

# Rethinking Population Policies: A Reproductive Rights Framework

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## I. INTRODUCTION

Rising population growth rates in the twentieth century generated widespread media attention and much controversy. National and international policy debates have focused on reducing fertility rates but often with inadequate consideration of the impact on women’s reproductive rights, which are disproportionately—and often negatively—affected as a result. This briefing paper examines the elements of a rights-based approach to population policies and offers four guiding principles, or “pillars,” for crafting policies that safeguard the human rights of all people, including women.

Critics from various disciplines, including economics, health and environmentalism, have analyzed population size. As a result, rapid population growth has long been viewed as detrimental to both future economic growth and the environment. Recently, however, a human rights analysis has also emerged, providing a framework for examining population policies and laws at the level of individuals and groups, such as minorities or indigenous peoples.

Population policies embody attempts by states to address issues affecting their populations’ composition, size and growth.<sup>1</sup> While a population policy should be composed of three elements—fertility, mortality and migration<sup>2</sup>—the recent focus on fertility rates has the effect of limiting women’s reproductive freedom.

### ***Classifying Population Policies***

Population policies that aim to influence birth rates may be classified as either pronatalist or antinatalist. A pronatalist policy exists “to increase population growth by attempting to raise the number of births.”<sup>3</sup> In contrast, an antinatalist policy seeks to limit the number of births and thus lower a country’s population growth rate.<sup>4</sup> The means for enacting pronatalist or antinatalist policies include regulation of the availability of modern contraception, maintenance of restrictive abortion laws, mandatory sterilization policies, generous childcare benefits, and housing subsidies dependent on family size. Governments in Africa, Asia,

**Measuring the Effects of Population Policies:** Demographic change, including fertility modification, can be wrought in many ways.<sup>10</sup> In recent decades, many governments have promulgated formal or explicit policies that declare their intention to adjust their population characteristics.<sup>11</sup> These policy measures can be carried out using a wide and complex range of mechanisms (i.e., federal laws, local regulations, executive proclamations) and sectors (i.e., health, education, tax, housing). In contrast, a broad range of social and economic policies and behavior also result in fertility change, even though such effects may not be intended, obvious or immediate. For example, some industrialized countries, such as the United States, do not have formal population policies with respect to fertility.<sup>12</sup> However, the U.S. does have laws or policies that can lead to variance in fertility patterns such as the following: federal funding for family planning and limited abortion services for low-income women; compulsory, free education for all children; national legislation on maternity leave benefits; and tax breaks for married couples and individuals with children. In the aggregate and over time, various laws and policies contribute to changes in the country's population size. However, it is virtually impossible to track the extent to which these laws and policies result in population changes, including fertility rates, since these changes can take many years.

Europe, and Latin America have taken actions to further antinatalist or pronatalist agendas. For example, a number of countries in sub-Saharan Africa have adopted population policies that explicitly aim to reduce population growth in response to high fertility rates.<sup>5</sup> Similar antinatalist trends can be found in Asia.<sup>6</sup> In contrast, East Central Europe as well as certain countries in Western Europe have been experiencing low or negative population growth<sup>7</sup> and have embraced formal or informal pronatalist policies as a result.<sup>8</sup>

#### ***Population versus Family Planning Policies***

Fertility rates are also controlled through family planning laws or policies, which should be entirely distinct from laws or policies relating to population.<sup>9</sup> The field of population encompasses a wider range of issues than does family planning, which only pertains to achieving desired fertility. Population policy, however, relates to issues of fertility, mortality and migration. The conflation of laws and policies relating to population with those relating to family planning frequently occurs because the population goals of many low- and middle-income countries have often

focused solely on fertility. That population policies have become synonymous with the goal of fertility growth or reduction, and therefore with expanding or contracting family planning services, exposes a fundamental flaw in how recent population policies have been conceptualized.

#### ***Challenges in Evaluating a Rights-Based Policy***

This paper focuses on the written text of population policies. How these policies are implemented is critical to evaluating their conformity with human rights standards. Ultimately, the incorporation of human rights principles into the text of a policy may not further the actual realization of these rights. Nevertheless, analyzing the text of these policies from a human rights perspective is a crucial first step for ensuring that these principles are realized upon implementation. Yet even grounding laws and policies in human rights principles poses challenges. For example, how does one delineate a threshold for how much human rights language is required for classifying a population policy as rights-based? Is mention of human rights sufficient, or must it be part of the policy's objectives,

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or must there be an entire strategy section dedicated to promoting human rights? While this paper does not definitively answer these questions, it provides a starting point.

This paper offers overarching principles that should be considered when determining whether population policies that are concerned with fertility have a reproductive rights orientation. As part of this determination, there are four guiding principles or pillars that can frame any analysis: human rights; a holistic reproductive health approach; advancement of women; and adolescents.

### ***II. Issues to Consider in a Rights-Based Population Policy***

Human rights critics have identified a number of issues that are problematic to a rights-based population policy. These concerns are identified below and should be considered when assessing a population policy.

#### **A. COMPETING RIGHTS**

A fundamental debate over population policies involves issues relating to competing rights and duties: for instance, individual rights versus collective rights, certain collective rights versus other collective rights, and rights versus duties. Some governments, for example, justify their population policies by elevating the supremacy of one group's future over the rights of individuals or other groups. Specifically, when states draft population policies that attempt to alter their population growth rate, they may claim that it is necessary to protect the social and economic welfare of present and future generations. According to this reasoning, high rates of population growth lead to a larger pool of people consuming a limited amount of social, economic and environmental resources, thereby endangering a country's capacity to meet the needs of its current and future population.<sup>13</sup> Therefore, the logic continues, governments are justified in employing measures that seek to curb population growth and in directing their residents to comply with such objectives.<sup>14</sup>

In practice, certain individuals—mainly women—are required to change their behavior. Underlying this approach is the rationale that individuals must exercise their reproductive rights with consideration for the consequences that they have on their community. In other words, reproductive rights must be enjoyed along with their correlative reproductive duties.<sup>15</sup> Advocates of this approach claim that a true human rights perspective comprises the totality of competing human rights, defined as including the rights of successor generations to attain a certain quality of life.<sup>16</sup> Governments that support this view sometimes carry it out through the use of fertility quotas or targets that seek to lower the rate of births per woman. Such measures entail restraints on women's right to reproductive self-determination and, in many cases, their right to bodily integrity.

Human rights activists have criticized such utilitarian views towards population size and,

specifically, women's reproductive capacity, on both ideological and practical grounds. These activists reject the underlying premise that the preservation of future collective rights is more important than limitations on current collective or individual rights.<sup>17</sup> Reproductive health activists point out that the compromises necessary to attain such population goals are often borne by women, who must modify their reproductive behavior or have it modified for them.<sup>18</sup> They claim that in reality, the implementation of these policies with their focus on women's bodies has led to serious infractions of human rights and cannot be justified by generalized societal objectives,<sup>19</sup> especially when the effects of existing practices to future generations are unknown.<sup>20</sup>

### **B. ECONOMIC INEQUALITY**

Issues of economic inequality, both at the international and national levels, are an important aspect of the dialogue on population. Economic disparities are seen at the global level among low-, middle- and high-income countries. Additionally, class divisions at the national level play a role in population policy. While pronatalist governments have used the rationale of the greater social good to urge their citizens to bear more children,<sup>21</sup> governments in countries with high fertility rates more often use the principle of social duty to support population stabilization policies. These high fertility countries are also predominantly low- and middle-income countries.<sup>22</sup> For example, the average fertility rate is 5.83 children in East Africa, 5.57 children in West Africa, 3.57 children in Western Asia, 3.25 children in South Central Asia, 2.76 children in Central America, 1.9 children in North America, and 1.5 children in Western Europe.<sup>23</sup> As these numbers demonstrate, it is primarily women from lower-income countries, and often lower-income women within those countries, who are called upon, or compelled, to compromise their reproductive rights for societal goals. Reproductive health activists criticize this emphasis on women from impoverished countries, asserting that the consumption patterns of high-income countries are as great a danger, if not greater, to the earth's limited resources.<sup>24</sup> At the same time, low-income women from high-income countries are also disproportionately affected by fertility control policies. For example, in the 1970s the receipt of state benefits for needy women in the United States was contingent upon their acceptance of being sterilized.<sup>25</sup>

### **C. TARGETS**

Population policies employ various methods to achieve their goals, including the establishment of numerical goals or targets. These targets serve a variety of purposes, such as increasing contraceptive prevalence, lowering population growth rates, decreasing maternal mortality, or raising the enrollment of girls in school. Jamaica's National Population Policy of 1992, for instance, sought to increase its 1989 contraceptive prevalence rate of 55% to 63% by 2000.<sup>26</sup> While some of these statistical goals are seen as a serious commitment by governments to improve reproductive health indicators, other targets remain more controversial. In particular, the international community has agreed that targets seeking to coercively impose ceilings on birth rates violate women's right to decide the number and spacing of their children.<sup>27</sup> While the actual designation of quotas may not be a human rights violation per se, the manner in which these quotas are filled may lead

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to such abuses. For example, an antinatalist country that sets a fertility goal of two children per woman either may develop policies that improve access to contraception and liberalize abortion laws to enable women to voluntarily meet their reproductive goals, or it may institute laws that deny state benefits to individuals with more than two children, which is an arguably more discriminatory measure. Governments objected to the use of certain demographic targets at the 1994 United Nations International Conference on Population and Development (ICPD). The ICPD's outcome document, the ICPD Programme of Action, differentiates between population goals that seek to advance development objectives in the family planning context (i.e. by fulfilling the unmet need for information and services) and goals that require service providers to fulfill targets or quotas for recruiting clients.<sup>28</sup> These two strategies have widely different implications for the promotion of human rights.

### **D. INCENTIVES AND DISINCENTIVES**

Incentives and disincentives are also used to fulfill the goals of population policies and can come in many forms and uses: they can be directed toward the medical providers, the users or the recruiters; they can be social (i.e., community stigmatization) or economic, which may be represented by cash or in-kind subsidies; and they can be designed to directly or indirectly influence reproductive behavior.<sup>29</sup> In Iran, the 1993 population law provides disincentives for families with four or more children by suspending privileges once a fourth child is born and by establishing separate maternity leave benefits for a woman who bears a fourth child.<sup>30</sup> India's 2000 National Population Policy has an elaborate section on incentives to decrease fertility rates, including the provision of cash awards to mothers and couples who wait to have their first child, limit their number of children or undergo sterilization.<sup>31</sup>

A central question posed by reproductive rights advocates is whether incentives are inherently coercive.<sup>32</sup> Critics claim that different factors, such as the individual's socioeconomic background, the recipient's gender, the types of incentives, and the means by which they are enforced, can turn incentives into compulsory measures.<sup>33</sup> These critics maintain that offering financial or other benefits to impoverished women to either engage in or abstain from certain reproductive actions creates an inherently involuntary choice.<sup>34</sup> Others acknowledge the pressures associated with incentives, but claim that some incentives can actually expand the choices available to women by counterbalancing the anti- or pro-birth tendencies of certain societies.<sup>35</sup> Still others assert that incentives are preferable to disincentives, as the latter inflict punitive measures on individuals.<sup>36</sup>

The ICPD Programme of Action also skeptically views the use of incentive and disincentive schemes to influence fertility rates. It states that most of these programs have had a minimal effect on fertility and have instead been detrimental in some situations.<sup>37</sup>

## ***III. FOUR PILLARS FOR A REPRODUCTIVE RIGHTS***

At their core, reproductive rights are founded upon the 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.

## ***APPROACH TO POPULATION POLICIES***

The four pillars we identify for a rights-based population policy are derived from major international conference documents as well as international treaties. The 1994 ICPD held in Cairo signifies a landmark in the field of population policy, as it was the first time an international consensus document addressing population was grounded in a reproductive rights approach. In addition to this event, the five-year follow-up to the ICPD (ICPD+5),<sup>38</sup> the 1995 United Nations Fourth World Conference on Women in Beijing (Beijing Conference)<sup>39</sup> and the five-year follow-up to the Beijing Conference (Beijing+5)<sup>40</sup> all represent major influences in the conceptualization of population and reproductive health programs, particularly those based in reproductive rights. The ICPD and Beijing Conference documents not only recognize the pivotal role of women in the formulation of laws and policies relating to population and development, they highlight the necessity of securing women's rights and equality. Additionally, these documents expand upon the traditional notion of population and include more than just family planning services. Nonetheless, the ICPD and Beijing Conference outcome documents also contain shortcomings that reflect the influence of conservative forces on the outcome of conference negotiations.<sup>41</sup> As such, both documents are weak in areas such as abortion rights, adolescent access to information and program funding.<sup>42</sup> The guidelines below, however, attempt to embrace the full range of reproductive health services and reproductive rights standards.

For each pillar discussed below, examples of government population policies in support or violation of the principle follow, except in cases where a suitable model could not be found. These examples are based on written policies or laws that may have vastly different consequences if they are implemented. Although laws and policies promulgated by various branches and levels of government affect fertility, our examples are drawn from a government's national-level laws and policies. In general, neither regional nor local laws, policies or regulations will be discussed.

### **A. HUMAN 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 concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.<sup>43</sup>*

ICPD Programme of Action, Para. 7.3

Every law or policy addressing population issues, especially those relating to fertility,

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should be grounded in respect for and promotion of human rights, particularly the reproductive rights of women. The ICPD Programme of Action recognizes the central role of human rights in the context of population policies; the preamble states that it “affirms the application of universally recognized human rights standards to all aspects of population programmes.”<sup>44</sup> The principal international human rights that are relevant to population policies are as follows:

1. The Right to Life, Liberty and Security;<sup>45</sup>
2. The Right Not to Be Subjected to Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment;<sup>46</sup>
3. The Right to be Free from Gender Discrimination;<sup>47</sup>
4. The Right to Modify Customs that Discriminate Against Women;<sup>48</sup>
5. The Right to Health, Reproductive Health and Family Planning;<sup>49</sup>
6. The Right to Privacy;<sup>50</sup>
7. The Right to Marry and Found a Family;<sup>51</sup>
8. The Right to Decide the Number and Spacing of Children;<sup>52</sup>
9. The Right to Education;<sup>53</sup>
10. The Right to be Free from Sexual Assault and Exploitation;<sup>54</sup> and
11. The Right to Enjoy Scientific Progress and to Consent to Experimentation.<sup>55</sup>

Together, these rights comprise the subset of reproductive rights. At their core, reproductive rights are founded upon the 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.<sup>56</sup> Every population policy should explicitly incorporate this right and use it to guide the remainder of its text. Broadly conceived, however, reproductive rights encompass two major principles: the right to reproductive health care and the right to reproductive self-determination. The former right includes the full spectrum of reproductive health services as described in the second pillar below. The right to reproductive self-determination is composed of the right to plan one’s family, the right to freedom from interference in reproductive decision-making and the right to be free from all forms of violence and coercion that affect an individual’s sexual or reproductive life.

### **Positive Example: South Africa**

South Africa adopted a commendable rights-based approach in its 1998 population policy. Before crafting a new population policy, the government circulated a Green Paper that invited individuals, organizations and the media to provide input on what approaches the government should take regarding population matters.<sup>57</sup> Upon opening this debate, the government stressed the ICPD as the starting point for any dialogue relating to a population policy.<sup>58</sup> Government officials also declared that “the ICPD Programme of Action emphasizes the importance of human rights, and that all programmes must be implemented within a framework of internationally accepted human rights.”<sup>59</sup>

As adopted, the 1998 Population Policy for South Africa follows the mandate of the ICPD

conference and establishes the human rights framework as the first of its 12 “Guiding Principles of the Policy.”<sup>60</sup> These 12 principles “provide the ethical context for a human rights approach to integrating population concerns into development planning, implementation and monitoring.”<sup>61</sup> One of these principles affirms the definition of reproductive rights as established in the ICPD Programme of Action, Paragraph 7.3: “All couples and individuals have the basic right to decide freely and responsibly on the number and spacing of their children, and to have the information, education and means to do so.”<sup>62</sup> Interspersed throughout the policy are references to principles of human rights, including free and informed choice, non-discrimination, equal access to reproductive health care, and women’s rights. It is even more momentous in its explicit language regarding the link between human rights violations and fertility goals: “Government imposed and driven fertility control measures are not reconcilable within freedom of choice and human rights.”<sup>63</sup> South Africa provides a worthy model for a human rights-based population policy.

***Negative Example: China***

On the opposite end of the spectrum stands China’s antinatalist population policy, recently codified into a national law in its 2001 People’s Republic of China Law of Population and Family Planning.<sup>64</sup> It should be noted that the new law has changed in certain respects from the old policy. However, this analysis focuses on a series of policy documents, including government reports, directives and proclamations beginning in 1979, that formed China’s policy on population prior to its recent promulgation into law.<sup>65</sup> Throughout the course of its population policy, China had bluntly and repeatedly stated that controlling population growth was a national priority.<sup>66</sup> While the policy was intended to be part of a wider economic development plan, because of the preoccupation with reducing birth rates the population policy had principally functioned as a family planning program. The government’s imposition of coercive demographic targets and systems of incentives and disincentives had led to the violation of numerous human rights.<sup>67</sup>

In order to meet its demographic targets,<sup>68</sup> China’s policy called on all couples to have no more than one child,<sup>69</sup> with exceptions made for special categories of people, such as ethnic minorities and rural couples. The policy had been enforced through a scheme of rewards and punishments implemented at the provincial level.<sup>70</sup>

The program of incentives and disincentives was promoted by the central government. Soon after the policy was instituted, the government stated that single children and their families should receive special attention, including privileges and subsidies in housing, education, health care, and employment.<sup>71</sup> In contrast, “...those who do not act according to or in compliance with the policy of family planning...must [be] subject[ed] to appropriate economic sanctions.”<sup>72</sup> Such sanctions included deduction of wages, deprivation of agricultural land, elimination of medical attention, and denial of welfare benefits.<sup>73</sup> The government also encouraged the use of “disciplinary action or administrative penalty” against those who did not adhere to the policy.<sup>74</sup> Its harshness was evident in its

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directives: “Where there are evil people who actually sabotage or undermine the policy of family planning, we must mobilize the masses to expose them in a timely way and subject them to severe treatment by the judiciary and by related departments.”<sup>75</sup> While the government maintained that coercion was prohibited,<sup>76</sup> it condoned regulations that imposed sterilizations, abortions or implantation of IUDs in women who had reached or exceeded the birthing limits.<sup>77</sup> China’s population policy also carried a eugenics dimension by denying people with genetic diseases permission to marry or have children.<sup>78</sup>

The one-child rule that applied to many residents violated the basic reproductive right to decide the number and spacing of one’s children. It intruded on the rights to privacy and the right to found a family. In addition, the scheme of coercive rewards and penalties as well as the eugenics components breached the principles of free consent and non-discrimination. Finally, the practice of forced abortions, sterilizations and other birth control procedures violated basic rights to liberty, security, bodily integrity, and freedom from cruel and inhuman treatment or punishment.

### B. A HOLISTIC REPRODUCTIVE HEALTH APPROACH

*Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.*<sup>79</sup>

ICPD Programme of Action, Para 7.2

The framework for all population policies should be embedded in a holistic approach toward reproductive health care. In the context of population policies, this principle requires that there should not be a singular focus on fertility or family planning services. Many of the elements encompassed by comprehensive reproductive health care are as follows:

- family-planning counseling, information, education, and services;
- education and services for prenatal care, safe delivery and postnatal care;
- prevention and appropriate treatment of infertility;
- abortion services;
- treatment of reproductive tract infections, sexually transmissible infections (STIs) and other reproductive health conditions;
- information, education and counseling, as appropriate, on human sexuality, reproductive health and responsible parenthood; and
- discouragement of harmful traditional practices, such as female circumcision/female genital mutilation (FC/FGM).

The items listed above, with the exception of abortion services, are included as essential components of reproductive health care in Paragraph 7.6 of the ICPD Programme of Action.<sup>80</sup> Despite the negative implications that restrictive abortion laws have for women's health and rights,<sup>81</sup> conservative countries have blocked the inclusion of safe, legal abortion services (without restriction as to reason) as part of comprehensive reproductive health care in the consensus documents agreed to at ICPD and other UN conferences.

The ICPD Programme of Action's "compromise" provision provides that "in circumstances where abortion is not against the law, such abortion should be safe."<sup>82</sup> The Beijing document went further in recommending that governments "consider reviewing laws containing punitive measures against women who have undergone illegal abortions."<sup>83</sup> The ICPD+5 document went further still in declaring that where abortion is legal, government health systems must ensure that it is safe and accessible to all women and that "[a]dditional measures should be taken to safeguard women's health."<sup>84</sup> Thus, while there is support for addressing unsafe abortion, these international consensus documents do not go far enough in affirming that abortion is a basic human right for all women. A policy that advocates a holistic approach toward reproductive health care must also include safe and legal abortion services.

In addition to the availability of services for abortion, maternal health, sexually transmissible infections, and other aspects of reproductive health, a population policy focusing on fertility that is rooted in a holistic approach must also take into account certain relationships and principles of providing reproductive health services. That is, a holistic framework includes principles of choice, non-coercion, confidentiality, privacy, non-discrimination, and quality of care as central tenets of providing basic health care.<sup>85</sup> These values must be incorporated into the special relationship between providers and patients, as well as enforced against private and public actors and institutions.

An important characteristic of holistic population policies is the role of male participation. Population policies that ignore gender and are oriented toward influencing only women's behavior ignore the reality of men's dominant positions in reproductive decision-making as partners, relatives, policymakers, service providers, and gatekeepers. The ICPD Programme of Action identifies numerous areas where efforts should be made to promote male involvement, including "responsible parenthood," responsible sexual and reproductive behavior, prevention of STIs, avoidance of unwanted and high-risk pregnancies, and "shared control of and contribution to family income, children's education, health, and nutrition."<sup>86</sup> In addition, reproductive health programs should offer men the full range of services and information that are necessary to help them exercise responsible reproductive behavior.

Finally, a population policy with a holistic reproductive health orientation should be integrated into the country's larger economic and social policies. Therefore, such a policy should be created and applied so that it is connected with other policies regarding health, development, employment, education, and civil rights. The panoply of such laws and policies should serve to reinforce, but not duplicate or contradict, one another.

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### **Positive Example**

After extensive research, we determined that a suitable positive model could not be found for this pillar.

### **Negative Example: Romania**

One of the most egregious and harmful historical examples of a non-holistic reproductive health approach can be found under President Nicolae Ceausescu's regime in Romania from 1965–1989. Ceausescu sought to increase the low population growth rate in his country through an extremist pronatalist agenda. He carried out his population goals through an informal population policy, or one that was not centralized in a single, written and explicit document. The reproductive health policies under his rule prohibited access to essential health services. He blocked provision of abortion services except in the most limited of circumstances, made the requirements for sterilization even more restrictive than abortion and completely banned contraceptives.<sup>87</sup> Therefore, family planning services were essentially redefined as pro-birth services.

This pronatalist policy extended to sectors outside of health. For example, extra taxes were exacted from unmarried people older than 25 as well as from couples married for two years without children who did not medically certify themselves to be infertile.<sup>88</sup> Coercive incentives and disincentives were also used in labor policies. If factories did not meet their state-mandated birth quotas, company doctors would not receive their full salaries. To ensure that pregnancies were carried to term, mandatory gynecological check-ups were instituted for women in the workplace; those who declined lost their right to certain benefits, such as medical care, pensions and social security.<sup>89</sup> A special unit to investigate illegal abortions was even formed by the Romanian State Security Police, who stationed agents in maternity wards and obstetrical-gynecological clinics.<sup>90</sup>

Such destructive policies took a devastating toll on Romanians' health. Under the Ceausescu government, Romania had the highest maternal mortality rate in Europe and one of the highest infant mortality rates.<sup>91</sup> Between 1966 and 1989, the restrictive pronatalist policy resulted in an increase in the maternal mortality ratio from 85 deaths per 100,000 live births in 1965 to 170 per 100,000 in 1983.<sup>92</sup> Moreover, unofficial estimates indicate that almost 20% of women of reproductive age may have become infertile because, on average, every woman may have undergone at least five illegal, unsafe abortions by age 40.<sup>93</sup> These policies also had a devastating effect on Romanian children, resulting in thousands of orphans being left to suffer from illness and poverty.<sup>94</sup>

### **C. ADVANCEMENT OF WOMEN**

*Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes.<sup>95</sup>*

**Every population policy should proclaim that raising the status of women and protecting their human rights is a fundamental goal of the policy.**

The third pillar involves mechanisms that strive to advance women's status in their societies. While the empowerment of women is an extremely important objective in and of itself, numerous commentators have indicated that this achievement is also necessary to a successful population policy.<sup>96</sup> The ICPD Programme of Action reflects this view: "Experience shows that population and development programmes are most effective when steps have simultaneously been taken to improve the status of women."<sup>97</sup> Every population policy should proclaim that raising the status of women and protecting their human rights is a fundamental goal of the policy.

Support for ensuring women's human rights and empowerment is found in several international instruments. The international treaty that best reflects this principle is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW obliges states parties to prohibit discrimination against women and secure their full development and advancement by adopting measures in various areas including social, political, economic, cultural, health, and legal matters.<sup>98</sup> These responsibilities are reiterated in the Beijing Conference and Beijing+5 documents, which provide numerous objectives and actions to be taken.

These international instruments emphasize that a policy that advocates for the advancement of women's roles must be broad-based. According to the United Nations, policies that endorse women's empowerment stress "...the importance of addressing years of discrimination against women by devising programmes and strategies that increase women's skills, capacities, rights, and opportunities."<sup>99</sup> Multidisciplinary strategies must be integrated into any population policy. Such strategies should include, but not be limited to the following:

- Education for women at all levels, including building awareness of how to fulfill their basic needs and enjoy their human rights;
- Economic opportunities, job training and skills, and income-generating schemes, including those beyond traditional occupations;
- Equal involvement in policy- and decision-making processes in all areas of public and private life;
- Increased political participation by women at the national and local levels, including employment of women in the government;
- Equal access to health care, nutrition and natural resources;
- Employment and promotion of women in leadership roles in family planning programs and other health services;
- Gender sensitivity training for health-service workers;
- Elimination of violence against women;
- Awareness of the special needs of certain groups of women, such as those who are elderly, young, rural, indigenous, disabled, racial or ethnic minorities,

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- refugees or internally displaced, and exposed to armed conflict;
- Removal of legal inequities and discrimination against women, especially in such areas as marriage, divorce, inheritance, property, labor, education, and credit; and
- Increased allocation of funds to carry out these strategies and to implement other women's programs.

### **Positive Example: Mexico**

An older version of Mexico's National Program on Population (1995–2000) provides a fine example of a policy that embraced the advancement of women as an integral part of its national population and development strategy. This analysis will not focus on the new National Program of Population (2001–2006), which was enacted in July 2002.<sup>100</sup> The earlier program was conceived after the government passed its current 1993 General Population Law and its accompanying regulations. The earlier population policy included as one of its six major objectives the participation of women, on a basis of equality with men, in the country's economic, social, educational, cultural, and political processes.<sup>101</sup> In turn, the policy specified that the empowerment of women would be one of its eleven main strategies.<sup>102</sup> Thereafter, the policy devoted much attention to laying out the methods by which it sought to promote the full and effective participation of women in the economic, social, political, and cultural life of the nation and to create the necessary conditions for women's active involvement in the decisions, responsibilities and benefits of development. It included multiple and cross-cutting actions to achieve its objectives, some of which were the following: legislative reform to achieve equal rights; elimination of discrimination and violence against women; participation of women in public life, including decision-making; equality in the home and in family responsibilities; incorporation of women into economic activities, including employment opportunities; access to education at all levels; and provision of health services, particularly reproductive health services.<sup>103</sup> Its multisectoral and detailed strategies provided a strong basis from which to raise the status of women in Mexican society.

### **Negative Example: Indonesia**

In recent years, those countries that have promulgated population policies have recognized the critical role of women's status and have made the advancement of women a key objective of such policies. While most countries have discussed women's concerns in their policies, they may not have been comprehensive enough. In contrast, however, Indonesia almost entirely disregarded women's empowerment in its 1992 Law of the Republic of Indonesia Concerning Population Development and the Development of Happy and Prosperous Families (Population Law) and its accompanying Elucidation of the Population Law.<sup>104</sup>

Under its chapter on "Principles, Directions and Objectives," the population law intends to develop "happy and prosperous families" and supports the principles of "balance," "harmony," "physical welfare," and "human dignity."<sup>105</sup> Nonetheless, it also enunciates such concerns as "controlling the size of the population" and "development of popula-

tion quality.”<sup>106</sup> Nowhere in this section, however, is there any reference to the role of women in population matters. Instead of promulgating a multisectoral and rights-based policy, the government has implemented a law that is strictly antinatalist and treats family planning and population measures as tools for reducing family size. For example, it defines family planning as efforts to “create small, happy and prosperous families.”<sup>107</sup> Asserting that family planning is tantamount to having small families subverts the very purpose of family planning, which is to allow individuals to control their family size, whether large or small. Defining family planning in this way violates women’s right to decide the number of their children and dismisses the role of women as individual and free agents.

The lack of attention to women’s issues in the Indonesian law is most blatant under the section on “Rights and Obligations.” While this chapter enumerates various rights, there is no identification of rights pertaining to gender, sex or women within the text of the law. Only in the Elucidation of the Population Law is there a prohibition of gender discrimination, but it is limited to the following context: “In planning development, including the planning of population development, every demographic group must be included in the calculation.... For example, in population registration and census, territorial division ... and so forth, there shall be no discrimination on the basis of ... gender.”<sup>108</sup> This brief gender provision does not reflect a holistic and multidisciplinary approach toward women’s rights. More revealing is a comment in the general introductory section under the Elucidation: “Bearing in mind that policies on population affairs and family welfare comprise various aspects, among others citizenship, population census, health, manpower, transmigration, marriage, social welfare, children’s welfare, environment...”<sup>109</sup> The omission of women in this broad conceptualization of population issues is disturbing.

The one article within the law’s text that espouses a women’s rights principle requires that the “husband and wife have equal rights and responsibilities” and “equal status in determining the method of birth control” that they use.<sup>110</sup> Again, there is no strategy for addressing women’s grossly unequal status. There are two instances in which the elucidation states that efforts should be made toward “improving the role of women.”<sup>111</sup> However, no strategies or plans are delineated to accomplish this goal. The government of Indonesia has not demonstrated sufficient commitment to enhancing the status of women within its population law. This law sets a disturbing tone that indicates the government’s lack of respect for promoting women’s rights and equality.

#### **D. ADOLESCENTS**

*Youth should be actively involved in the planning, implementation and evaluation of development activities that have a direct impact on their daily lives. This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases.*<sup>112</sup>

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Adolescents—defined as those who fall between the ages of 10 and 19—<sup>113</sup> are a particularly vulnerable segment of the population whose needs, especially those pertaining to their reproductive health, are largely neglected. However, adolescents comprise 20% of the world's population<sup>114</sup> and their informed participation is necessary for a sustainable population or development program. Moreover, many adolescents are increasingly becoming more sexually active, whether within or outside marriage and whether consensually or not.<sup>115</sup> These pressing realities require that the fourth pillar of any population policy consist of attention to the rights and needs, including those relating to reproductive health care, of adolescents.

Adolescents' reproductive rights have been established under international law. Their right to health, which includes reproductive health, was first given international legal protection in the 1990 Convention on the Rights of the Child.<sup>116</sup> The ICPD and Beijing consensus documents affirm and elaborate on the reproductive rights and concerns of adolescents. In particular, the Beijing Platform for Action states the following:

*The International Conference on Population and Development recognized, in paragraph 7.3 of the Programme of Action, that “full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality,” taking into account the rights of the child to access to information, privacy, confidentiality, respect and informed consent, as well as the responsibilities, rights and duties of parents and legal guardians to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention on the Rights of the Child, and in conformity with the Convention on the Elimination of All Forms of Discrimination against Women.*<sup>117</sup>

While international instruments recognize the right of parents and guardians to provide guidance regarding reproductive health matters,<sup>118</sup> these documents also declare that the best interests of the child takes precedence in all instances.<sup>119</sup>

As with women's empowerment, the incorporation of adolescents' needs and rights must also be multifaceted. Population policies should therefore address a broad spectrum of adolescents' social, economic, political, legal, cultural, and health issues in a holistic manner. Some of these issues include access to reproductive health care; education, including in matters of sexual and reproductive health; child and forced marriage; contraception, especially unmet need; unsafe delivery and early childbearing; unsafe abortion; STIs, including HIV/AIDS; sexual violence; responsible male behavior; harmful traditional practices, including FC/FGM; vocational training; and removal of legal barriers and discrimination, such as parental consent requirements.

**Positive Example: Ghana**

Ghana's 1994 National Population Policy, which is still in effect, provides an example of a policy that has comprehensively addressed the special concerns of adolescents.<sup>120</sup> It notes that its population is young, with children (defined as 0–9 years old) and youth (defined as 10–25 years old) making up 64% of the population in 1984.<sup>121</sup> The issues it focuses on include education and training, employment, family life education, recreation, and the general welfare of children and youth.<sup>122</sup>

In concrete terms, this interest in adolescents is displayed in its objectives and strategies. One of its 16 objectives is “[t]o educate the youth on population matters which directly affect them such as sexual relationships, fertility regulation, adolescent health, marriage and child bearing, in order to guide them towards responsible parenthood...”<sup>123</sup> Another objective is to “[t]o promote sound social welfare programmes that would take care of the special needs of the youth...”<sup>124</sup> The National Population Policy details five broad-based strategies under its section on “Children and Youth” to carry out its objectives. These strategies involve problems relating to economic productivity, social life, sexual and reproductive health, early marriage or parenthood, displaced or homeless youth, and delinquents.<sup>125</sup> It sets targets to help actualize its goals; for example, it endeavors to reduce by 80% the number of adolescents marrying before age 18 and also to raise by 80% the proportion of women aged 15–19 with secondary education or higher by 2020.<sup>126</sup> It commits to achieve its aims through legal measures: “Laws will be enacted, or where such laws already exist they will be enforced, to enhance the rights and access of children and youth to education, health and employment.”<sup>127</sup>

Complementing its population policy, Ghana has also enacted an Adolescent Reproductive Health Policy (1996) that provides a further guideline to government agencies in responding to the reproductive health needs of adolescents. This policy affirms the rights of adolescents regarding comprehensive sexual and reproductive health services and information.<sup>128</sup> Among its objectives, it seeks to provide for education programs on reproductive health; programs to decrease early pregnancy, reproductive tract infections, STIs including HIV, unsafe abortions, FC/FGM, and early marriage; programs for marginalized adolescent groups; policies to improve access to education and employment opportunities; and policies to eliminate violence against adolescents and abuses against the girl-child.<sup>129</sup>

**Negative Example: Burkina Faso**

Burkina Faso's 1991 Population Policy does not make a strong commitment to meeting the needs of its adolescent population. The policy rests on a number of principles and assumptions, none of which mention adolescents. None of the policy's 16 general objectives incorporate the issues facing adolescents either. The few instances in which the population policy does reference adolescents are all restricted to matters of information and education. For instance, it includes only three specific objectives that deal with youth: to make population information more widely available, especially to adolescents, by 2005;<sup>130</sup> to enable individuals to become more responsible parents;<sup>131</sup> and to promote

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equal access to education for girls through sensitization campaigns aimed at parents.<sup>132</sup> The only attention paid to adolescents in the section on “Fertility and Family Planning” pertains to family life education in schools. Thereafter, there are only two other instances in which adolescent concerns are addressed, both within the section on “Information, Education and Communication in Matters of Population.”<sup>133</sup> Burkina Faso’s population policy fails to meet the reproductive health needs of its adolescent population by focusing on only one component of reproductive health care—information and education—rather than the full range of services to which adolescents are entitled, including counseling, access to contraception, prevention and treatment of STIs, and maternal health services for pregnant adolescents. Not only does the population policy fail to guarantee comprehensive reproductive health care, it also falls short of promoting a multidisciplinary strategy toward meeting adolescents’ needs by neglecting to include areas outside of education.

### ***IV. CONCLUSION***

As the world’s population size continues to expand and countries strive to deal with the challenges of development, the formation of population policies and laws that focus on fertility will become more important. The focus on population numbers at the expense of human rights is countereffective and even harmful to the goals of social and economic development. In contrast, laws and policies that promote women’s rights—their human rights, their right to holistic reproductive health care, the improvement of their social, political, and economic status, and their unique rights and needs during adolescence—will lead to success in the larger goals of national development. Since these laws and policies affect the most basic functions and needs of human life, it is crucial that they are created and implemented in a manner that protects the rights of all people. As has been the case previously and as is the case currently, women are particularly vulnerable to violations of their reproductive rights when governments attempt to affect their population growth rates rapidly. Therefore, the four guiding pillars we elucidate in this paper—human rights, a holistic approach to reproductive health, women’s advancement, and adolescent issues—should always be considered when population policies are enacted.

ENDNOTES

- 1 See ROLAND PRESSANT, THE DICTIONARY OF DEMOGRAPHY 177 (Christopher Wilson ed., 1985) [hereinafter PRESSANT].
- 2 See *id.*
- 3 UNITED NATIONS, POPULATION INFORMATION NETWORK (POPIN), DICTIONARY OF DEMOGRAPHIC AND REPRODUCTIVE HEALTH TERMINOLOGY (DRAFT) (1999), available at <http://www.popin.org/~unpopterms/> (last visited Aug. 13, 2002).
- 4 See *id.*
- 5 See UNITED NATIONS POPULATION FUND (UNFPA), BACKGROUND PAPER: POPULATION GROWTH AND ECONOMIC DEVELOPMENT: THE POLICY RESPONSE OF GOVERNMENTS 4-6 (1993), available at <http://www.un.org/popin/unfpa/pubs/econmeet/sect6.html> (last visited Aug. 13, 2002) [hereinafter UNFPA BACKGROUND PAPER]; See, e.g., OFFICE OF THE PRIME MINISTER, NATIONAL POPULATION POLICY OF ETHIOPIA at 26-28 (April 1993); NATIONAL POPULATION COUNCIL, GOVERNMENT OF GHANA NATIONAL POPULATION POLICY preface, § 1.2, 2.2, 2.4, 4.2.4, 4.3.5, 4.3.7, 4.4.1, 4.4.2 (Revised ed. 1994) [hereinafter GHANA POPULATION POLICY]; NATIONAL ECONOMIC PLANNING COMMISSION, ZIMBABWE: NATIONAL POPULATION POLICY preface (1), executive summary (3-4), § 1.1, 1.3, 2.5, 3.1.1, 4.2.2, 4.3.2.1, 4.4.3 (October 1998); NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT, SESSIONAL PAPER NO. 1 OF 2000 ON NATIONAL POPULATION POLICY FOR SUSTAINABLE DEVELOPMENT OF REPUBLIC OF KENYA § 2.0(i), 3.2, 4.1.1(i)(iii), 4.2.1, 6.1 (iii), 6.2 (i)(iii), 6.3.1 (vi) (2000); PRESIDENT'S OFFICE, THE PLANNING COMMISSION, NATIONAL POPULATION POLICY OF THE UNITED REPUBLIC OF TANZANIA i-iv, § A.2, B.6-9, B.12, D.20 (1992); MINISTER OF HEALTH, NATIONAL POLICY ON POPULATION FOR DEVELOPMENT, UNITY, PROGRESS AND SELF-RELIANCE OF THE FEDERAL REPUBLIC OF NIGERIA § 1.2, 1.3, 1.5, 2.1-2.2, 2.4, 3.1-3.6, 4.1.3, 4.2.1-4.2.2, 4.3.1.3, 4.3.4 (1988); CONSEIL NATIONAL DE LA POPULATION [NATIONAL COUNCIL OF POPULATION], MINISTERE DU PLAN ET DE LA COOPERATION [MINISTRY OF PLANNING AND COOPERATION], POLITIQUE DE POPULATION AU BURKINA FASO [POPULATION POLICY OF BURKINA FASO] § 3.2.2 (1991) [hereinafter POPULATION POLICY OF BURKINA FASO]; MINISTERE DÉLÉGUÉ AUPRÈS DU PREMIER MINISTRE CHARGÉ DU PLAN ET DU DÉVELOPPEMENT INDUSTRIEL [MINISTRY DEPENDENT OF THE PRIME MINISTER IN CHARGE OF INDUSTRIAL PLANNING AND DEVELOPMENT], RÉPUBLIQUE DE CÔTE D'IVOIRE [REPUBLIC OF IVORY COAST], COMMUNICATION EN CONSEIL DES MINISTRES [NATIONAL MINISTRY COMMUNICATION], NOTE DE PRÉSENTATION DE LA DÉCLARATION DE POLITIQUE NATIONALE DE POPULATION [PRESENTATION OF THE DECLARATION OF NATIONAL POPULATION POLICY] at 6, item 1 (1997); MINISTERE DE L'ECONOMIE, DES FINANCES ET DU PLAN, REPUBLIQUE DU SENEGAL [MINISTRY OF ECONOMY, FINANCE, AND PLANNING OF REPUBLIC OF SENEGAL], DECLARATION DE LA POLITIQUE DE POPULATION [DECLARATION OF THE POPULATION POLICY] § 3.2.1 (1994); MINISTERE DU PLAN ET DE LA COOPERATION, REPUBLIQUE DE CHAT [MINISTRY OF PLANNING AND COOPERATION, REPUBLIC OF CHAD], POLITIQUE DE POPULATION [POPULATION POLICY] at 8, B, 3rd bullet (1994).
- 6 See UNFPA BACKGROUND PAPER, *supra* note 5, at 9-13; See, e.g., MINISTRY OF HEALTH AND INDIGENOUS MEDICINE, POPULATION AND REPRODUCTIVE HEALTH POLICY OF DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA preamble, goal 1 (1998); MINISTRY OF HEALTH AND FAMILY WELFARE, NATIONAL POPULATION POLICY OF INDIA intro., para. 7, 46 (2000); CREATION OF THE COMMISSION ON POPULATION, PURPOSES/OBJECTIVES, DUTIES AND FUNCTIONS, PRESIDENTIAL DECREE NO. 79, AS AMENDED REVISING THE POPULATION ACT OF NINETEEN HUNDRED AND SEVENTY ONE OF PHILIPPINES § 5.a (Dec. 8, 1972); LAW OF THE REPUBLIC OF INDONESIA, NUMBER 10 OF 1992, CONCERNING POPULATION DEVELOPMENT AND THE DEVELOPMENT OF HAPPY AND PROSPEROUS FAMILIES intro., art. 3, 4.5 (1992) [hereinafter INDONESIA POPULATION LAW]; NATIONAL COMMITTEE FOR POPULATION AND FAMILY PLANNING, RESOLUTION ON POPULATION AND FAMILY PLANNING OF VIETNAM (Adopted at 4th meeting of the Party Central Committee, 7th Sess.) § I, II.B, objectives I.1-2 (Jan. 14, 1993); PEOPLE'S REPUBLIC OF CHINA LAW OF POPULATION AND FAMILY PLANNING (Adopted by the 25th Meeting of the Standing Committee of the Ninth National People's Congress on Dec. 29, 2001) art. 1, 2, 11, 18, translated by Xinhua News Agency ([www.xinhua.com](http://www.xinhua.com)) [hereinafter CHINA'S POPULATION LAW].
- 7 For example, in Hungary in 1997 the rate of natural population increase was -3.8, in Russia for 1997, -5.1, and in Poland, a small increase of 0.9. See CENTER FOR REPRODUCTIVE RIGHTS, WOMEN OF THE WORLD: LAWS AFFECTING THEIR REPRODUCTIVE LIVES: EAST CENTRAL EUROPE 9-10 (2000) [hereinafter CENTER FOR REPRODUCTIVE RIGHTS WOW ECE]. In France, the population growth rate is expected to drop from .36% in 2000-2005 to .30% in 2005-2010. Spain is expected to drop from -.02 to -.15% and in Germany from -.04 to -.12%. See UNITED NATIONS POPULATION DIVISION, WORLD POPULATION PROSPECTS DATABASE, COUNTRY PROFILES, at <http://esa.un.org/unpp/p2k0data.asp> (last visited Aug. 13, 2002).
- 8 See CENTER FOR REPRODUCTIVE RIGHTS WOW ECE, *supra* note 7, at 9-10, 182; See also Elizabeth Liagin, *The Greatest Modern Threat to Genuine Reproductive Freedom*, 2:1 STUDIES IN PROLIFE FEMINISM 105-114 (Spring 1995).
- 9 See STEPHEN L. ISAACS & ANDREA IRWIN, POPULATION POLICY: A MANUAL FOR POLICYMAKERS AND PLANNERS 1-2 (2nd ed. 1991).
- 10 See PRESSANT, *supra* note 1, at 177.
- 11 See *id.* at 177-178.
- 12 See DOROTHY STEIN, PEOPLE WHO COUNT: POPULATION AND POLITICS, WOMEN AND CHILDREN 4 (1995).
- 13 See Reed Boland et al., *Honoring Human Rights in Population Policies: From Declaration to Action*, in POPULATION POLICIES RECONSIDERED: HEALTH, EMPOWERMENT, AND RIGHTS 96 (Gita Sen et al. eds, 1994); See also KLAUS M. LEISINGER & KARIN SCHMITT, ALL OUR PEOPLE: POPULATION POLICY WITH A HUMAN FACE 118-119 (1994).
- 14 See Gita Sen et al., *Reconsidering Population Policies*:

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- Ethics, Development, and Strategies for Change, in POPULATION POLICIES RECONSIDERED: HEALTH, EMPOWERMENT, AND RIGHTS 4* (Gita Sen et al. eds, 1994); See also Boland et al., *supra* note 13, at 96.
- 15 See Luke T. Lee, *Population: The Human Rights Approach*, 6 COLO. J. INT'L ENVTL. L. & POL'Y 327, 338 (Summer 1995); See also Diana D.M Babor, *Population-Environment Linkages in International Law*, 27 DENV. J. INT'L L. & POL'Y 205, 222-228 (Spring 1995).
- 16 See Lee, *supra* note 15, at 327, 338-341.
- 17 See Boland et al., *supra* note 13, at 96.
- 18 See Paula Abrams, *Reservations About Women: Population Policy and Reproductive Rights*, 29 CORNELL INT'L L.J. 1, 6, 11 (1996).
- 19 See Boland et al., *supra* note 13, at 89, 96-97.
- 20 See *id.* at 97.
- 21 See e.g., *Spanish Government Urges Young Women to Have More Children*, NATIONAL POST VIA KAISER DAILY REPRODUCTIVE HEALTH REPORT, July 17, 2001; CENTER FOR REPRODUCTIVE RIGHTS WOW ECE, *supra* note 7, at 38.
- 22 See UNITED NATIONS POPULATION FUND (UNFPA), *POPULATION POLICIES AND PROGRAMMES: LESSONS LEARNED FROM TWO DECADES OF EXPERIENCE* xx (Nafis Sadik ed. 1991).
- 23 See UNITED NATIONS POPULATION FUND (UNFPA), *THE STATE OF THE WORLD POPULATION 2001 70-72* (2001).
- 24 See Babor, *supra* note 15, at 205, 226-229; See also Paula Abrams, *Population Control and Sustainability: It's the Same Old Song But with a Different Meaning*, 27 ENVTL. L. 1111, 1119-1121 (Winter 1997).
- 25 See Beverly Horsburgh, *Schrodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing An Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, § II(A) (Jan. 1996); See also L.M Cirando, *Informed Choice and Population Policy: Do the Population Policies of China and the United States Respect and Ensure Women's Right to Informed Choice?* 19 FORDHAM INT'L L. J. 611, 650 (Dec. 1995); See also Relf v. Weinberger, 372 F. Supp. 1196, 1974 U.S. Dist. LEXIS 9493; See also Meredith Blake, *Welfare and Coerced Contraception: Morality Implications of State Sponsored Reproductive Control*, 34 U. OF LOUISVILLE J. OF FAM. L. 311, 313-314 (Spring 1995/1996).
- 26 JAMAICA NATIONAL POPULATION POLICY § 2 (1992).
- 27 See Abrams, *supra* note 18, at 1, 6; See also Babor, *supra* note 15, at 83, 114; See also *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para. 7.12, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].
- 28 *ICPD Programme of Action*, *supra* note 27, para. 7.12.
- 29 See Lynn P. Freedman & Stephen L. Isaacs, *Human Rights and Reproductive Choice*, 24:1 STUDIES IN FAMILY PLANNING 18, 24-25 (Jan./Feb. 1993).
- 30 GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, NATIONAL REPORT ON POPULATION, art. 1, 1A (1993).
- 31 INDIA NATIONAL POPULATION POLICY, *supra* note 6, at 13-14 (para. 46).
- 32 See Freedman & Isaacs, *supra* note 29, at 18, 25; See generally Stephen L. Isaacs, *Incentives, Population Policy, and Reproductive Rights*, 26:6 STUDIES IN FAMILY PLANNING 363-367 (Nov./Dec. 1995).
- 33 See Ruth Dixon-Mueller, *POPULATION POLICY AND WOMEN'S RIGHTS: TRANSFORMING REPRODUCTIVE CHOICE* 20 (1993); See also LEISINGER & SCHMITT, *supra* note 13, at 126-127; See also Isaacs, *supra* note 32, at 363, 365-366.
- 34 See Boland et al., *supra* note 13, at 100; See also LEISINGER & SCHMITT, *supra* note 13, at 126-127; See also Paula Abrams, *supra* note 18, at 1, 7-8.
- 35 See Ruth Dixon-Mueller, *supra* note 33, at 20.
- 36 See LEISINGER & SCHMITT, *supra* note 13, at 127; See also Cirando, *supra* note 25, at 611, 659.
- 37 *ICPD Programme of Action*, *supra* note 27, para. 7.12.
- 38 *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, U.N. GAOR, 21st Special Sess., New York, United States, June 30 - July 2, 1999, U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter *ICPD+5 Key Actions Document*].
- 39 *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Declaration and Platform for Action*].
- 40 *Further actions and initiatives to implement the Beijing Declaration and the Platform for Action*, U.N. GAOR, 23rd Special Sess., New York, United States, June 5-9, 2000, U.N. Doc. A/Res/S-23 (2000) [hereinafter *Beijing +5 Review Document*].
- 41 See CENTER FOR REPRODUCTIVE RIGHTS, BEIJING+5: ASSESSING REPRODUCTIVE RIGHTS 1-2 (2000); See also CENTER FOR REPRODUCTIVE RIGHTS, ICPD+5: GAINS FOR WOMEN DESPITE OPPOSITION 4, 15-16 (1999).
- 42 See CENTER FOR REPRODUCTIVE RIGHTS BEIJING+5, *supra* note 41, at 1-2; See also CENTER FOR REPRODUCTIVE RIGHTS ICPD+5, *supra* note 41, at 1, 16.
- 43 *ICPD Programme of Action*, *supra* note 27, para. 7.12.
- 44 *Id.* para. 1.15 (emphasis added).
- 45 Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, 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, U.N. Doc. A/6316 (1966), arts. 6.1, 9.1999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter *Civil and Political Rights Covenant*]. art. 6.1, 9.1; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, U.N. GOAR, 44th Sess., Supp. No. 49, arts. 6.1, 6.2, U.N. Doc. A/44/49, at 166 (1989) (*entered into force* Sep. 2, 1990) [hereinafter *Children's Rights Convention*].
- 46 Universal Declaration, *supra* note 45, art. 5; Civil and Political Rights Convention, *supra* note 45, art. 7; Children's Rights Convention, *supra* note 45, art. 37(a).
- 47 Universal Declaration, *supra* note 45, art. 2; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, art. 2.2, 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*]; Civil and Political Rights Convention, *supra* note 45, art. 2.1; Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GOAR, 34th Sess., Supp. No.

- 46, U.N. Doc. A/34/46, at 193 (1979) (*entered into force* Sept. 3, 1981), art. 1, 3 [hereinafter CEDAW]; ICPD *Programme of Action*, *supra* note 27, principles 1, 4; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 214.
- 48 CEDAW, *supra* note 47, art. 2, 5; Children's Rights Convention, *supra* note 45, art. 24.3; ICPD *Programme of Action*, *supra* note 27, para. 5.5; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 224.
- 49 Economic, Social and Cultural Rights Convention, *supra* note 47, arts. 10.2, 12.1-12.2; CEDAW, *supra* note 47, arts. 10, 11.2, 12, 14.2; Children's Rights Convention, *supra* note 45, art. 24.1- 24.2; ICPD *Programme of Action*, *supra* note 27, principle 8, para. 7.45; *Beijing Declaration and Platform for Action*, *supra* note 39, paras. 89, 92, 267.
- 50 Civil and Political Rights Convention, *supra* note 45, art. 17.1; Children's Rights Convention, *supra* note 45, arts. 16.1-16.2; ICPD *Programme of Action*, *supra* note 27, para. 7.45; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 106(f), 107(e).
- 51 Universal Declaration, *supra* note 45, art. 16.1; Economic, Social and Cultural Rights Convention, *supra* note 47, arts. 10.1; Civil and Political Rights Convention, *supra* note 45, arts. 23; CEDAW, *supra* note 47, art. 16; ICPD *Programme of Action*, *supra* note 27, principle 9; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 274(e).
- 52 CEDAW, *supra* note 47, art. 16.1(e); ICPD *Programme of Action*, *supra* note 27, principle 8, para. 7.3; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 223.
- 53 ICPD *Programme of Action*, *supra* note 27, principles 10-11; Universal Declaration, *supra* note 45, art. 26; Children's Rights Convention, *supra* note 45, arts. 28-29; CEDAW, *supra* note 47, art. 10.
- 54 CEDAW, *supra* note 47, art. 6; Children's Rights Convention, *supra* note 45, art.19.1, 34; ICPD *Programme of Action*, *supra* note 27, principle 11, para. 4.10.
- 55 Economic, Social and Cultural Rights Convention, *supra* note 47, art. 15.1; Civil and Political Rights Convention, *supra* note 45, art. 7; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 109.
- 56 ICPD *Programme of Action*, *supra* note 27, principle 8, para. 7.3; CEDAW, *supra* note 47, art. 16.1(e); *Beijing Declaration and Platform for Action*, *supra* note 39, para. 223.
- 57 MINISTRY FOR WELFARE & POPULATION DEVELOPMENT, A GREEN PAPER FOR PUBLIC DISCUSSION: POPULATION POLICY FOR SOUTH AFRICA 5 (1995).
- 58 *Id.* at 13-14.
- 59 *Id.* at 14.
- 60 MINISTRY FOR WELFARE, POPULATION POLICY FOR SOUTH AFRICA viii-ix, § 1.5 (1998).
- 61 *Id.* at ix.
- 62 *Id.* § 1.5.7; ICPD *Programme of Action*, *supra* note 27, para.7.3.
- 63 *Id.* § 1.4 at 7.
- 64 CHINA'S POPULATION LAW, *supra* note 6.
- 65 Wang Hong, *The Population Policy of China*, in POPULATION AND DEVELOPMENT PLANNING IN CHINA 49, 51 (Wang Jiye & Terence H. Hill eds., 1991).
- 66 See e.g., STATE FAMILY PLANNING COMMISSION, THE NATIONAL FAMILY PLANNING PROGRAM OF CHINA, 1995-2000 § 1; INFORMATION OFFICE OF THE STATE COUNCIL, PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER: FAMILY PLANING IN CHINA § I at 2 (1995), available at <http://chinese-embassy.org.uk/Hot-Issues/wpfamily.htm> (last visited June 6, 2002); INFORMATION OFFICE OF THE STATE COUNCIL, PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER ON POPULATION IN CHINA § II para. 11 (2000), available at <http://www.cpirc.org.cn/whitepaper.htm> (last visited June 6, 2002) [hereinafter CHINA WHITE PAPER 2000].
- 67 See Reed Boland, *The Environment, Population, and Women's Human Rights*, 27 ENVTL. L. 1137, 1143-1144 (Winter 1997); See also *Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women*, 17 WOMEN'S RTS. L. REP. 285, 294 (Summer 1996); See also Cirando, *supra* note 25, at 611, 615; See also Ellen Keng, *Population Control Through the One-Child Policy in China; Its Effects on Women*, 18 WOMEN'S RIGHTS. L. REP. 205, 209 (Winter 1997).
- 68 The government's objective is to keep the population below 1.4 billion by 2010. See CHINA WHITE PAPER 2000, *supra* note 66, § II para. 11.
- 69 See generally *Open Letter of the Central Committee of the Communist Part of China to the General Membership of the Communist Party and the Membership of the Chinese Communist Youth League on the Problem of Controlling Population Growth in Our Country* (Sept. 25, 1980), 24:3 CHINESE SOC. & ANTHROPOLOGY: FAM. PLAN. IN CHINA 11-16 (Tyrene White ed., Spring 1992); CHINA'S POPULATION LAW, *supra* note 6, art. 18.
- 70 See Antoaneta Bezlova, *Population-China: Law Formalizing One-Child Policy Due Soon*, INTER PRESS SERVICE, May 23, 2001; See also CHINA'S POPULATION LAW, *supra* note 6, art. 2, 23, 25-27.
- 71 See *Directive of the Central Committee of the Communist Part of China and the State Council of the PRC on Doing a Great Job with Family Planning Work* (Feb. 9, 1982), 24:3 CHINESE SOC. & ANTHROPOLOGY: FAM. PLAN. IN CHINA 22-23 (Tyrene White ed., Spring 1992).
- 72 *Id.* at 22.
- 73 *Id.* at 22-23.
- 74 *Id.* at 23.
- 75 *Id.*
- 76 See "Report on the Conditions of the Work of Family Planning" of the Party Group of the State Family Planning Commission, as Approved and Issued by the Central Committee of the Communist Part of China (Apr. 13, 1984), 24:3 CHINESE SOC. & ANTHROPOLOGY: FAM. PLAN. IN CHINA 29 (Tyrene White ed., Spring 1992); See also Boland et al., *supra* note 13, at 98.
- 77 See Boland et al., *supra* note 13, at 98-99; See also RESEARCH DIRECTORATE OF THE IMMIGRATION AND REFUGEE BOARD OTTAWA, CANADA, CHINA: ONE-CHILD POLICY UPDATE § 2 (June 1999); See also Rosemary Santana Cooney & Jiali Li, *Sterilization and Financial Penalties Imposed on Registered Peasant Couples, Hebei Province, China*, 32:1 STUDIES IN FAMILY PLANNING 67-68 (Mar. 2001).

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- 78 See Boland, *supra* note 67, at 1137, 1151-1152.
- 79 ICPD *Programme of Action*, *supra* note 27, para. 7.2.
- 80 *Id.* para. 7.6.
- 81 See generally CENTER FOR REPRODUCTIVE RIGHTS, MAKING ABORTION SAFE, LEGAL, AND ACCESSIBLE: A TOOL KIT FOR ACTION (2000); ADRIENNE GERMAIN AND THERESA KIM, INTERNATIONAL WOMEN'S HEALTH COALITION, EXPANDING ACCESS TO SAFE ABORTION: STRATEGIES FOR ACTION (1999).
- 82 ICPD *Programme of Action*, *supra* note 27, para. 8.25.
- 83 *Beijing Declaration and Platform for Action*, *supra* note 39, para. 106(k).
- 84 ICPD+5 *Key Actions Document*, *supra* note 38, para. 63 (iii).
- 85 See generally REBECCA COOK & BERNARD DICKENS, WORLD HEALTH ORGANIZATION, CONSIDERATIONS FOR FORMULATING REPRODUCTIVE HEALTH LAWS (2nd ed. 2000).
- 86 ICPD *Programme of Action*, *supra* note 27, para. 4.27.
- 87 See Charlotte Hord et al., *Productive Health in Romania: Reversing the Ceausescu Legacy*, 22:4 STUDIES IN FAMILY PLANNING 232 (July/Aug. 1991).
- 88 See *id.*
- 89 See Boland, *supra* note 67, at 1137, 1140-1141; See also Hord, *supra* note 87, at 232.
- 90 See Hord, *supra* note 87, at 232.
- 91 See *id.* at 233.
- 92 See UNITED NATIONS, ABORTION POLICIES: A GLOBAL REVIEW 52, available at <http://www.un.org/esa/population/publications/abortion/doc/romania.doc> (last visited July 16, 2002).
- 93 See *id.*
- 94 See Boland, *supra* note 67, at 1137, 1141; See also Hord, *supra* note 87, at 233.
- 95 ICPD *Programme of Action*, *supra* note 27, principle 4.
- 96 See Boland, *supra* note 67, at 1137, 1140; See also Abrams, *supra* note 18, at 1, 11, 41 n.58; See also Elizabeth Spahn, *Feeling Grounded: A Gendered View of Population Control*, 27 ENVTL.L.1295, 1308 (Winter 1997); See also Amartya Sen, *Fertility and Coercion*, 63 U.CHI. L. REV.1035, 1052 (Summer 1996).
- 97 ICPD *Programme of Action*, *supra* note 27, para 4.1.
- 98 CEDAW, *supra* note 47.
- 99 United Nations Resources on Gender, *Approaches to Gender Equality*, at [www.un.org/womenwatch/resources/goodpractices/approaches.html](http://www.un.org/womenwatch/resources/goodpractices/approaches.html) (last visited Aug. 14, 2002).
- 100 SISTEMA INTERNET DE LA PRESIDENCIA DE LA REPÚBLICA [EXECUTIVE SECRETARIAT WEBSITE], PRIMERA SESIÓN ORDINARIA DEL CONSEJO NACIONAL DE POBLACIÓN 2002 Y PRESENTACIÓN NACIONAL DE POBLACIÓN 2001-2006 [FIRST ORDINARY SESSION ON COUNCIL OF POPULATION 2002 & NATIONAL PRESENTATION ON POPULATION 2001-2006] (July 11, 2002), at <http://www.presidencia.gob.mx/?P=2&Orden=Leer&Tipo=PP&Art=3369> (last visited July 16, 2002).
- 101 *Id.* at 56-57.
- 102 *Id.* at 66-67.
- 103 *Id.* at 84-86.
- 104 INDONESIA POPULATION LAW, *supra* note 6.
- 105 *Id.* arts. 2-4.
- 106 *Id.* art. 3.
- 107 *Id.* art. 1(12) (emphasis added).
- 108 ELUCIDATION OF LAW OF THE REPUBLIC OF INDONESIA, NUMBER 10 OF 1992, CONCERNING POPULATION DEVELOPMENT AND THE DEVELOPMENT OF HAPPY AND PROSPEROUS FAMILIES, art. 6(d), available at [http://www.unescap.org/pop/database/law\\_indo/elucidation.htm](http://www.unescap.org/pop/database/law_indo/elucidation.htm) (last visited Aug. 14, 2002) [hereinafter ELUCIDATION INDONESIA POPULATION LAW].
- 109 *Id.* § 4.3.
- 110 INDONESIA POPULATION LAW, *supra* note 6, art. 19.
- 111 ELUCIDATION INDONESIA POPULATION LAW, *supra* note 108, art. 3(1), 25(2).
- 112 ICPD *Programme of Action*, *supra* note 27, para. 6.15.
- 113 See UNITED NATIONS POPULATION FUND (UNFPA), THE SEXUAL AND REPRODUCTIVE HEALTH OF ADOLESCENTS, TECHNICAL AND POLICY DIVISION DRAFT REPORT 2 (April 1998).
- 114 See *id.* at 4, citing UNITED NATIONS, THE SEX AND AGE DISTRIBUTION OF THE WORLD POPULATION (1996).
- 115 See THE ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD: YOUNG WOMEN'S SEXUAL AND REPRODUCTIVE LIVES 18-19 (1998).
- 116 Children's Rights Convention, *supra* note 45, art. 24.
- 117 *Beijing Declaration and Platform for Action*, *supra* note 39, para. 267.
- 118 Children's Rights Convention, *supra* note 45, art. 5; *Beijing Declaration and Platform for Action*, *supra* note 39, para. 267; ICPD *Programme of Action*, *supra* note 27, para. 7.45.
- 119 Children's Rights Convention, *supra* note 45, arts. 3(1)(2), 18(1); *Beijing Declaration and Platform for Action*, *supra* note 39, para. 267.
- 120 While we use Ghana as a positive example for this pillar, it should be noted some language in Ghana's policy is not wholly sensitive to the four pillars we identify. For example, the population policy states that education of youth on population matters should guide them towards "small family size." GHANA POPULATION POLICY, *supra* note 5, § 4.5.7.
- 121 *Id.* § 5.8.
- 122 *Id.*
- 123 *Id.* § 4.3.7.
- 124 *Id.* § 4.3.10.
- 125 *Id.* § 5.8.1-5.8.5.
- 126 *Id.* § 4.4.7, 4.4.3.
- 127 *Id.* § 5.8.5.
- 128 NATIONAL POPULATION COUNCIL, GOVERNMENT OF GHANA ADOLESCENT REPRODUCTIVE HEALTH POPULATION POLICY § 2.1-2.2 (1996).
- 129 *Id.* § 2.1-2.3, 5.0-6.0.
- 130 POPULATION POLICY OF BURKINA FASO, *supra* note 5, § 3.2.2.
- 131 *Id.* § 3.3.4.
- 132 *Id.* § 3.2.2.
- 133 *Id.* § 3.3.4, bullets 4-5.

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