

William & Mary Journal of Race, Gender, and Social Justice

Volume 14 (2007-2008)
Issue 3 *William & Mary Journal of Women and
the Law*

Article 5

April 2008

Adolescents Under International Law: Autonomy as the Key to Reproductive Health

Aliya Haider

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Human Rights Law Commons](#), and the [Juvenile Law Commons](#)

Repository Citation

Aliya Haider, *Adolescents Under International Law: Autonomy as the Key to Reproductive Health*,
14 Wm. & Mary J. Women & L. 605 (2008), [https://scholarship.law.wm.edu/wmjowl/vol14/
iss3/5](https://scholarship.law.wm.edu/wmjowl/vol14/iss3/5)

Copyright c 2008 by the authors. This article is brought to you by the William & Mary Law School Scholarship
Repository.
<https://scholarship.law.wm.edu/wmjowl>

ADOLESCENTS UNDER INTERNATIONAL LAW: AUTONOMY AS THE KEY TO REPRODUCTIVE HEALTH

ALIYA HAIDER*

ABSTRACT

As a matter of policy, the reproductive and sexual health of adolescents matter because they comprise almost one half of the world's population. As a matter of international human rights law, adolescents have reproductive and sexual health rights. This article outlines how the international community must ensure adolescents' access to and exercise of those reproductive health rights. Governments must enable informed decision-making while also offering state protections for this vulnerable population. Without laws and policies that uphold adolescent health worldwide, future generations will needlessly suffer.

- I. ADOLESCENCE: AN INCREASINGLY RELEVANT LEGAL CONCERN
 - II. FRAMING ADVOCACY
 - A. *Adolescent Reproductive Rights*
 - III. CORE CHALLENGES
 - A. *Ensuring Informed Decision-Making*
 - 1. *Information: Comprehensive Sexuality Education*
 - 2. *Access to Confidential and Adolescent-Friendly Services*
 - B. *Ensuring Protection for Reproductive Rights and Autonomy*
 - 1. *Child Marriage and Education: Robbing Girls of Opportunity and Autonomy*
 - 2. *Sexual Violence and the Threat of Violence with Impunity*
 - 3. *Female Genital Mutilation*
 - IV. RECOMMENDATIONS
 - A. *What Governments Can Do*
 - B. *What Advocates Can Do*
 - C. *What Health Care Providers Can Do*
- CONCLUSION

* Aliya Haider received her J.D. from Harvard Law School (2003), her M.Sc. from the London School of Economics (2000), and her B.A. from Columbia University (1999). She is a Harry Truman Scholar and a member of the Phi Beta Kappa Society. This article was written while she was a Fellow at the Center for Reproductive Rights. Currently, she is a Vice President & Assistant General Counsel at JPMorgan Chase in New York City.

At the most basic level, all young people have the right to education, health and safety. If they are given information, choices and opportunities, they will live healthier and more productive lives.

—Thoraya Ahmed Obaid, Executive Director,
United Nations Population Fund¹

I. ADOLESCENCE: AN INCREASINGLY RELEVANT LEGAL CONCERN

Adolescents and young people comprise almost half the world's population.² It might surprise some that adolescents have the same rights to reproductive health as adults.³ Unfortunately, their low social status, lack of autonomy, and physical vulnerability make it harder for them to exercise those rights.⁴ Governments have a duty to empower adolescents with the tools to make informed choices and protect themselves.⁵ Governments have a duty under international law to provide comprehensive sex education, access to confidential health-care services,⁶ protection from child marriage,⁷ protection from sexual

1. UNITED NATIONS POPULATION FUND, UNFPA & YOUNG PEOPLE 2 (2003), *available at* http://www.unfpa.org/upload/lib_pub_file/582_filename_unfpa_and_young_people.pdf [hereinafter UNFPA & YOUNG PEOPLE].

2. Jose Antonio Ocampo, Under-Secretary-General, *Foreword* to U.N. DEPT ECON. & SOC. AFFAIRS, WORLD YOUTH REPORT 2005: YOUNG PEOPLE TODAY AND IN 2015, at iii, U.N. Doc. ST/ESA/301, U.N. Sales No. E.05IV.6 (2005).

3. Int'l Conference on Population & Human Dev., Cairo, Egypt, Sept. 5-13, 1994, *Report of the International Conference on Population & Development*, ¶¶ 7.3, 7.7, U.N. Doc. A/CONF.171/13 (Oct. 18, 1994) [hereinafter *ICPD Programme of Action*] (specifying that adolescents have special needs and that governments should ensure access to information and services meets their needs, just as it would for other ages).

4. UNITED NATIONS POPULATION FUND, STATE OF THE WORLD POPULATION 2005: THE PROMISE OF EQUALITY: GENDER EQUITY, REPRODUCTIVE HEALTH AND THE MILLENNIUM DEVELOPMENTAL GOALS 45-55 (2005), *available at* http://www.unfpa.org/upload/lib_pub_file/493_filename_en_swp05.pdf [hereinafter PROMISE OF EQUALITY].

5. *Id.* at 48-49; *see also* United Nations Convention on the Rights of the Child, G.A. Res. 44/25, arts. 13, 19, 24, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Nov. 20, 1989) [hereinafter CRC].

6. CRC, *supra* note 5, at art. 24; *see generally* R. Cook & B.M. Dickens, *Recognizing Adolescents' 'Evolving Capacities' to Exercise Choice in Reproductive Healthcare*, 70 INT'L J. GYNECOL. & OBSTETRICS 13 (2000) (examining the specific duties of the government and health service providers in order to implement adolescent rights regarding their sexual and reproductive health needs).

7. Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, *Report of the Fourth World Conference on Women*, ¶ 274(e), U.N. Doc. A/CONF.177/20 (Oct. 17, 1995) [hereinafter *Beijing Declaration*]; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, art. 16, ¶ 2, U.N. GAOR, 34th Sess., 107th plen. mtg., U.N. Doc. A/RES/34/46 (Dec. 18, 1979) [hereinafter CEDAW].

violence,⁸ and protection from the practice of female genital mutilation.⁹ When governments impose restrictions on adolescents' access to reproductive health information and services, they violate international legal standards.¹⁰ When governments fail to implement laws and policies that protect adolescents from violence, child marriage, and female genital mutilation, they also violate international legal standards.¹¹ However, because adolescents do not have a collective voice that is as strong as adults', and because they are enmeshed with their caretakers or the state, the human rights community has not invested as much concern for this group as it should.¹² Often a paternalistic nostalgia for childhood overshadows adolescents' voices and concerns, which in turn creates insufficient concern in the human rights community.¹³

Advocating for adolescents' reproductive rights is fraught with politicization. Because adolescence is a borderline stage of life, it often becomes a legal battleground for control over provocative issues, such as sex, contraception, abortion, and sexually transmitted diseases.¹⁴ Despite the critical health issues at stake, discussing the sexuality of young persons typically sparks controversy.¹⁵ Sometimes the issue is age or maturity level.¹⁶ The charge is that talking to teens about sex is tantamount to pushing them into sexual encounters.¹⁷ Sometimes the issue is the relativity of rights.¹⁸ Advocates in this scenario are confronted with the assertion of culture as a justification and a defense for violations of adolescents' rights.¹⁹ Refuting the cultural relativist defense opens one up to charges of human rights imperialism and a lack of respect for local culture because of a refusal to accept the dictates of local authority.²⁰ Despite these challenges, all

8. CRC, *supra* note 5, at art. 34.

9. *See id.* at art. 24, ¶ 3 (indicating signatory countries agree to abolish traditional practices that are "prejudicial to the health of children"); *id.* at art. 19 (indicating signatory countries agree to prevent physical abuse and maltreatment, including sexual abuse).

10. *Id.* at art. 24.

11. *Id.* at arts. 19, 24, 34.

12. Cook & Dickens, *supra* note 6, at 15-16.

13. *Id.*

14. *See, e.g.,* PROMISE OF EQUALITY, *supra* note 4, at 50-52.

15. Steve Sternberg, *Sex Education Stirs Controversy*, USA TODAY, July 11, 2002, at 8D.

16. *See, e.g.,* Jonathan F. Will, *My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs*, 22 J. CONTEMP. HEALTH L. & POL'Y 233, 259 (2006).

17. Sternberg, *supra* note 15.

18. Fitnat Naa-Adjeley Adjetei, *Reclaiming the African Woman's Individuality: The Struggle Between Women's Reproductive Autonomy and African Society and Culture*, 44 AM. U. L. REV. 1351, 1374 (1995).

19. *Id.*

20. *Id.*

of which have strong replies in moral theory and social science, the importance of advocating for adolescent reproductive health rights is only growing as the adolescent population grows.²¹ Despite the fact that adolescent autonomy is often a political issue, policies concerning adolescents' reproductive health are becoming more prevalent alongside a growing acknowledgment of adolescents as agents of development and change.²²

To get a sense of just how relevant adolescents are in today's global health calculus, consider the following facts. The term "adolescents" refers to persons between the ages of ten and nineteen.²³ The term "young people" refers to persons between the ages of ten and twenty-four.²⁴ Almost half of the world's population — nearly three billion people — is under twenty-five.²⁵ Of those three billion, two billion are under eighteen.²⁶ More than eighty-five percent of the world's young people live in developing low-income and middle-income countries.²⁷ Further, when adolescence intersects with other factors, such as poverty, race, and gender, it compounds the challenges adolescent women, in particular, face in exercising their basic human rights.²⁸

In this article, I argue that advocates and lawmakers can best foster adolescent reproductive health by promoting adolescents' autonomy. I outline the framework of adolescents' reproductive and sexual rights, noting at each turn that they do not fit within the traditional categories of child or adult, and therefore, adolescents require particular legal consideration. This article highlights core rights concerns for adolescents and discusses governments' legal duties to address those concerns. I focus on sexuality education, access to confidential healthcare, child marriage, lack of educational opportunity, sexual violence, and female genital mutilation ("FGM"). I conclude that an effective government response to adolescent reproductive and sexual health issues includes laws and policies that blend protection and freedom, thereby enabling adolescents to flourish and achieve their full potential.

21. PROMISE OF EQUALITY, *supra* note 4, at 45.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. UNICEF, THE STATE OF THE WORLD'S CHILDREN 2007: WOMEN AND CHILDREN: THE DOUBLE DIVIDEND OF GENDER EQUALITY 125 (2006), available at <http://www.unicef.org/sowc07/docs/sowc07.pdf> [hereinafter UNICEF, WOMEN AND CHILDREN].

27. The Secretary-General, *Report of the Secretary-General on the World Youth Report 2005*, ¶ 2, delivered to the Economic & Social Council and the General Assembly, U.N. Doc. A/60/61-E/2005/7 (Dec. 6, 2004).

28. PROMISE OF EQUALITY, *supra* note 4, at 45.

II. FRAMING ADVOCACY

A. Adolescent Reproductive Rights

International law recognizes adolescence — a critical developmental stage — as a time when young women's capacities are evolving.²⁹ Article 5 of the Convention on the Rights of the Child introduces the term “evolving capacities” into human rights law and marks a radical shift in how human rights law conceives of adolescents.³⁰ Adolescents are viewed as persons who, at differing rates, have the competence to be responsible for themselves.³¹ Governments, then, must foster this competence and protect adolescents while they develop the ability to be self-governing. Not only do adolescent girls experience rapid biological change, but their emotional maturity also develops more rapidly at this time than perhaps any other time in life.³² Though adolescence may be messy, the laws and legal standards regulating government obligations to adolescents are clear.³³ International human rights law provides a framework for states' obligations.³⁴ Governments have a duty “to respect, protect and fulfil [sic]” rights that are recognized under international law.³⁵

The duty to respect requires governments to refrain from taking action that directly violates rights.³⁶ For example, governments should reform laws or policies that undermine adolescents' access to information about safe sex and confidential services. The duty to protect requires governments to prevent or punish violations of rights by private actors, such as family or community members.³⁷ This duty

29. CRC, *supra* note 5, at art. 5; *see also* Cook & Dickens, *supra* note 6, at 13-21.

30. CRC, *supra* note 5, at art. 5.

31. Cook & Dickens, *supra* note 6, at 14.

32. United Nations Convention of Rights of the Child, *General Comment No. 4: Adolescent Health & Development in the Context of the Convention of the Rights of the Child*, ¶ 2, U.N. Doc. CRC/GC/2003/4 (July 1, 2003) [hereinafter *Comment on Rights of the Child*].

33. *See generally* CRC, *supra* note 5 (depicting the basic human rights to which all children are entitled); *see also* CEDAW, *supra* note 7, at art. 16, ¶ 1(d); Universal Declaration of Human Rights, G.A. Res. 217A, art. 25, U.N. GAOR, 3d Sess., 1st plen. mtg. U.N. Doc. A/180 (Dec. 10, 1948) [hereinafter *Universal Declaration of Human Rights*]; *Beijing Declaration*, *supra* note 7, Annex I, ¶ 9, World Conference on Human Rights, June 14-15, 1993, *Vienna Declaration and Programme of Action*, pt. II, ¶ 41, U.N. Doc. A/CONF.157/23 (July 12, 1993) [hereinafter *Vienna Declaration*].

34. International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A, art. 2, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter *ICESC*].

35. Hélène Combrinck, *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 HUM. RTS. Q. 691, 693 (1998).

36. *Id.* at 694.

37. *Id.*

also requires governments to implement and enforce laws that prevent abusive practices, for example child marriage or FGM.³⁸ State protections are necessary because many adolescents do not have the authority within family structures, workplace experience, or financial independence to provide for themselves.³⁹

The duty to fulfill requires governments to adopt concrete measures and, in some cases, make expenditures that enable adolescents to exercise their rights.⁴⁰ For example, complications from pregnancy and childbirth are the two leading causes of death for fifteen to nineteen-year-old girls worldwide.⁴¹ Governments' duty to fulfill human rights requires them to invest in providing reproductive healthcare services and take affirmative measures to enable adolescents to exercise their reproductive autonomy.⁴²

**Human Rights Standards that Apply to
Adolescents' Reproductive Rights:**

- The right to life, liberty, and security⁴³
- The right to reproductive self-determination⁴⁴
- The right to consent to marriage⁴⁵
- The right to health⁴⁶
- The right to be free from discrimination⁴⁷

38. *Id.* at 694-97.

39. See CRC, *supra* note 5, at arts. 5, 18, 32.

40. Combrinck, *supra* note 35, at 694.

41. SAVE THE CHILDREN, CHILDREN HAVING CHILDREN: STATE OF THE WORLD'S MOTHERS 4 (2004).

42. *Id.* at 20-26; Combrinck, *supra* note 35, at 694.

43. See CRC, *supra* note 5, at art. 6; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 6, ¶ 1, art. 9, ¶ 1, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR]; Universal Declaration of Human Rights, *supra* note 33, at art. 3. The concept of the right to life, liberty, and security in the context of reproductive rights is also underscored in the *ICPD Programme of Action*, *supra* note 3, at ¶¶ 7.3, 7.17, and the *Beijing Declaration*, *supra* note 7, at ¶¶ 96, 106(g).

44. See CEDAW, *supra* note 7, at art. 16, ¶ 1(e); *ICPD Programme of Action*, *supra* note 3, at Principle 8; *Beijing Declaration*, *supra* note 7, at ¶ 223.

45. See CEDAW, *supra* note 7, at art. 16, ¶ 1, art. 16, ¶ 2; ICCPR, *supra* note 43, at art. 23, ¶¶ 2-4; ICESCR, *supra* note 34, at art. 10, ¶ 1; Universal Declaration of Human Rights, *supra* note 33, at art. 16, ¶ 1; *Beijing Declaration*, *supra* note 7, at ¶ 274(e); *ICPD Programme of Action*, *supra* note 3, at Principle 9.

46. See CRC, *supra* note 5, at art. 24; CEDAW, *supra* note 7, at art. 10(h), art. 12, ¶¶ 1-2, art. 14, ¶ 2(b); ICESCR, *supra* note 34, at art. 10, ¶ 1, art. 12, ¶¶ 1-2; International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, at art. 5(e)(iv), U.N. GAOR, 20th Sess., 1406th plen. mtg., U.N. Doc. A/6014 (Dec. 21, 1965) [hereinafter ICERD]; *Beijing Declaration*, *supra* note 7, at ¶¶ 91, 92, 94; *ICPD Programme of Action*, *supra* note 3, at Principle 8, ¶¶ 7.2, 7.46, 8.34; *Vienna Declaration*, *supra* note 33, at ¶ 41.

47. See CRC, *supra* note 5, at art. 2, ¶¶ 1-2; CEDAW, *supra* note 7, at art. 1, art. 2, art. 11, ¶ 2; ICESCR, *supra* note 34, at art. 2, ¶ 2; Universal Declaration of Human

- The right to not be subjected to torture or other cruel, inhuman, or degrading treatment or punishment⁴⁸
- The right to be free from sexual violence⁴⁹
- The right to education and information⁵⁰

III. CORE CHALLENGES

A. Ensuring Informed Decision-Making

To make an informed decision about their reproductive health, adolescents require information and access to confidential health-care services.⁵¹ The Convention on the Rights of the Child ("CRC"), which is the principal treaty that grants special protections to minors, recognizes the importance of adolescent autonomy.⁵² The CRC acknowledges that because minors have "evolving capacities" to make decisions affecting their lives,⁵³ some minors are more mature than others depending on individual circumstances.⁵⁴ Furthermore, while the CRC requires States Parties to "respect the responsibilities, rights and duties of parents . . . to provide . . . appropriate direction and guidance"⁵⁵ in children's exercise of their rights, it recognizes that the best interests of the child take precedence and that the child should be enabled to exercise her rights.⁵⁶

The Committee on the Rights of the Child ("Committee") refers to adolescence as a time of "reproductive maturation," as well as a

Rights, *supra* note 33, at art. 2; *Beijing Declaration*, *supra* note 7, at ¶ 232(a); *ICPD Programme of Action*, *supra* note 3, at ¶¶ 4.4(c), 4.4(f); *Vienna Declaration*, *supra* note 33, at ¶ 18.

48. See CRC, *supra* note 5, at art. 37, ¶ 1; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (Dec. 10, 1984) [hereinafter Convention Against Torture]; ICCPR, *supra* note 43, at art. 7; Universal Declaration of Human Rights, *supra* note 33, at art. 5; *ICPD Programme of Action*, *supra* note 3, at ¶¶ 4.9-4.10; *Vienna Declaration*, *supra* note 33, at ¶ 56.

49. See CRC, *supra* note 5, at art. 19, ¶ 1, art. 34; CEDAW, *supra* note 7, at art. 6; United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, at art. 7, ¶ 1(g), June 15-17, 1998; *Rome Statute of the International Criminal Court*, Rome, Italy, art. 7, ¶ 1(e), U.N. Doc. A/CONF.183/9 (July 17, 1998); *ICPD Programme of Action*, *supra* note 3, at Principle 4; *Vienna Declaration*, *supra* note 33, at ¶ 38.

50. CRC, *supra* note 5, at arts. 13, 28; CEDAW, *supra* note 7, at art. 10(h); ICESCR, *supra* note 34, at art. 13; ICERD, *supra* note 46, at art. 5(e).

51. CRC, *supra* note 5, at art. 24; CEDAW, *supra* note 7, at art. 10(h).

52. CRC, *supra* note 5, at art. 2, ¶ 2, art. 5, ¶ 12, art. 28, ¶ 38.

53. *Id.* at art. 5.

54. *Id.* at art. 12, ¶ 1.

55. *Id.* at art. 5.

56. *Id.* at art. 3, ¶¶ 1-2, art. 14, ¶ 2, art. 18, ¶ 1.

time to develop critical thinking about reproductive choices.⁵⁷ The Committee has repeatedly voiced concern about the "lack of sufficient reproductive health information and services for adolescents"⁵⁸ in its concluding observations to States Parties and has frequently criticized governments for failing to promote education about family planning for adolescents.⁵⁹ The Committee on the Elimination of Discrimination Against Women ("CEDAW Committee") also encourages States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") "to address the issue of women's health throughout the woman's lifespan," understanding that "'women' includes girls and adolescents."⁶⁰

1. *Information: Comprehensive Sexuality Education*

Providing adolescents with information is the first step toward teaching them to make meaningful choices. Article 10(h) of CEDAW explicitly obliges States Parties to provide "[a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."⁶¹ Sex education is, ultimately, education. The Special Rapporteur on the Right to Education recently noted that a "crucial issue for the elimination of gender discrimination [is] . . . access to sex education."⁶² To protect themselves from unwanted pregnancy and the spread of sexually transmitted infections (STIs), including the human immunodeficiency virus (HIV), adolescents need comprehensive sexuality education.⁶³ Without complete information, adolescents' rights to health and reproductive self-determination are significantly compromised.

57. Comment on Rights of the Child, *supra* note 32, at ¶ 2.

58. CRC, *Concluding Observations of the Committee on the Rights of the Child* for the following countries: Paraguay, ¶¶ 23, 45, U.N. Doc. CRC/C/15/Add.75 (June 18, 1997); Hungary, ¶ 36, U.N. Doc. CRC/C/15/Add.87 (June 24, 1998).

59. See CRC, *Concluding Observations of the Committee on the Rights of the Child* for the following countries: Belarus, ¶ 14, U.N. Doc. CRC/C/15/Add.17 (Feb. 7, 1994); Cuba, ¶ 37, U.N. Doc. CRC/C/15/Add.72 (June 18, 1997); Holy See, ¶ 9, U.N. Doc. CRC/C/15/Add.46 (Nov. 27, 1995); Pakistan, ¶ 29, U.N. Doc. CRC/C/15/Add.18 (Apr. 15, 1994); Ukraine, ¶ 23, U.N. Doc. CRC/C/15/Add.42 (Nov. 27, 1995).

60. U.N. General Assembly, Committee on the Elimination of Discrimination Against Women, *General Recommendation 24: Women and Health*, ¶ 8, U.N. Doc. A/54/38/Rev.1 (Jan. 19, 1999).

61. CEDAW, *supra* note 7, at art. 10(h).

62. The Special Rapporteur, Katarina Tomasevski, *Report of the Special Rapporteur on Economy, Social & Cultural Rights: The Right to Education*, 2, delivered to the Econ. & Soc. Council, U.N. Doc. E/CN.4/2004/45 (Jan. 15, 2004).

63. SEXUALITY INFO. & EDUC. COUNCIL OF THE U.S., COMPREHENSIVE SEXUALITY EDUCATION IS HIV-PREVENTION: FACT SHEET, available at http://www.siecus.org/inter/FS_WomenHIV-AIDS.pdf (last visited Mar. 19, 2008).

The CRC recommends the following to all countries:

Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours.⁶⁴

The CRC has frequently recommended to countries that they improve adolescent reproductive healthcare education policies.⁶⁵ The CEDAW Committee also comments on the importance of comprehensive sexuality education, especially with regard to preventing the spread of HIV/AIDS.⁶⁶ For example, the CEDAW Committee recommends the following:

That States parties intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them [and]

That programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection.⁶⁷

“Sexuality education” refers to educational goals that are broader than simply biology.⁶⁸ At a minimum, sexuality education should include information about “anatomy and physiology, puberty, pregnancy and STIs, including HIV/AIDS.”⁶⁹ It should also address the

64. Comment on Rights of the Child, *supra* note 32, at ¶ 26.

65. CRC, *Concluding Observations of the Committee on the Rights of the Child* for the following countries: Albania, ¶ 57, U.N. Doc. CRC/C/15/Add.249 (Mar. 31, 2005); Algeria, ¶ 59, U.N. Doc. CRC/C/15/Add.269 (Oct. 12, 2005).

66. Committee on the Elimination of Discrimination Against Women, *General Recommendation 15, Avoidance of Discrimination Against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS)*, 240-41, U.N. Doc. HRI/GEN/1/Rev.6 (May 12, 2003).

67. *Id.* at 240.

68. Deborah Rogow & Nicole Haberland, *Sexuality and Relationships Education: Toward a Social Studies Approach*, 5 SEX EDUC. 333, 339-40 (2005).

69. See ACTION CAN. FOR POPULATION & DEV., SEXUAL AND REPRODUCTIVE HEALTH EDUCATION AND SERVICES FOR ADOLESCENTS 1 (2001), http://www.reproductiverights.org/pdf/pub_fac_adoles_sexedservices.pdf [hereinafter SEXUAL AND REPRODUCTIVE HEALTH EDUCATION]; see also SEXUALITY INFO. & EDUC. COUNCIL OF THE U.S., *supra* note 63.

relationships and emotions involved in sexual experience.⁷⁰ "It approaches sexuality as a natural, integral and positive part of life, and covers all aspects of becoming and being a sexual, gendered person."⁷¹ It should promote gender equality, self-esteem, and respect for the rights of others.⁷² The goal of sexuality education is to help young people develop autonomy using skills such as communication, decision-making, and negotiation.⁷³ Learning to be responsible for one's health and choices promotes a successful transition to adulthood in good sexual health.⁷⁴

Opponents of comprehensive sexuality education argue that providing adolescents with information about sex encourages them to engage in it⁷⁵ — a proposition that has been proven false in a number of studies.⁷⁶ These opponents promote a policy commonly called "abstinence-only" education, which does not teach how pregnancy occurs or how STIs are spread, but instead teaches that unmarried people should simply abstain from sex.⁷⁷ Often messages of abstinence are accompanied by lessons promoting stereotypical gender roles that reinforce girls' subordinate status.⁷⁸

70. See SUE ALFORD, NICOLE CHEETHAM & DEBRA HAUSER, ADVOCATES FOR YOUTH, SCIENCE & SUCCESS IN DEVELOPING COUNTRIES: HOLISTIC PROGRAMS THAT WORK TO PREVENT TEEN PREGNANCY, HIV & SEXUALLY TRANSMITTED INFECTIONS, 7, 13, 16-17, 21, 26, 28 (2005), available at http://www.advocatesforyouth.org/publications/sciencesuccess_developing.pdf.

71. SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 1. See POPULATION COUNCIL & UNFPA, ADDRESSING GENDER AND RIGHTS IN YOUR SEX/HIV EDUCATION CURRICULUM: A STARTER CHECKLIST (Eleanor Timreck et al. eds., 2007); Rogow & Haberland, *supra* note 68, at 336-37.

72. Rogow & Haberland, *supra* note 68, at 335, 337-78.

73. ALFORD, CHEETHAM & HAUSER, *supra* note 70, at 6.

74. Advocates for Youth, Advocacy Kit for Growing Up Global: The Changing Transitions to Adulthood in Developing Countries, <http://www.advocatesforyouth.org/PUBLICATIONS/growingupglobal/index.htm> (last visited Mar. 19, 2008).

75. Soc'y for Adolescent Med., *Position Paper: Abstinence-Only Education Policies and Programs: A Position Paper of the Society for Adolescent Medicine*, 38 J. ADOLESCENT HEALTH 83, 83 (2006), available at http://www.adolescenthealth.org/PositionPaper_Abstinence_only_edu_policies_and_programs.pdf.

76. See BRIGID MCKEON, ADVOCATES FOR YOUTH, EFFECTIVE SEX EDUCATION (2006), available at <http://www.advocatesforyouth.org/publications/factsheet/fssexcur.pdf>; John Santelli et al., *Abstinence and Abstinence-Only Education: A Review of U.S. Policies and Programs*, 38 J. ADOLESCENT HEALTH 72, 75-76 (2006); Doug Kirby, B.A. Laris & Lori Rollieri, *Impact of Sex and HIV Education Programs on Sexual Behaviors of Youth in Developing and Developed Countries 2* (Family Health Int'l Youth Research, Working Paper No. 2, 2005. See generally A. BROWN ET AL., WORLD HEALTH ORG., SEXUAL RELATIONS AMONG YOUNG PEOPLE IN DEVELOPING COUNTRIES: EVIDENCE FROM WHO CASE STUDIES (2001) (telling stories of those adolescents from low-income developing countries and their sexual experiences).

77. Editorial, *The Abstinence-Only Delusion*, N.Y. TIMES, Apr. 28, 2007, at A16.

78. See Rogow & Haberland, *supra* note 68, at 334, 336-40.

There are several problems with this approach. First, it violates women's rights to reproductive self-determination.⁷⁹ Whether married or not, all women have a right to information that will help them plan the number and spacing of their children and protect themselves from STIs. Given the reality that many unmarried adolescents are sexually active, denying them comprehensive sexuality education poses a real threat to their health and lives.⁸⁰ Second, the approach violates the right to life, liberty, and security of married women, because it does not address the risk of exposure that married women have to HIV and other STIs when their spouses have more than one sexual partner.⁸¹ By not acknowledging premarital sex and sex outside of marriage, abstinence-only policies leave women unable to protect themselves against diseases.⁸² Finally, the messages of gender inequality often incorporated into abstinence-only curricula⁸³ violate girls' rights to equality and nondiscrimination.⁸⁴

Sexuality education should reach all individuals, including the most vulnerable sectors of a population. To achieve this goal, sexuality education should not just be a school-based service, because in many countries most young people (especially girls) have left school by the age of twenty, and many are married between the ages of fifteen and nineteen.⁸⁵ It is imperative that sexuality education not only begin at the earliest stages in school, but that governments initiate programs to reach the large number of young people outside the school system.⁸⁶ Ultimately, "[p]arents, community organizations, religious groups, friends and peers, and healthcare delivery centers can, with proper training, become part of this effort."⁸⁷

79. CEDAW, *supra* note 7, at art. 16.

80. See, e.g., A. BROWN ET AL., *supra* note 76; Ann K. Blanc & Ann A. Way, *Sexual Behavior and Contraceptive Knowledge and Use Among Adolescents in Developing Countries*, 29 STUD. FAM. PLAN. 106, 106-07 (1998); United Nations Population Fund, Fast Facts, <http://www.unfpa.org/adolescents/facts.htm> (last visited Mar. 19, 2008).

81. AMNESTY INT'L, WOMEN, HIV/AIDS, AND HUMAN RIGHTS 4 (2004), available at <http://www.amnesty.org/en/report/info/ACT77/084/2004> (click on Download: pdf link); PETER R. LAMPTEY, JAMIL L. JOHNSON & MARYA KHAN, POPULATION REFERENCE BUREAU, 61 POPULATION BULLETIN: THE GLOBAL CHALLENGE OF HIV AND AIDS 5 (2006).

82. Susheela Singh, Akinrinola Bankole & Vanessa Woog, *Evaluating the Need for Sex Education in Developing Countries: Sexual Behaviour, Knowledge of Preventing Sexually Transmitted Infections/HIV and Unplanned Pregnancy*, 5 SEX EDUC. 307, 316-22, 329 (Nov. 2005).

83. See *supra* note 78 and accompanying text.

84. CEDAW, *supra* note 7, at art. 16.

85. UNITED NATIONS POPULATION FUND, STATE OF WORLD POPULATION 2003: MAKING 2 BILLION COUNT: INVESTING IN ADOLESCENTS' HEALTH AND RIGHTS 2, 16 (2003) [hereinafter UNFPA, STATE OF WORLD POPULATION 2003].

86. Singh, Bankole & Woog, *supra* note 82, at 325, 329.

87. SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 2.

2. Access to Confidential and Adolescent-Friendly Services

Adolescents need reproductive healthcare services from specially trained providers who offer confidentiality and adolescent-friendly services.⁸⁸ Access to such services is important to: (1) prevent unwanted pregnancy; (2) prevent unsafe abortions; and (3) reduce the spread of STIs, including HIV/AIDS.⁸⁹ Adolescents' rights to life, health, and privacy entitle them to have access to confidential and adolescent-friendly services.⁹⁰

International treaty monitoring bodies routinely comment on the importance of access to confidential reproductive health services.⁹¹ The Children's Rights Committee,⁹² CEDAW,⁹³ and the Human Rights Committee⁹⁴ all agree that access to services is critical.⁹⁵ The CRC has asserted time and again that adolescents must have access to confidential health care.⁹⁶ The CRC recently

88. *Id.*

89. *Id.*

90. CRC, *supra* note 5, at arts. 6, 24; ICCPR, *supra* note 43, at art. 6.

91. CEDAW, *supra* note 7, at art. 16; *see also* U.N. General Assembly, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women* for the following countries: Chile, ¶ 227, U.N. Doc. CEDAW/C/CHI/CO/4 (June 22, 1999); Greece, ¶ 207-08, U.N. Doc. CEDAW/C/GRC/CO/6 (May 4, 1999); Ireland, ¶ 186, U.N. Doc. A/54/38 (June 21, 1999); Mauritius, ¶ 211, U.N. Doc. CEDAW/C/MAR/CO/5 (May 31, 1995); Mexico, ¶ 394, U.N. Doc. CEDAW/C/MEX/CO/6 (May 14, 1998); Nigeria, ¶ 171, U.N. Doc. A/53/38/Rev.1 (July 2, 1998); Paraguay, ¶ 123, U.N. Doc. A/51/38 (May 9, 1996); Venezuela, ¶ 236, U.N. Doc. CEDAW/C/VEN/CO/6 (Aug. 12, 1997); Zimbabwe, ¶ 148, U.N. Doc. A/53/38 (May 14, 1998).

92. CRC, *Concluding Observations of the Committee for the Rights of the Child: Djibouti*, ¶ 46, U.N. Doc. CRC/C/15/Add.131 (May 30, 2000).

93. CRC, Committee on the Elimination of Discrimination Against Women, *General Recommendation 24, Women and Health*, ¶ 14, U.N. Doc. A/54/38/Rev.1 (Aug. 20, 1999).

94. *See, e.g., Concluding Observations of the Human Rights Committee, Chile*, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (Mar. 30, 1999).

95. *See, e.g., ICCPR, Concluding Observations of the Human Rights Committee: Ecuador*, ¶ 11, U.N. Doc. CCPR/C/79/Add.92 (Aug. 18, 1998).

96. *See, e.g., CRC, Concluding Observations of the Committee on the Rights of the Child* for the following countries: Armenia, ¶ 39, U.N. Doc. CRC/C/15/Add.119 (Feb. 24, 2000); Cambodia, ¶ 52, U.N. Doc. CRC/C/15/Add.128 (June 28, 2000); Chad, ¶ 30, U.N. Doc. CRC/C/15/Add.107 (Aug. 24, 1999); Colombia, ¶¶ 48-49, U.N. Doc. CRC/C/15/Add.137 (Oct. 16, 2000); Costa Rica, ¶ 22, U.N. Doc. CRC/C/15/Add.117 (Feb. 24, 2000); Côte d'Ivoire, ¶ 41, U.N. Doc. CRC/C/15/Add.155 (July 9, 2001); Democratic Republic of the Congo, ¶¶ 54-55, U.N. Doc. CRC/C/15/Add.153 (July 9, 2001); Dominican Republic, ¶ 38, U.N. Doc. CRC/C/15/Add.150 (Feb. 21, 2001); Ecuador, ¶ 23, U.N. Doc. CRC/C/15/Add.93 (Oct. 26, 1998); Ethiopia, ¶¶ 60-61, U.N. Doc. CRC/C/15/Add.144 (Feb. 21, 2001); Fiji, ¶ 20, U.N. Doc. CRC/C/15/Add.89 (June 24, 1998); Guatemala, ¶¶ 44-45, U.N. Doc. CRC/C/15/Add.154 (July 9, 2001); Guinea ¶ 27, U.N. Doc. CRC/C/15/Add.100 (May 10, 1999); Honduras, ¶ 27, U.N. Doc. CRC/C/15/Add.105 (Aug. 24, 1999); Japan, ¶ 21, U.N. Doc. CRC/C/15/Add.90 (June 24, 1998); Latvia, ¶ 39, U.N. Doc. CRC/C/15/Add.142 (Feb. 21, 2001); Lesotho, ¶ 46, U.N. Doc. CRC/C/15/Add.147 (Feb. 21, 2001); Lithuania, ¶¶ 39-40, U.N. Doc. CRC/C/15/Add.146 (Feb. 21, 2001); Maldives, ¶¶ 19, 39, U.N. Doc. CRC/C/15/

interpreted Article 16 of the CRC, which protects adolescent privacy, as follows:

In order to promote the health and development of adolescents, States parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters (art. 16). Health-care providers have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention. Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult's confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.⁹⁷

Open engagement with healthcare providers fosters an adolescent girl's self-determination regarding her reproductive life and health.⁹⁸ Armed with information, counseled within a secure, confidential environment, she can determine for herself the course of action that best serves her.⁹⁹ Failure to ensure confidentiality, therefore, constitutes a barrier to comprehensive reproductive healthcare.¹⁰⁰ Adolescents may be deterred from seeking sexual and reproductive healthcare if they believe that their parents may learn that they are — or are considering becoming — sexually active.¹⁰¹ International bodies are aware that requiring parental involvement in adolescents' reproductive healthcare decisions impedes access to necessary services. For example, the CRC has strongly advocated that adolescent reproductive health services be available without parental consent,¹⁰²

Add.91 (June 24, 1998); Federated States of Micronesia, ¶ 19, U.N. Doc. CRC/C/15/Add.86 (Feb. 4, 1998); Nicaragua, ¶ 35, U.N. Doc. CRC/C/15/Add.108 (Aug. 24, 1999); Palau, ¶¶ 48-49, U.N. Doc. CRC/C/15/Add.149 (Feb. 21, 2001); Peru, ¶ 24, U.N. Doc. CRC/C/15/Add.120 (Feb. 22, 2000); Turkey, ¶¶ 53-54, U.N. Doc. CRC/C/15/Add.152 (July 9, 2001); United Republic of Tanzania, ¶ 48-49, U.N. Doc. CRC/C/15/Add.156 (July 9, 2001); Venezuela, ¶ 27, U.N. Doc. CRC/C/15/Add.109 (Nov. 2, 1999).

97. See Comment on the Rights of the Child, *supra* note 32, at ¶ 11.

98. EC/UNFPA INITIATIVE FOR REPROD. HEALTH IN ASIA, FOCUS ON: CONFIDENTIAL COUNSELLING IN SEXUAL AND REPRODUCTIVE HEALTH (2001), available at http://www.asia-initiative.org/pdfs/RHI_Focus%20on_Counselling.pdf.

99. *Id.*

100. *Id.*

101. See CTR. FOR REPROD. LAW & POLICY & CHILD & LAW FOUND., STATE OF DENIAL: ADOLESCENT REPRODUCTIVE RIGHTS IN ZIMBABWE 55, 58 (2002).

102. See, e.g., CRC, *Concluding Observations of the Committee on the Rights of Child* for the following countries: Austria, ¶¶ 18, 34, U.N. Doc. CRC/C/SR.507-509 (Apr. 15, 1999); Barbados, ¶ 25, U.N. Doc. CRC/15/Add.103 (Aug. 24, 1999); Benin, ¶ 25, U.N. Doc. CRC/15/Add.103 (Aug. 12, 1999).

and the CEDAW Committee has asked States Parties to eliminate parental consent for contraception.¹⁰³

Adolescent-friendly care is nonjudgmental. Many adolescents are concerned about stigma or shame culturally associated with sexual activity, pregnancy, and STIs.¹⁰⁴ This stigma not only makes it difficult for adolescents to find nonjudgmental medical advice and guidance,¹⁰⁵ but it also makes them less willing to seek counseling and care.¹⁰⁶ Providers can and should be specially trained to work directly with adolescents and provide information about how to protect adolescents' health without judging their choices.¹⁰⁷

The fate of adolescent girls' health is in crisis. Girls aged ten to fourteen are five times more likely to die in pregnancy or childbirth than women aged twenty to twenty-four.¹⁰⁸ Girls aged fifteen to nineteen are twice as likely to die.¹⁰⁹ One-third of all women living with HIV are between the ages of fifteen and twenty-four.¹¹⁰ The United Nations estimates that every fourteen seconds, a young person is infected with HIV/AIDS.¹¹¹ At this rate, 6000 youth are newly infected every day.¹¹² Of more than 4.4 million abortions occurring among fifteen to nineteen year old girls every year, forty percent take place under unsafe conditions.¹¹³ These numbers come to life with the stories reported from across the world.¹¹⁴

103. See, e.g., CRC, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Australia*, ¶ 404, U.N. Doc. A/49/30 (Apr. 12, 1994).

104. See UNAIDS, *CHILDREN AND YOUNG PEOPLE IN A WORLD OF AIDS* 3-4 (2001).

105. See *Aid for Women v. Foulston*, 441 F.3d 1101, 1114 (10th Cir. 2006).

106. ENGENDERHEALTH, *REDUCING STIGMA AND DISCRIMINATION RELATED TO HIV AND AIDS: TRAINING FOR HEALTH CARE WORKERS* 1 (2004), available at http://www.engenderhealth.org/res/offc/hiv/stigma/pdf/stigma_trainer.pdf.

107. DOUGLAS KIRBY ET AL., *SEX AND HIV EDUCATION PROGRAMS FOR YOUTH: THEIR IMPACT AND IMPORTANT CHARACTERISTICS* 40-42, 48 (2006); DOUGLAS KIRBY ET AL., *HEALTHY TEEN NETWORK & ETR ASSOC., TOOLS TO ASSESS THE CHARACTERISTICS OF EFFECTIVE SEX & STD/HIV EDUCATION PROGRAMS* 40 (2007); G.A. O'SULLIVAN ET AL., *HEALTH/CTR. FOR COMM'C'N PROGRAMS, A FIELD GUIDE TO DESIGNING A HEALTH COMMUNICATION STRATEGY* 23 (2003); Anne Palmer, *Reaching Youth Worldwide* 3 (Johns Hopkins Univ. Ctr. for Commc'n Programs, 1995-2000, Working Paper No. 6, 2002).

108. UNITED NATIONS POPULATION FUND, *GIVING GIRLS TODAY & TOMORROW: BREAKING THE CYCLE OF ADOLESCENT PREGNANCY* 5 (2007).

109. *Id.* at 6.

110. United Nations Population Fund, *Youth and HIV/AIDS Fact Sheet: State of World Population 2005*, http://www.unfpa.org/swp/2005/presskit/factsheets/facts_youth.htm (last visited Mar. 19, 2008).

111. UNFPA, *STATE OF THE WORLD POPULATION 2003*, *supra* note 85, at 23.

112. *Id.*

113. PLAN, *BECAUSE I AM A GIRL: THE STATE OF THE WORLD'S GIRLS* 77 (2007).

114. *Id.*

B. Ensuring Protection for Reproductive Rights and Autonomy

Many adolescents face violence and coercion within their families and communities — abuses that make it impossible to exercise their basic rights to informed decision-making.¹¹⁵ Because adolescence is a vulnerable stage of transition out of childhood, adolescents require added protections against coercion or mistreatment by third parties, for example family members, community members, and private medical practitioners.¹¹⁶ State protections enable adolescents to exercise their reproductive rights with autonomy.¹¹⁷ Governments have affirmative duties to safeguard adolescents' rights during the period of transition from childhood to adulthood.¹¹⁸

1. Child Marriage and Education: Robbing Girls of Opportunity and Autonomy

Child marriages violate adolescents' rights to life, liberty, self-determination, and health. Child marriage has been defined as "[a]ny marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing."¹¹⁹ In practice, many girls as young as ten to fourteen years old are married to men who are much older than they are.¹²⁰ These marriages are often not even registered in state marriage registries, making the extent of the practice difficult to document.¹²¹ Child marriages result in violations of adolescents' right to make decisions regarding their sexuality and reproductive lives.¹²² Once married, adolescents are trapped in a situation that threatens them physically — by forced sex, early and frequent pregnancies, and, in many cases, exposure to HIV/AIDS.¹²³

115. CHILD & ADOLESCENT HEALTH & DEV. PROGRAMME & WORLD HEALTH ORG., THE SECOND DECADE: IMPROVING ADOLESCENT HEALTH & DEVELOPMENT 8 (1998); UNAIDS INTER-AGENCY TASK TEAM ON YOUNG PEOPLE, WORLD HEALTH ORG., PREVENTING HIV/AIDS IN YOUNG PEOPLE: A SYSTEMATIC REVIEW OF THE EVIDENCE FROM DEVELOPING COUNTRIES 2 (David A. Ross et al. eds., 2006).

116. *Id.*

117. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, ENDING CHILD MARRIAGE: A GUIDE FOR GLOBAL POLICY ACTION 24 (2006).

118. *Id.* at 21-22.

119. *Id.* at 7 (citation omitted).

120. INNOCENTI RESEARCH CTR., UNICEF, EARLY MARRIAGE: CHILD SPOUSES 2-4 (2001) [hereinafter INNOCENTI RESEARCH CTR., CHILD SPOUSES].

121. *Id.* at 4.

122. *Id.* at 9.

123. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 7, 11.

International standards firmly oppose child marriage.¹²⁴ The International Covenant on Economic, Social, and Cultural Rights, echoing the Universal Declaration of Human Rights, declares that “[m]arriage must be entered into with the free consent of the intending spouses.”¹²⁵ The CEDAW Committee routinely condemns child marriage.¹²⁶ It recommends public awareness campaigns to change local attitudes¹²⁷ and makes policy recommendations, such as the implementation of a marriage registry system to combat the practice.¹²⁸ The CRC explicitly requires States Parties to take measures to abolish traditional practices that are harmful to children’s health.¹²⁹ The CRC calls child marriage a harmful practice and a form of gender discrimination.¹³⁰ The Human Rights Committee has expressed concern over the practice¹³¹ and recommends, among other measures, legal reform to eliminate it.¹³² Finally, the Committee on Economic, Social, and Cultural Rights (“CESCR”) also condemns the practice.¹³³

124. *Id.* at 6.

125. ICESCR, *supra* note 34, at art. 10, ¶ 1; see Universal Declaration of Human Rights, *supra* note 33, at art. 16, ¶ 2.

126. See, e.g., U.N. General Assembly, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women* for the following countries: Burundi, ¶ 56, U.N. Doc. A/56/38 (Feb. 2, 2001); Cameroon, ¶ 54, U.N. Doc. A/55/38 (June 26, 2000); Romania, ¶¶ 318-319, U.N. Doc. A/55/38 (June 23, 2000).

127. See, e.g., U.N. General Assembly, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women* for the following countries: Cameroon, ¶ 54, U.N. Doc. A/55/38 (June 26, 2000); Democratic Republic of the Congo, ¶ 216, U.N. Doc. A/55/38 (Feb. 1, 2000); Guinea, ¶ 123, U.N. Doc. A/56/38 (July 31, 2001); Nepal, ¶ 154, U.N. Doc. A/54/38 (July 1, 1999); Vietnam, ¶ 259, U.N. Doc. A/56/38 (July 31, 2001).

128. See, e.g., U.N. General Assembly, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: India*, ¶ 62, U.N. Doc. A/55/38 (May 1, 2000).

129. CRC, *supra* note 5, at art. 24, ¶ 3.

130. See, e.g., CRC, *Concluding Observations of the Committee on the Rights of the Child* for the following countries: Bangladesh, ¶ 15, U.N. Doc. CRC/C/15/Add.74 (June 18, 1997); Burkino Faso, ¶ 14, U.N. Doc. CRC/C/15/Add.19 (Apr. 25, 1994); Djibouti, ¶¶ 25-26, U.N. Doc. CRC/C/15/Add.131 (June 28, 2000); India, ¶¶ 32-33, U.N. Doc. CRC/C/15/Add.115 (Feb. 23, 2000).

131. See, e.g., ICCPR, *Concluding Observations of the Human Rights Committee* for the following countries: India, ¶ 16, U.N. Doc. CCPR/C/79/Add.81 (Aug. 4, 1997); Kuwait, ¶ 7, U.N. Doc. CCPR/CO/69/KW T (July 27, 2000); Nigeria, ¶ 25, U.N. Doc. CCPR/C/79/Add.65 (July 24, 1996); Peru, ¶ 14, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); Sudan, ¶ 11, U.N. Doc. CCPR/C/79/Add.85 (Nov. 19, 1997); Syrian Arab Republic, ¶ 20, U.N. Doc. CCPR/CO/71/SYR/Add.1 (Apr. 24, 2001); Venezuela, ¶¶ 18, 20, U.N. Doc. CCPR/CO/71/VEN (Apr. 26, 2001); Zimbabwe, ¶ 12, U.N. Doc. CCPR/C/79/Add.89 (Apr. 6, 1998).

132. See, e.g., ICCPR, *Concluding Observations of the Human Rights Committee* for the following countries: Monaco, ¶ 12, U.N. Doc. CCPR/CO/72/MCO (Aug. 28, 2001); Syrian Arab Republic, ¶ 20, U.N. Doc. CCPR/CO/71/SYR/Add.1 (Apr. 24, 2001); Venezuela, ¶¶ 18, 20, U.N. Doc. CCPR/CO/71/VEN (Apr. 26, 2001).

133. See, e.g., U.N. Econ. & Soc. Council, *Concluding Observations of the Committee on Economic, Social and Cultural Rights* for the following countries: Cameroon, ¶¶ 14, 33, U.N. Doc. E/C.12/1/Add.40 (Dec. 8, 1999); Kyrgyzstan, ¶¶ 16, 23, 30, U.N. Doc.

Child marriage limits adolescents' control over their reproductive and sexual lives, thereby severely compromising their rights. Forcing a young girl into marriage interrupts her education and social development.¹³⁴ Child brides either are not enrolled in school or are pulled out and never return.¹³⁵ For example, in Guatemala, of the twenty-six percent of Mayan girls aged fifteen to nineteen who are married, only two percent are enrolled in school, compared with forty percent of unmarried girls of the same age.¹³⁶ Without education, a girl's chances of leading an autonomous life and becoming financially self-sufficient are severely hindered.¹³⁷ There are other detrimental effects of interrupted education.¹³⁸ A joint report by UNFPA, UNAIDS, and UNIFEM found that women with more education are more likely to make use of reproductive health services, less likely to be subjected to FGM, and more likely to exercise sexual decision-making power regarding family planning and contraception usage.¹³⁹ Child mothers without education are more likely to have children with low literacy rates and low educational success rates.¹⁴⁰ This perpetuates a cycle of poverty.¹⁴¹

At least two powerful forces encourage child marriage: economic incentives and local custom.¹⁴² Economic necessity is cited as a reason

E/C.12/1/Add.49 (Sept. 1, 2000); Syrian Arab Republic, ¶¶ 14, 31, U.N. Doc. E/C.12/1/Add.63 (Sept. 24, 2001).

134. See, e.g., K.G. SANTHYA, NICOLE HABERLAND & AJAY KUMAR SINGH, POPULATION COUNCIL, "SHE KNEW ONLY WHEN THE GARLAND WAS PUT AROUND HER NECK": FINDINGS FROM AN EXPLORATORY STUDY ON EARLY MARRIAGE IN RAJASTHAN 1 (2006).

135. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 14.

136. KELLY HALLMAN, SARA PERACCA, JENNIFER CATINO & MARTA JULIA RUIZ, CAUSES OF LOW EDUCATIONAL ATTAINMENT AND EARLY TRANSITION TO ADULTHOOD IN GUATEMALA 3 (2004), available at <http://www.popcouncil.org/gfd/presentations/guatemala/quantstudy.pdf>.

137. U.N. ECON. & SOC. COUNCIL, EFA GLOBAL MONITORING REPORT 2005: EDUCATION FOR ALL: THE QUALITY IMPERATIVE 19, 28 (2005).

138. *Id.* at 28; see also REBECCA J. COOK & BERNARD M. DICKENS, WORLD HEALTH ORG., CONSIDERATIONS FOR FORMULATING REPRODUCTIVE HEALTH LAWS 45-47 (2d ed. 2000), available at http://who.int/reproductive-health/publications/rhr_00_1/considerations_for_formulating_reproductive_health_laws.pdf; UNAIDS ET AL., WOMEN & HIV/AIDS: CONFRONTING THE CRISIS 39-40 (2004), available at <http://www.unfpa.org/hiv/women/report/index.htm>.

139. UNAIDS ET AL., *supra* note 138, at 39-40.

140. See, e.g., Cynthia B. Lloyd, Cem Mete & Monica J. Grant, *The Implications of Changing Educational and Family Circumstances for Children's Grade Progression in Rural Pakistan: 1997-2004*, at 11 (Population Council Policy Research Div., Working Paper No. 209, 2006).

141. Shana Hofstetter, Note, *The Interaction of Customary Law and Microfinance: Women's Entry into the World Economy*, 14 WM. & MARY J. WOMEN & L. 337, 357-58 (2008).

142. See JUDITH BRUCE & SHELLEY CLARK, INCLUDING MARRIED ADOLESCENTS IN ADOLESCENT REPRODUCTIVE HEALTH AND HIV/AIDS POLICY 20 (2004); UNICEF, EARLY

for child marriage, which happens almost exclusively in low-income countries, particularly in rural areas.¹⁴³ In South Asia, generally forty-eight percent of fifteen to twenty-four year-olds were married before they reached the age of eighteen.¹⁴⁴ But if one examines a particular rural, poor area like Bihar, India, the percentage leaps to seventy-one.¹⁴⁵ Two economic justifications for forcing young girls into marriage are because their families cannot support them, or they are bought as brides so that their husbands and their families can benefit from the girl's labor.¹⁴⁶ Investing in adolescent girls' education and autonomy is viewed as a lost investment, because the girl leaves her parents' home to join her husband's, so that her economic contributions are to that home.¹⁴⁷ Therefore, many parents betroth their daughters as early as infancy.¹⁴⁸ One expert noted that dowry rates are often lower when the girl is married young.¹⁴⁹

The statistics around child marriage are alarming not just for the numbers themselves, but because these numbers only represent the stories that are reported. Eighty-two million girls ages ten to seventeen in low-income countries marry before their eighteenth birthday.¹⁵⁰ In Africa, forty-two percent of young girls marry before the age of eighteen.¹⁵¹ In East and West Africa, this number is sixty percent,¹⁵² and in regions such as northern Nigeria, it rises to seventy-three percent.¹⁵³ Due to the fact that many marriages are not registered and the available evidence is anecdotal, far more girls than this are sent into child marriage, and their fate is unknown by the international community.¹⁵⁴

MARRIAGE: A HARMFUL TRADITIONAL PRACTICE: A STATISTICAL EXPLORATION 1 (2005) [hereinafter UNICEF, EARLY MARRIAGE]; UNICEF, WOMEN AND CHILDREN, *supra* note 26, at 4.

143. BRUCE & CLARK, *supra* note 142, at 20; UNICEF, EARLY MARRIAGE, *supra* note 142, at 5-6, 15.

144. UNICEF, EARLY MARRIAGE, *supra* note 142, at 4.

145. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 10.

146. INNOCENTI RESEARCH CTR., CHILD SPOUSES, *supra* note 120, at 2, 6.

147. Geeta Rao Gupta, Remarks to the U.S. Department of State, Forum on Child Marriage in Developing Countries 3 (Sept. 14, 2005), available at <http://www.icrw.org/docs/speeches/9-14-05%20Child%20Marriage%20State%20Dept.pdf>.

148. *Id.*

149. *Id.*

150. UNFPA, STATE OF WORLD POPULATION 2003, *supra* note 85, at 15.

151. UNICEF, EARLY MARRIAGE, *supra* note 142, at 4.

152. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 10.

153. *Id.*

154. INNOCENTI RESEARCH CTR., CHILD SPOUSES, *supra* note 120, at 9, 12; INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 9.

The strong incentives to send young adolescent girls into marriage make the case for government intervention all the more compelling. Governments should adopt laws prohibiting child marriage, as well as take measures to counter the economic incentives for continuing the practice. To address cultural norms that support child marriage, governments and non-governmental organizations should engage in outreach campaigns to raise awareness of the rights and health consequences of child marriage.¹⁵⁵ At the same time, broad measures to promote girls' status — for example, measures to keep girls in school — are essential to the success of any strategy to stop child marriage.¹⁵⁶

2. Sexual Violence and the Threat of Violence with Impunity

Violence against women is one of the most brutal consequences of the economic, social, political, and cultural inequalities that exist between men and women.¹⁵⁷ It is also perpetuated by legal and political systems that have historically discriminated against women. The pervasive political and cultural subordination resulting from these systems create a climate in which women are especially vulnerable to violence.¹⁵⁸ When these gender-based inequities are compounded by the vulnerabilities of youth, the problem of violence becomes further entrenched.¹⁵⁹ The Beijing Declaration and Platform for Action defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."¹⁶⁰ Without a doubt, violence directly interferes with adolescents' human rights to security, liberty, and physical integrity.¹⁶¹

Article 9 of the International Covenant on Civil and Political Rights protects the right of individuals to liberty and personal security.¹⁶² International treaty monitoring bodies routinely comment on the importance of eradicating violence against women and girls.¹⁶³ The Children's Rights Convention states:

155. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 28.

156. *Id.* at 23-24, 26, 29.

157. UNFPA, STATE OF WORLD POPULATION 2003, *supra* note 85, at 15.

158. *Beijing Declaration*, *supra* note 7, at ¶ 118.

159. UNFPA, STATE OF WORLD POPULATION 2003, *supra* note 85, at 20.

160. *Beijing Declaration*, *supra* note 7, at ¶ 113.

161. UNFPA, STATE OF WORLD POPULATION 2003, *supra* note 85, at 12.

162. ICCPR, *supra* note 43, at art. 9.

163. CRC, *supra* note 5, at arts. 19, 34, 39; Convention Against Torture, *supra* note 48, at arts. 1, 3; CEDAW, *supra* note 7, at arts. 5, 8; ICCPR, *supra* note 43, at arts. 2, 6, 7, 23, 24; ICESCR, *supra* note 34, at arts. 2, 12; ICERD, *supra* note 46, at arts. 5(b), 5(d).

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse¹⁶⁴

CEDAW's General Recommendation 12 also instructs States Parties to adopt legislation that protects women from "all kinds of violence in everyday life including sexual violence, abuses in the family, sexual harassment at the workplace etc."¹⁶⁵

Adolescents are particularly vulnerable to violence in both the public and private spheres.¹⁶⁶ Institutions that should nurture and foster adolescents' independence, such as schools, clinics, the workplace, and the home, often become traps where violence cannot be avoided.¹⁶⁷ For example, the Inter-American Commission presided over the case of a nineteen-year-old rural Peruvian woman who went alone to a hospital to seek treatment for head and body pains she had been suffering since a traffic accident three months prior.¹⁶⁸ The doctor led her into his private office, where he administered anesthesia to make her unconscious and then raped her.¹⁶⁹ In a landmark settlement, the Peruvian government agreed to pay the young woman reparations, report the doctor for professional disciplinary proceedings, and establish a commission to ensure rights protection in public health facilities.¹⁷⁰ The abuses experienced by the woman in this case, however, are not unique. The power differential in the provider-client relationship can facilitate abuse.¹⁷¹ Women seeking reproductive health care or counseling in clinics have suffered rape, humiliating verbal abuse, and violations of their reproductive autonomy, including their right to give informed consent.¹⁷² The patients' lack of knowledge about appropriate examination procedures and their legal rights perpetuate the acts of violence.¹⁷³ In addition, providers often

164. CRC, *supra* note 5, at art. 19.

165. U.N. General Assembly, CEDAW, *General Recommendation 12, Violence Against Women*, ¶ 1, U.N. Doc. A/44/38 (1990).

166. PROMISE OF EQUALITY, *supra* note 4, at 48, 66.

167. See generally CTR. FOR REPROD. 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 (providing recent cases involving impingements upon adolescent females' reproductive rights).

168. *Id.* at 12.

169. *Id.*

170. *Id.* at 13.

171. *Id.* at 15-16.

172. *Id.* at 13; see also CTR. FOR REPROD. RIGHTS, *FAILURE TO DELIVER: VIOLATIONS OF WOMEN'S HUMAN RIGHTS IN KENYAN HEALTH FACILITIES* 22 (2007).

173. LATIN AM. & CARIBBEAN COMM. FOR THE DEF. OF WOMEN'S RIGHTS & CTR. FOR

have access to social and institutional networks, allowing them to conceal their behavior, secure legal defense, and exert pressure on the women who report them.¹⁷⁴

Schools are institutions where adolescent women should be able to learn, grow, and develop their autonomy. Instead, school corridors and classrooms often become traps of violence and abuse.¹⁷⁵ In a recent study, Latin American girls attested that sexual violence is present in schools.¹⁷⁶ Studies show that educational environments are the principal settings for sexual violence in Ecuador: forty-four percent of female students reported knowledge of cases of sexual violence in schools, and thirty-six percent of adolescents reported male teachers as the aggressors.¹⁷⁷

The case of Paola Guzmán, a student in Ecuador, is an example. Paola was a sixteen-year-old student who had been sexually abused by her school's vice principal for two years.¹⁷⁸ After learning of her pregnancy that resulted from the abuse, she committed suicide.¹⁷⁹ Paola's family argued that her rights to life, personal integrity, personal security, freedom from violence, and nondiscrimination were violated.¹⁸⁰ Her case has been brought before the Inter-American Commission for Human Rights.¹⁸¹

The pattern of violence in schools repeats itself all over the world. In South African schools, girls are raped, sexually abused, sexually harassed, and assaulted by their male classmates or teachers.¹⁸² These abuses occur in school restrooms, empty classrooms and corridors, hostel rooms, and dormitories.¹⁸³ Variations on these events

REPROD. LAW & POLICY, SILENCE AND COMPLICITY: VIOLENCE AGAINST WOMEN IN PERUVIAN PUBLIC HEALTH FACILITIES 9-13 (1999) [hereinafter SILENCE AND COMPLICITY].

174. *Id.*

175. U.N. REGIONAL SECRETARIAT FOR THE STUDY OF LATIN AMERICA, CUBA & THE DOMINICAN REPUBLIC IN THE CARIBBEAN, VIOLENCE AGAINST CHILDREN IN LATIN AMERICA: A DESK REVIEW 11,12 (2005).

176. *Id.*

177. LATIN AM. & CARIBBEAN COMM. FOR THE DEF. OF WOMEN'S RIGHTS, SHADOW REPORT: AN ALTERNATIVE LOOK AT WOMEN'S DISCRIMINATION SITUATION IN ECUADOR, art. 1 (2007), available at http://www.cladem.org/english/regional/monitoreo_convenios/cedawecuadori.asp.

178. Ctr. for Reprod. Rights, The Center's Cases: Coercive Sterilization/Violence Against Women, Paola Guzmán Albarracín v. Ecuador, http://www.reproductiverights.org/crt_violence.html#ecuador (last visited Mar. 19, 2008).

179. *Id.*

180. *Id.*

181. *Id.*

182. HUMAN RIGHTS WATCH, SCARED AT SCHOOL: SEXUAL VIOLENCE AGAINST GIRLS IN SOUTH AFRICAN SCHOOLS (2001), <http://www.hrw.org/reports/2001/safrica/> (detailing female students' accounts of the sexual abuse they face at schools).

183. *Id.*

happen throughout the world, especially where laws and policies do not recognize, target, and punish such violence.¹⁸⁴

3. *Female Genital Mutilation (FGM)*

Although FGM can be performed as early as infancy or well into adulthood, girls most commonly undergo it between four and twelve years of age.¹⁸⁵ In many places it has been considered a rite of passage to adulthood.¹⁸⁶ FGM is prevalent in at least twenty-eight African countries, parts of Yemen, and certain minority groups in Asia.¹⁸⁷ Its prevalence varies significantly from one country to another.¹⁸⁸ In addition, there are many immigrant women in Europe, Canada, and the United States who have undergone FGM.¹⁸⁹

FGM is a cultural practice that girls are usually subjected to when they are too young to protest and too dependent — financially and socially — on their families to have any escape.¹⁹⁰ The World Health Organization defines FGM as “all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons.”¹⁹¹ Although there are variations of FGM,¹⁹²

184. *See, e.g., id.*

185. FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE 3 (Anika Rahman & Nahid Toubia eds., 2000).

186. *Id.*

187. INNOCENTI RESEARCH CTR., UNICEF, INNOCENTI DIGEST: CHANGING A HARMFUL SOCIAL CONVENTION: FEMALE GENITAL MUTILATION/CUTTING 3 (2005) [hereinafter INNOCENTI RESEARCH CTR., FEMALE GENITAL MUTILATION/CUTTING].

188. *Id.*

189. CTR. FOR REPROD. RIGHTS, FEMALE GENITAL MUTILATION (FGM): LEGAL PROHIBITIONS WORLDWIDE FACT SHEET (Mar. 2007), available at http://www.reproductive-rights.org/pdf/pub_fac_fgm_0307.pdf [hereinafter CTR. FOR REPROD. RIGHTS, FGM].

190. World Health Org., Female Genital Mutilation: Fact Sheet No. 241 (2001), available at <http://www.who.int/mip2001/files/2270/241-femalegenitalmutilationforMIP.pdf>.

191. *Id.*

192. *Id.* The World Health Organization classifies the various forms of female genital mutilation as follows:

Type I — excision of the prepuce, with or without excision of part or all of the clitoris;

Type II — excision of the clitoris with partial or total excision of the labia minora;

Type III — excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);

Type IV — pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue;

scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts);

roughly eighty percent of reported cases involve the excision of the clitoris and the labia minora.¹⁹³ An estimated 130 million women worldwide have undergone FGM and an additional three million girls and women undergo the procedure every year.¹⁹⁴

Subjecting girls and women to FGM violates a number of rights protected in international and regional instruments, such as: the right to be free from all forms of gender discrimination,¹⁹⁵ the rights to life¹⁹⁶ and to physical integrity,¹⁹⁷ and the right to health.¹⁹⁸ FGM is a form of gender discrimination because it aims primarily to control women's sexuality and assigns them a subordinate role in society.¹⁹⁹ Furthermore, FGM compromises the recognition and enjoyment of women's other fundamental rights and liberties, as it violates the right to life in the rare cases in which death results from the procedure.²⁰⁰ Acts of violence that threaten a person's safety, such as FGM, violate a person's right to physical integrity.²⁰¹ "Also implicit in the principle of physical integrity is the right to make independent decisions in matters affecting one's own body. An unauthorized invasion or alteration of a person's body represents a disregard for that fundamental right."²⁰² Finally, because complications associated with FGM often have severe consequences for a woman's physical and mental health, the practice violates women's right to health.²⁰³ But even in the absence of complications, because FGM results in the removal of bodily tissue necessary for the enjoyment of a satisfying and safe sex life, a woman's right to the "highest attainable standard of physical and mental health" has been compromised.²⁰⁴

introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.

Id.

193. *Id.*

194. INNOCENTI RESEARCH CTR., FEMALE GENITAL MUTILATION/CUTTING, *supra* note 187, at 1 (2005).

195. See CEDAW, *supra* note 7, at art. 1.

196. See ICCPR, *supra* note 43, at art. 6.

197. See *id.* at art. 9; African [Banjul] Charter on Human and Peoples' Rights, art. 6, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev. 5 (1981), reprinted in 21 I.L.M. 59 (1982).

198. See CRC, *supra* note 5, at art. 24; ICESCR, *supra* note 34, at art. 12.

199. FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE, *supra* note 185, at 5.

200. *Id.* at 23.

201. *Id.*

202. *Id.*

203. *Id.* at 26.

204. CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION: A MATTER OF HUMAN RIGHTS: AN ADVOCATE'S GUIDE TO ACTION 16 (2003), available at <http://www.reproductiverights.org/pdf/fgmhandbook.pdf> [hereinafter CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION]. For a longer analysis of the rights violations inherent to the practice of female genital mutilation, see *id.*

International treaties directly condemn the practice of FGM.²⁰⁵ The Children's Rights Convention²⁰⁶ and other treaties, such as CEDAW²⁰⁷ and the African Charter on Human and Peoples' Rights²⁰⁸ (African Charter), all condemn practices that threaten the health and rights of women and girls. Female genital mutilation is addressed most explicitly in Article 5 of the 2003 Protocol to the African Charter on the Rights of Women in Africa, which reads:

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards . . . [and] shall take all necessary legislative and other measures to eliminate such practices, including:

(a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;

(b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;

(c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;

205. *Id.* at 25-26.

206. See CRC, *supra* note 5, at art. 24, ¶ 3 (condemning harmful cultural practices); see also CRC, *Concluding Observations of the Committee on the Rights of the Child* for the following countries: Australia, ¶¶ 19, 34, U.N. Doc. CRC/C/15/Add.79 (Oct. 21, 1997); Benin, ¶ 26, U.N. Doc. CRC/C/15/Add.106 (Aug. 12, 1999); Burkina Faso, ¶ 14, U.N. Doc. CRC/C/15/Add.193 (Oct. 9, 2002); Central African Republic, ¶¶ 58-59, U.N. Doc. CRC/C/15/Add.138 (Oct. 18, 2000); Chad, ¶ 29, U.N. Doc. CRC/C/15/Add.107 (Aug. 24, 1999); Côte d'Ivoire, ¶¶ 44-45, U.N. Doc. CRC/C/15/Add.155 (July 9, 2001); Democratic Republic of the Congo, ¶¶ 56-57, U.N. Doc. CRC/C/15/Add.153 (July 9, 2001); Djibouti, ¶¶ 43-44, U.N. Doc. CRC/C/15/Add.131 (June 28, 2000); Egypt, ¶¶ 46, U.N. Doc. CRC/C/15/Add.145 (Feb. 21, 2001); Egypt, ¶¶ 14-15, 64-65, U.N. Doc. CRC/C/15/Add.144 (Feb. 21, 2001); Ethiopia, ¶ 14, U.N. Doc. CRC/C/15/Add.67 (Jan. 24, 1997); Ghana ¶ 42, U.N. Doc. CRC/C/15/Add.73 (June 18, 1997); Guinea, ¶ 26, U.N. Doc. CRC/C/15/Add.100 (May 10, 1999); Lesotho, ¶¶ 47-48, U.N. Doc. CRC/C/15/Add.147 (Feb. 21, 2001); Mali, ¶ 28, U.N. Doc. CRC/C/15/Add.113 (Nov. 2, 1999); Netherlands, ¶ 18, U.N. Doc. CRC/C/15/Add.114 (Oct. 26, 1999); Nigeria, ¶¶ 15, 36, U.N. Doc. CRC/C/15/Add.61 (Oct. 30, 1996); Sierra Leone, ¶¶ 61-62, U.N. Doc. CRC/C/15/Add.116 (Feb. 24, 2000); South Africa, ¶ 33, U.N. Doc. CRC/C/15/Add.122 (Feb. 22, 2000).

207. U.N. General Assembly, CEDAW, *General Recommendation 14, Female Circumcision*, ¶ 215, U.N. Doc. A/45/38 (June 6, 1990); see also U.N. General Assembly, *Report of the Committee on the Elimination of Discrimination Against Women* for the following countries: Burkina Faso, at 27, ¶ 261, U.N. Doc. A/55/38 (Jan. 27, 1999); Cameroon, at 55, ¶¶ 53-54, U.N. Doc. A/55/38 (June 26, 2000); Democratic Republic of the Congo, at 23, ¶¶ 207, 215, U.N. Doc. A/55/38 (Feb. 1, 2000); Senegal, ¶ 721, U.N. Doc. A/49/38 (Apr. 12, 1994).

208. African Charter, *supra* note 197, at art. 18.

(d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.²⁰⁹

In addition to international condemnation, many countries have passed national laws that criminalize FGM.²¹⁰ Fifteen African countries have enacted laws criminalizing the practice.²¹¹ The penalties range from a minimum of six months to a maximum of life in prison.²¹² Several countries also impose monetary fines.²¹³ There have been reports of prosecutions or arrests in cases involving FGM in several African countries.²¹⁴ Twelve high-income nations that receive immigrants from countries where FGM is practiced have passed laws criminalizing it.²¹⁵ In the United States, the federal government and seventeen states have done so.²¹⁶ "France [] has relied on existing criminal legislation to prosecute both practitioners of FGM and parents procuring the service for their daughters."²¹⁷

The international community and many national governments have condemned FGM on paper.²¹⁸ The charge to advocates is to use public awareness and legal challenges to stop the practice.²¹⁹ Advocates can push governments to criminalize FGM.²²⁰ They can also pressure national governments to adopt laws that deter FGM, such as professional sanctions against medical providers who engage in the practice of FGM.²²¹ National governments should fund education programs about the rights, implications, and health effects of FGM and also provide healthcare resources for the treatment of complications from it.²²²

209. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 5, July 11, 2003, O.A.U. Doc. CAB/LEG/66.6 (entered into force Nov. 26, 2005).

210. CTR. FOR REPROD. RIGHTS, FGM, *supra* note 189.

211. These are Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Ethiopia, Ghana, Guinea, Kenya, Niger, Senegal, South Africa, Tanzania, and Togo. *Id.*

212. *Id.*

213. *Id.*

214. *E.g.*, Burkina Faso, Egypt, Ghana, Senegal, and Sierra Leone.

215. These are Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom, and the United States. *Id.*

216. *Id.*

217. *Id.*

218. See generally CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION, *supra* note 204 (assessing the duties of governments under human rights law).

219. *Id.* at 25.

220. *Id.*

221. *Id.* at 25, 30.

222. *Id.* at 32-35.

IV. RECOMMENDATIONS

Governments, non-governmental organizations, individual advocates, and healthcare providers all play a role in ensuring adolescents' reproductive health and well-being.²²³ Though the primary responsibility for respecting, protecting, and fulfilling adolescents' human rights lies with national governments, the international community can help hold governments accountable to broadly accepted human rights standards.²²⁴ These recommendations, which call for both access to services and protection from abuse, are aimed at ensuring adolescents' ability to make and act on informed reproductive decisions.²²⁵

A number of legal and policy approaches should be taken to guarantee the right to security, the right to liberty, the right to be free from sexual violence and exploitation, and the right to health care. These approaches must include greater enforcement of existing international legal protections.

A. *What Governments Can Do*

There are several steps governments can take to begin meeting obligations to international standards. First, governments must ensure adolescents' access to needed healthcare services and education regarding FGM.²²⁶ Governments need to allocate resources to youth-friendly clinics that offer comprehensive and confidential reproductive health care.²²⁷ They should also provide financial and political support to comprehensive sex-education campaigns.²²⁸

Second, governments must adopt and enforce legal measures and employ outreach strategies to protect adolescents' rights.²²⁹ This includes adopting legislation to ban child marriage and FGM, as well

223. *Id.* at 51; *see, e.g.*, CRC, *supra* note 5, at art. 24; ICCPR, *supra* note 43, at pmb.; CEDAW General Recommendation 24, *supra* note 93, at arts. 17, 29, 31; Comment on Rights of the Child, *supra* note 32, at arts. 42, 43.

224. *See, e.g.*, CRC, *supra* note 5, at pmb.; ICCPR, *supra* note 43, at pmb.; CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION, *supra* note 204, at 6, 22.

225. ALFORD, CHEETHAM & HAUSER, *supra* note 70, at 6; *see, e.g.*, CRC, *supra* note 5, at art. 24; CEDAW, *supra* note 7, at art. 10(h).

226. CRC, *supra* note 5, at arts. 24, 28; CEDAW, *supra* note 7, at art. 10(h); CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION, *supra* note 204, at 22.

227. Comment on Rights of the Child, *supra* note 32, at 40; SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 2; Cook & Dickens, *supra* note 6, at 85.

228. CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION, *supra* note 204, at 33-35.

229. *See id.*; SAVE THE CHILDREN, *supra* note 41, at 20-26.

as engaging in public education campaigns or other activities to discourage these practices.²³⁰ Furthermore, governments should explicitly criminalize sexual harassment and abuse in institutions meant to empower adolescents, such as schools, legal clinics, and the domestic arena.

Third, governments must empower married and pregnant adolescents.²³¹ They can do this by providing married adolescents with access to educational and job training opportunities.²³² Governments must also pass legislation which prohibits the expulsion of pregnant adolescents from school.²³³

Finally, governments should be responsible for raising public awareness of adolescents' rights.²³⁴ To achieve this, they can adopt policies reflecting their recognition of the rights of adolescents in the area of sexual and reproductive health.²³⁵ They can also engage in public education campaigns to raise awareness of adolescents' rights and foster sensitivity to the reproductive health concerns of adolescents.²³⁶

B. What Advocates Can Do

Advocates are the most agile of players in the legal system. They can use the international human rights instruments to build and strengthen legal standards that recognize and safeguard adolescents' rights.²³⁷ First, advocates must use international instruments to hold governments to their legal obligations to respect, protect, and fulfill adolescents' reproductive rights. Advocates should also use international law to hold national governments accountable for human rights violations.²³⁸ To achieve this, they can submit shadow reports to the U.N. treaty monitoring bodies, or send communications to U.N. and regional special rapporteurs covering issues of health

230. *Id.*

231. *Id.* at 20-22, 24.

232. *Id.*

233. *Id.* at 22.

234. INT'L PLANNED PARENTHOOD FED'N & FORUM ON MARRIAGE & RIGHTS OF WOMEN & GIRLS, *supra* note 117, at 28; SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 2.

235. CRC, *supra* note 5, at arts. 19, 24; ICCPR, *supra* note 43, at arts. 6, 9, 24.

236. See e.g., ALFORD, CHEETHAM & HAUSER, *supra* note 70; SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 2.

237. See FEMALE GENITAL MUTILATION, *supra* note 185, at 73.

238. CTR. FOR REPROD. LAW & POLICY, FEMALE GENITAL MUTILATION, *supra* note 204, at 46-51.

and violence against women and girls.²³⁹ Advocates can also bring cases on behalf of individual victims of rights violations to national, regional, and U.N. human rights accountability bodies.²⁴⁰

Second, advocates can operate in tandem and through organizations to apply political pressure to governments that lack the legal framework and enforcement capacity to protect adolescents from violence, child marriage, and female genital mutilation.²⁴¹ Finally, in regional and international human rights norm-setting conferences, advocates may emphasize reproductive health of adolescents as a key human rights concern.²⁴²

C. What Health Care Providers Can Do

Health care providers have the ability to make an impact at the individual and local level. Because they are the most direct point of contact with adolescents, the measures they take to promote adolescent autonomy are likely the most important. First, health care providers can ensure that health facilities are youth-friendly and provide confidential, comprehensive services.²⁴³ Second, providers can also make certain that facilities should be staffed with specially trained healthcare providers who can listen without judgment and empower adolescents to make safe choices regarding their reproductive health.²⁴⁴ Providers should be trained to understand adolescents' reproductive rights and their capacity to make health care decisions.²⁴⁵

Third, health care providers should inform adolescents seeking reproductive health care information about their rights as patients.²⁴⁶ For example, adolescents should be made aware of their right to give informed consent and should know about administrative and legal remedies available to them should they experience violations of their rights.²⁴⁷ Healthcare providers should also give adolescents comprehensive information regarding pregnancy and the transmission of STIs.²⁴⁸

239. *Id.* at 49.

240. *Id.*

241. *Id.* at 45-50.

242. *Id.* at 51.

243. SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 2.

244. *Id.*; see also EC/UNFPA, *supra* note 98, at 1-2; Kirby, Laris & Roller, *supra* note 76, at 41-42; Palmer, *supra* note 107, at 1-3.

245. SILENCE AND COMPLICITY, *supra* note 173, at 16, 18, 19.

246. *Id.*

247. *Id.*

248. SEXUAL AND REPRODUCTIVE HEALTH EDUCATION, *supra* note 69, at 2.

CONCLUSION

As a matter of policy, the reproductive and sexual health of adolescents matter because they comprise almost one half of the world's population.²⁴⁹ As a matter of international human rights law, adolescents have reproductive and sexual health rights. This article outlines how the international community must ensure adolescents' access to and exercise of those reproductive health rights. We must enable informed decision-making while also offering state protections for this vulnerable population. Without laws and policies that uphold adolescent health worldwide, future generations will needlessly suffer.

249. Ocampo, *supra* note 2, at iii.