access to reproductive health by 2015.¹⁹ These leaders affirmed their commitment to eradicating violence against women and girls, promoting gender equality, combating HIV/AIDS, and ensuring equal access to reproductive health.²⁰ The document, titled the 2005 World Summit Outcome, also reiterates the importance of eliminating gender inequalities in education; guaranteeing women's equal rights to property; and ensuring equal access to employment and resources.²¹

Women's health and rights remain on the international political agenda and are given force in international law. Many governments have begun to transform their commitments and obligations into meaningful change by introducing national laws and policies that respect, protect, and fulfill women's reproductive rights. It is crucial that advocates hold governments to their commitments and seek accountability for violations of reproductive rights.

3. HOW CAN INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES ADVANCE REPRODUCTIVE RIGHTS AT THE NATIONAL LEVEL?

International and regional human rights treaties can significantly strengthen national-level advocacy. By ratifying treaties, governments undertake a binding legal obligation and make a public commitment to uphold the rights protected in those treaties. In addition, treaties help advocates articulate the nature and content of women's human rights and they can be used to raise awareness of these rights.

The content of women's sexual and reproductive rights under international law is further elaborated in the work of UN committees (known as treaty monitoring bodies, or TMBs), which monitor government compliance with the rights and obligations espoused by the key international human rights treaties. These bodies issue country-specific recommendations after periodic review of states parties' compliance with their treaty obligations. The recommendations can be used by advocates to bring public attention to governments' duties under international law and to shortfalls in their compliance. The committees also issue general comments to aid all member states in interpreting the broad provisions of international human rights treaties. While not legally binding, these interpretations elaborate on the content and meaning of particular rights and facilitate improved observance of these rights. Both the committees' general comments and their concluding observations have generally embraced reproductive and sexual health for women.²²

Regional human rights treaties and mechanisms can provide a bridge between national laws and broader international human rights instruments. Some have argued that regional treaties and organizations are more likely than global ones to have an impact on local human rights because regional agreements are less likely to be seen as being imposed by outsiders.²³ An effective regional human rights system is based on a region's shared legal, political, socioeconomic, and intellectual traditions.²⁴ Regional human rights mechanisms include the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; the European Court of Human Rights; and the African Commission on Human Rights and the recently established African Court

of Human and Peoples' Rights.²⁵ These mechanisms can interpret regional human rights treaties and decide whether a violation has occurred, and some can determine remedies or issue legally binding decisions.

4. THE ROLE OF NATIONAL LAWS AND POLICIES IN ADVANCING REPRODUCTIVE RIGHTS

The world can do better. The solutions are well known and effective. They include...the removal of barriers to women's equal participation in social, cultural, economic and political life...and the implementation of laws and policies that promote and protect the full range of internationally agreed human rights, including the right to sexual and reproductive health. All of these actions fall under the banner of "equality". Equality is an end in itself and a cornerstone of development.

Thoraya Ahmed Obaid, Executive Director, United Nations Population Fund (UNFPA), *Statement on the Occasion of World Population Day* (July 11, 2005)

Government ratification of treaties is merely a first step toward social change. Much more needs to be done to transform government commitments into concrete action. First, governments must take action to ensure that all domestic legislation is compatible with the treaties they have ratified. In addition, once a treaty is ratified, any future national-level legislation should be reviewed for compatibility with the treaty.

Laws and policies create the framework through which governments affect the behavior of people living in their jurisdictions. It is important to bear in mind, however, that the degree to which laws and policies influence people's lives depends upon whether these measures are implemented and enforced. For example, laws intended to ensure informed consent and quality of care at reproductive health facilities have little weight where there is no government commitment to training health-care workers to respect reproductive rights. Similarly, laws ensuring free access to reproductive health-care services, which may include abortion procedures, can only be implemented where there is an investment in facilities that are equipped and authorized to perform these services. Nonetheless, formal laws and policies are crucial indicators of a government's commitment to promoting women's reproductive rights. Governments must ensure respect for reproductive rights in national constitutions, legislation, and policies. Courts play a crucial role in protecting the rights of the most vulnerable women and advancing the development of reproductive rights norms.

Laws and policies can take several different forms at the national level. The following provides an overview of the types of measures that address reproductive rights.

A. Constitutional Protections

Most countries, as parties to international human rights treaties, have recognized the fundamental rights of women and girls. These rights must be enshrined in national-level constitutions, which have a force of law superior to that of other parliamentary and executive acts, as well as to that of customary and religious law. A nation's constitution is its law of highest authority. All legislation

and government actions should conform to the norms established in the constitution. Constitutional measures that uphold the rights of women are critical and can shape government practice. Many constitutions provide remedies that can be the basis for litigating violations of women's rights.

Constitutions should be unambiguous in securing the equality of women and men under the law in all matters. The constitutions of Ghana and Uganda, for example, contain provisions that protect women from harmful customary practices (see Chapter V: Harmful Practices—the Case of Female Genital Mutilation). The legal effects of such constitutional protections vary according to each country's legal system. A provision that has constitutional status guides members of the government in their drafting and implementation of law and policy. In addition, in many countries, a judicial body may have the power to strike down laws and policies that are inconsistent with such a protection.

The effectiveness of constitutional protections against discrimination and inequality is sometimes severely undermined by retrogressive provisions, often known as “clawback clauses.”²⁶ In these instances, some constitutions explicitly declare that guarantees of nondiscrimination are not applicable in matters governed by customary and religious law. Because customary and religious law frequently govern such matters as marriage and inheritance, a government's refusal to enforce women's equality when customary and religious law are at issue may result in a perpetuation of conditions that lead to women's subordination (see Chapter VII: Marriage Rights).

The ongoing efforts of many countries to reform their constitutions present opportunities for both gains and losses. Constitutional reform provides the chance to remove discriminatory provisions and replace them with language that guarantees women's equality, particularly if advocates ensure that women's rights are promoted throughout the reform process. However, conservative groups can also seize the opportunity to introduce provisions that abridge reproductive and sexual rights, such as defining the right to life as starting from the moment of conception or outlawing same-sex marriage.

B. Legislation

Legislation determines not only what is and is not legal, but outlines government responsibility in enforcing laws and protecting rights. The insufficiency of existing law or the absence of law on issues relating to women can affect whether women's rights will be recognized and protected. For example, violence against women has often been neglected or treated in a cursory fashion in national legislation. Legal reform can remedy these gaps, as is evident in Colombia's recent expansion of the definition of sexual crimes, which eliminated a legal loophole (see Chapter VIII: Violence against Women).

Laws, no matter how well they are drafted, are only as effective as their enforcement and judicial interpretation. For positive legislation to improve women's lives, it must be accompanied by a government commitment to ensuring that law enforcement and the judicial branch respect and understand the law.

C. The Regulatory Framework

Legislative reform is often followed by the issuance of regulations indicating how the executive branch will implement the new law. These regulations address technical aspects of implementation and often provide an official interpretation of broad legislative language. For example, in 2000, the Federal District of Mexico liberalized the district's penal code to expand the grounds on which abortion is not penalized to include threats to a woman's health. Two years later, the Federal District Ministry of Health issued implementing regulations that explicitly interpreted the code to permit abortion when there is a risk to a woman's mental health, as well as to her physical health (see Chapter IV: Abortion).

D. Policies

Comprehensive policies are among the primary expressions of government commitment to meeting the needs of its constituents. Policies, like regulations, are adopted by the executive branch of government. They make broad commitments for action, articulate necessary steps, and divide tasks among government actors. For example, Nepal adopted a sweeping policy calling on government agencies to make concerted efforts to promote adolescents' health (see Chapter X: Adolescents' Reproductive Rights). Governments can and should be held accountable politically for compliance with their own policy commitments.

E. Using the Courts

Litigation, which is not addressed in this publication, remains one of the most important tools for achieving change. Through litigation, a change in the law or its application can reach beyond the immediate case and individual client to affect society as a whole. Litigation can also be a powerful tool in raising public awareness about a particular issue. In Colombia, for example, a recent decision by the Constitutional Court struck down the country's ban on abortion to make the procedure legal when a woman's life or health is at risk and in cases of rape, incest, and fetal impairment.²⁷ Despite its potential for far-reaching impact, litigation has yet to be systematically used to better protect and ensure reproductive rights.

5. KEY CHALLENGES IN ADVOCATING FOR REPRODUCTIVE RIGHTS

The fundamental right to equality has been affirmed and reaffirmed repeatedly in conferences and other public fora in which governments participate. Yet in an overwhelming number of countries, laws remain in force that perpetuate discrimination with regard to personal status, economic status, marital status and recourse against violence. And it is not only the existence of these laws on the statute book that acts against women. Discrimination in the enforcement of the law, denial of equal opportunity in education and employment, denial of property rights, inheritance rights and land rights, exclusion of women from political representation, deprivation of sexual and reproductive rights, and the use of social forces and physical violence to intimidate and subordinate women all constitute fundamental violations of the human right to equality. Governments and societies must respect women's human rights in all the diverse situations that women live.

Mary Robinson, United Nations High Commissioner for Human Rights and Secretary-General of the World Conference against Racism, *Women 2000: Gender Equality Development and Peace in the 21st Century*, address before the preparatory committee for the special session of the General Assembly (March 6, 2000)

A. Religious Extremism

Religious extremism and fundamentalism pose serious challenges to the advancement of reproductive and sexual rights.²⁸ Many women live in countries where officials rely on interpretations of a dominant religion to justify infringements and violations of these rights. Although there is considerable debate in most religions about key issues of morality, including reproductive and sexual rights, this debate is frequently silenced by religious extremists. In many instances, extremists have succeeded in framing reproductive rights issues in absolutist terms that ignore both the realities of women's lives and scientific evidence.

The resistance of the U.S. Food and Drug Administration (FDA) to making emergency contraception (EC) available over the counter is a potent example of religious fundamentalism trumping scientific evidence.²⁹ Despite the extensive scientific research demonstrating the safety of EC and the recommendations of the FDA's own experts, FDA officials adopted the view of evangelicals and social conservatives that the availability of EC would encourage irresponsible sexual behavior.³⁰ After more than a three-year delay, the FDA has agreed to make EC available without a doctor's prescription only to women over the age of 18.³¹

Religious extremists have also succeeded in allowing religious considerations to enter into relationships between women and health-care providers. For example, some doctors refuse to perform abortions or provide the necessary referrals to a doctor who will perform the procedure (see Chapter IV: Abortion).

B. Economic Barriers

Advocacy for the right to health often takes place within the context of dire poverty. More than one billion people worldwide struggle to survive on less than one dollar a day; overall, 2.7 billion people make do with less than two dollars per day.³² Even where the political will exists to advance reproductive rights, the financial resources may not be there. Budgetary decisions and government action, particularly in countries in the global South, can also be subject to conditions set by international financial institutions, such as the World Bank and the International Monetary Fund (IMF), and to input from donor governments. For example, many low-income countries have agreed to follow structural adjustment policies in order to qualify for World Bank and IMF loans, or as part of debt repayment of earlier loans.³³ Critics of these policies argue that debt repayment is emphasized at the expense of social service provision, and that a reliance on market forces ignores the needs of the poor.³⁴ In the area of health care, the conditions set by lenders have often included a shift to decentralizing the funding of health-care services and imposing user fees, which have had devastating consequences.³⁵

While rights violations are generally considered the responsibility of the states in whose jurisdiction they occur, the international community also has human rights obligations in these instances. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, an authoritative restatement of states' duties under the Economic, Social and Cultural Rights Covenant, has emphasized that states must ensure that the "violations do not result from the programmes and policies of the organizations of which they are members."³⁶ The guidelines also emphasize that international organizations, including international financial institutions, should "correct their

policies and practices so they do not result in deprivation of economic, social and cultural rights.”³⁷ The 2005 World Summit Outcome also calls for the elimination of user fees for health care where appropriate.³⁸

C. Dual or Multiple Discrimination

The vulnerability of women to rights violations may be heightened by a variety of factors, including their age, religion, income, ethnic or racial background, and nationality. For example, Roma women, who belong to a minority group that has long been discriminated against, were targeted for coercive and forcible sterilization by the Slovak government (see Chapter III: Contraception). Reproductive rights violations occur more often in rural areas than urban areas, and are also more likely to be overlooked in rural areas. Effective advocacy strategies must recognize and address the ways that multiple sources of discrimination can overlap and exacerbate each other.

D. Disagreement between Customary and Formal Laws

Religion- and custom-based laws governing marriage, divorce, inheritance, property ownership, and guardianship can institutionalize inequality within marriage and undermine women’s ability to exercise their constitutional rights to equality. Such laws often legitimize discriminatory and sometimes violent practices within the home by giving these practices an aura of sanctity and exempting them from public scrutiny. These laws may coexist with formal legal guarantees of women’s equality, which effectively deprives women of the benefit of national legislative initiatives promoting social justice. Governments should specifically override religious and customary laws that undermine women’s basic rights, as they are increasingly doing in countries around the world, including Turkey and Morocco (see Chapter VII: Marriage Rights).

E. Lack of Legal Mechanisms for Accountability

The judicial branch can be a key player in establishing government accountability for ensuring reproductive and sexual rights. For example, the Venezuelan Supreme Court held that the government had an obligation to provide antiretrovirals to every person in Venezuela living with HIV/AIDS.³⁹ However, the effectiveness of the judiciary can be undermined in a variety of ways. Some legal systems have few or no mechanisms for bringing public interest litigation and no provisions for remedies. In others, however, constitutional measures allow individuals and groups to bring legal action to address rights violations and provide substantive remedies where violations are found.

Even where the mechanisms for bringing such suits exist, judicial systems sometimes lack both financial resources and personnel. For countries emerging from civil strife or political repression, the judicial branch may be underdeveloped through lack of use or it may lack credibility because of an association with a repressive government. Judges may also lack the requisite knowledge or interest to take on reproductive and sexual rights issues. In these instances, educating and sensitizing the judiciary can be a vital step in using the judicial system to establish government accountability.

F. Political Barriers

Participation in public life is key to influencing the political agenda and the allocation of public resources. Laws and policies that ensure proportional representation for women in local and national governing bodies are positive steps that have increased women's political involvement in countries such as India, Nepal, and Rwanda.⁴⁰ However, the results so far have been mixed. Even with increased representation, women's access to power and state resources remains extremely limited. As a result, women's reproductive health problems generally continue to be ignored.

6. AFTER LAW REFORM: ANOTHER CAMPAIGN BEGINS

Any advocate who has worked toward successful law reform knows that the campaign to implement new legislation may be just as demanding as the one to change the law. For example, with the passage of legislation liberalizing grounds for abortion, often an entire infrastructure has to be created to ensure access to services that were previously illegal. Civil society must hold the government accountable to its commitments and, in some cases, take the lead on implementation.

Following a successful law reform campaign, advocates are often involved with raising awareness of the law's passage and informing women of their rights under the new law. Advocates may participate in national task forces, often in collaboration with the government, to plan for the law's implementation. Where there is a complete failure to ensure enjoyment of the new law's guarantees, advocates may bring a lawsuit seeking a court order requiring the government to proceed with implementation.

Endnotes

1. Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), art. 3, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art. 6, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter Civil and Political Rights Covenant].
2. Human Rights Committee (HRC), *General Comment 6, The right to life*, para. 5, July 30, 1982.
3. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, art. 12, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter Economic, Social and Cultural Rights Covenant].
4. WHO, Constitution of the World Health Organization, *signed* July 22, 1946, pmbl. (*entry into force* April 7, 1948), available at http://www.who.int/governance/eb/who_constitution_en.pdf.
5. *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para 7.2, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].
6. Economic, Social and Cultural Rights Covenant, *supra* note 3, art. 12(2)(d).
7. Universal Declaration, *supra* note 1, art. 2; Civil and Political Rights Covenant, *supra* note 1, art. 6; Economic, Social and Cultural Rights Covenant, *supra* note 3, art. 3.
8. Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, art. 12(1), U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].
9. Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24, Women and Health*, para. 29, Feb. 2, 1999.
10. *Id.* at 14.
11. Privacy and family life are protected by Article 12 of the Universal Declaration. Universal Declaration, *supra* note 1; Article 17 of the Civil and Political Rights Covenant, *supra* note 1; Article 11 of the American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (*entered into force* July 18, 1978) [hereinafter American Convention]; and Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *signed* Nov. 4, 1950, 213 U.N.T.S. 222 (*entered into force* Sept. 3, 1953) [hereinafter European Convention].
12. African Charter on Human and Peoples' Rights, *adopted* June 26, 1981, art. 5(1), O.A.U. Doc. CAB/LEG/67/3/Rev.5, 21 I.L.M. 58 (1982) (*entry into force* Oct. 21, 1986) [hereinafter Banjul Charter]; American Convention, *supra* note 11, art. 5(1).
13. CEDAW, *supra* note 8, art. 16(e). "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."
14. *ICPD Programme of Action*, *supra* note 5, para 7.3.
15. United Nations General Assembly, *Declaration on the Elimination of Violence Against Women*, art. 1, U.N. Doc. A/RES/48/104 (1994).
16. *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Platform for Action*].
17. *ICPD Programme of Action*, *supra* note 5.
18. *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Vienna, Austria, June 14-25, 1993, U.N. Doc. A/CONF.157/23 (1993).
19. See United Nations General Assembly, *2005 World Summit Outcome*, U.N. Doc A/Res/60/1 (2005) [hereinafter *2005 World Summit Outcome*].
20. *Id.* para 57(g).
21. *Id.* para 58.
22. See CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO INTERNATIONAL PROGRAMME ON REPRODUCTIVE AND SEXUAL HEALTH LAW, BRINGING RIGHTS TO BEAR: AN ANALYSIS OF THE WORK OF UN TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS (2002), available at http://www.reproductiverights.org/pub_bo_tmb.html.
23. See George William Mugwagwa, *Realizing Universal Human Rights Norms through Regional Human Rights Mechanisms: Reinvigorating the African System*, 10 IND. INT'L & COMP. L. REV. 35, 41-42 (1999); Fitnat Naa-Adjeley Adjetey, *Religious and Cultural Rights: Reclaiming the Africa Women's Individuality: The Struggle Between Women's Reproductive Autonomy and African Society and Culture*, 44 AM. U.L. REV. 1354 (noting that international human rights norms "must be linked to local laws and regional human rights instruments to make people realize that these norms are not part of an alien culture which is to be imposed on them."). Fitnat Naa-Adjeley Adjetey states, "The African Charter must be used to the fullest extent in order to eliminate the notion that foreign ideas are being imposed on African women... Only as a last resort should there be a resort to international fora." *Id.* at 1369.
24. Mugwagwa, *supra* note 23, at 41.
25. For more information, see CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS IN THE INTER-AMERICAN SYSTEM FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (2002), available at http://www.reproductiverights.org/pdf/pub_bp_rr_interamerican.pdf; CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS IN THE EUROPEAN COURT OF HUMAN RIGHTS (2004), available at

- http://www.reproductiverights.org/pdf/pub_bp_ECHR.pdf; Scott Lyons, *The African Court of Human and Peoples' Rights*, ASIL INSIGHTS, Sept. 19, 2006, <http://www.asil.org/insights/2006/09/insights060919.html>.
26. "Clawback clauses" are "[p]hrases which could effectively remove (or at a minimum severely curtail) the right ostensibly guaranteed." Joseph Oloka-Onyango, *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?*, Human Development Report 2000 Background Paper, http://hdr.undp.org/docs/publications/background_papers/Oloka-Onyango2000.html (last visited Nov. 21, 2006).
 27. Sentencia C-355/06, 10 de mayo de 2006, Corte Constitucional [Constitutional Court] (Colom.).
 28. See International Interfaith Network for Development and Reproductive Health, *A Faith-Filled Commitment to Development Includes a Commitment to Women's Rights and Reproductive Health* (Prepared for the 2005 World Summit, Sept. 14-16, 2005), *available at* <http://www.un-ngls.org/un-summit-interfaith.pdf>.
 29. Marc Kaufman, *Memo May Have Swayed Plan B Ruling: FDA Received 'Minority Report' From Conservative Doctor on Panel*, WASHINGTON POST, May 12, 2005, at A02; *see also* Alastair J.J. Wood et al., *A Sad Day for Science at the FDA*, NEW ENGLAND JOURNAL OF MEDICINE, September 22, 2005.
 30. Kaufman, *supra* note 29; *see also* Wood et al., *supra* note 29.
 31. Ann Friedman, *Over the Counter Insurgency*, MOTHER JONES, Aug. 1, 2001, *available at* http://www.motherjones.com/news/update/2006/08/planb_timeline.html.
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