CHAPTER 5

HARMFUL TRADITIONAL PRACTICES AFFECTING REPRODUCTIVE RIGHTS: FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION (FC/FGM)

“Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated.”

Beijing Platform for Action, 224.

“States Parties shall take all appropriate measures . . . [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women . . .”

Women’s Convention, Article 5(a).

I. Introduction

The UN Special Rapporteur on Violence against Women has noted that “certain customary practices and some aspects of tradition, such as those related to deeply rooted power inequities of society, often constitute a cause of violence against women and girls.” Many societies in many parts of the world have customs and traditions that jeopardize the health, well-being, or dignity of women and young girls. Practices that are consistently recognized as “harmful traditional practices” include: FC/FGM, facial scarring, the force-feeding of women, early marriage, nutritional taboos, traditional practices associated with childbirth, dowry-related crimes, honor crimes, and the consequences of son preference.

This chapter focuses solely on FC/FGM, a set of traditional practices that involve the cutting of the female genitals. FC/FGM is generally performed upon girls between the ages of four and 12, although it is practiced in some cultures as early as a few days after birth or as late as just prior to marriage or after the first pregnancy. It is estimated that 130 million girls and women worldwide have undergone FC/FGM. At least two million girls each year are at risk of undergoing some form of the procedure. It is practiced in 28 countries in Sub-Saharan and Northeastern Africa. Prevalence varies, ranging from 5% in Uganda and the Democratic Republic of Congo to 98% in Djibouti and Somalia. According to estimates, 18 African countries have prevalence rates of 50% or higher. FC/FGM is also practiced among immigrant groups from these countries residing in Europe, North America, Australia, and New Zealand.

This chapter places FC/FGM within a human rights framework and reviews the types of laws and policies that seek to address FC/FGM, with an emphasis on developments since 1995. Recommendations are offered to governments and non-governmental actors, with a view to developing a multi-strategy approach to stopping the practice of FC/FGM.
II. FC/FGM Within a Human Rights Framework

When performed upon girls and non-consenting women, FC/FGM violates a number of recognized human rights protected in international and regional instruments and reaffirmed in international conference documents. These include: the right to non-discrimination, the rights to life and physical integrity, the right to health, and the right of the child to special protections.

A. The right to non-discrimination

FC/FGM violates women's right to be free from all forms of discrimination. As discussed in Chapter 3, Article 1 of the Women's Convention defines discrimination against women as including any distinction based on sex that has the effect or purpose of impairing the equal enjoyment of rights by women. FC/FGM is practiced only on women and girls, and has the effect of nullifying their enjoyment of fundamental rights discussed below. In addition, the practice carries a strong message about the subordinate role of women and girls in society. It is an attempt to repress the independent sexuality of women by altering their anatomy.

The Women's Convention at Article 2 requires governments to “take all appropriate measures, including legislation, to modify or abolish existing laws, . . . customs and practices which constitute discrimination against women.” Article 5 further requires governments to “take all appropriate measures . . . to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of . . . customary and all other practices which are based on . . . stereotyped roles for men and women . . . . ”

B. The rights to life and physical integrity

FC/FGM threatens women's enjoyment of their rights to life and physical integrity. The right to life is violated in the rare cases in which death results from the procedure. When FC/FGM does not result in death, it interferes with a number of the protections encompassed in the right to physical integrity. First, it is an act of violence that poses a threat to personal security. In addition, the dignity, liberty, and privacy interests that are encompassed in the right to physical integrity protect the right to independent decision-making in matters affecting one's own body. An unauthorized invasion or alteration of a person's body represents a disregard for that fundamental right.

The threat to physical integrity posed by FC/FGM is particularly obvious when girls are forcibly restrained during the procedure. Yet the subjection of non-protesting girls and women to the practice of FC/FGM without their informed consent is no less compromising of the right to physical integrity. A decision to alter the body of a woman or a girl for the purpose of reinforcing socially defined roles is a clear interference with the right to autonomy in decision-making about one's body.

C. The right to health

FC/FGM also prevents women and girls from enjoying their right to health. Under international law, women and girls are entitled to enjoy the highest attainable standard of physical and mental health, defined broadly to encompass social well-being. Furthermore, the ICPD Program of Action defines “reproductive health” as including “sexual health, the purpose of which is the enhancement
of life and personal relations . . . “While the right to health does not guarantee perfect reproductive health for all people, it has been interpreted to require governments to provide health care and to work toward creating conditions conducive to the enjoyment of good health. CEDAW, in its Recommendation on Health, has urged that governments devise health policies that take into account the needs of girls and adolescents who may be vulnerable to traditional practices such as FC/FGM.

Because the complications associated with FC/FGM can have devastating effects upon a woman's physical and emotional health, this procedure has been viewed as an infringement upon the right to health. But even in the absence of such complications, FC/FGM compromises the right to health. Where FC/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. Furthermore, any invasive procedure — no matter how “safely” performed — entails risks to the health of the person who undergoes it.

D. The right of the child to special protections

Because children in general cannot adequately protect themselves or make informed decisions about matters that may affect them for the rest of their lives, human rights law grants children special protections. The right of the child to these protections has been affirmed in the Convention on the Rights of the Child (Children's Rights Convention), one of the most widely ratified international human rights instruments. Article 1 of the Children's Rights Convention defines a “child” as a person below the age of 18 unless majority is attained earlier under the law applicable to the child.

The international community has generally regarded FC/FGM as a violation of children's rights. Because FC/FGM is commonly performed upon girls between the ages of four and 12, those most at risk of undergoing the procedure meet the definition of “child” set out in the Children's Rights Convention. Article 24(3) of this treaty is explicit in its call to States to “abolish . . . traditional practices prejudicial to the health of children.” The concern with stopping such traditional practices is also evident in the African Charter on the Rights and Welfare of the Child (African Charter), which was adopted by the Organization for African Unity (OAU) in 1990 and entered into force in 1999. The African Charter calls upon states to “abolish customs and practices harmful to the welfare, normal growth, and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child, and (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

III. The Legal Status of FC/FGM

FC/FGM has been prohibited by legal or administrative measures in at least eighteen countries worldwide. The majority of these measures have been adopted during the last five years. In Africa, however, several legal measures banning FC/FGM have been in place for over 30 years. In 1965, Guinea prohibited FC/FGM in a Penal Code provision that defines the offense of “castration” to include mutilation of the organs of either a man or a woman. In the Central African Republic in 1966, then President Bokassa issued an ordinance prohibiting the practice of FC/FGM, explicitly noting an intent to conform to the provisions of the Universal Declaration of Human Rights and protect women's dignity.
Non-African countries with immigrant communities in which FC/FGM may be prevalent, which will be referred to as “receiving countries,” have also taken legal steps to prevent the practice within their borders. France was among the first of these countries to treat FC/FGM as a criminal offense. Since 1978, practitioners of FC/FGM and parents of girls who have undergone it have been prosecuted under a Penal Code provision that prohibits acts of violence against a minor under the age of 15 that result in mutilation or permanent disability. In Sweden, a law enacted in 1982 prohibits “operations on the external female genital organs which are designed to mutilate them or produce other permanent changes in them.” This law was modified in 1998 to make the penalties more severe. In 1985, the United Kingdom adopted the Prohibition of Female Circumcision Act, which makes it a crime to “excise, infibulate or otherwise mutilate the whole or any part of the labia majora or labia minora or clitoris of another person . . . .”

The 1990s saw heightened legislative and administrative activity aimed at stopping the practice of FC/FGM. In some African countries, this activity coincided with a period of constitutional reform. In 1992, Ghana adopted a constitution proclaiming that “[a]ll customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.” Similarly, Ethiopia’s Constitution, adopted in 1994, provides that “[w]omen have the right to protection by the state from harmful customs. Laws, customs and practices that oppress women or cause bodily or mental harm to them are prohibited.”

A 1994 amendment to Ghana’s Penal Code making FC/FGM a criminal offense was the first of the recent developments in criminal legislation. The law provides that “[w]hoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person” is subject to imprisonment of not less than three years.

IV. Developments Since 1995

Since 1995, 12 countries have adopted legal or administrative measures making FC/FGM a crime. Following is a brief summary of the measures taken in both African countries and receiving countries to prohibit FC/FGM.

- In Australia, between 1994 and 1997, six out of eight states and territories (Australian Capital Territory, Northern Territory, New South Wales, South Australia, Tasmania, and Victoria) adopted legislation prohibiting FC/FGM.

- In 1996, Burkina Faso amended its Penal Code to provide that “[a]ny person who violates or attempts to violate the physical integrity of the female genital organ” shall be punished by imprisonment for six months to 10 years, depending on severity, and/or a fine of 150,000 to 900,000 [approximately U.S. $240 to $1,440].

- Canada amended its Criminal Code in 1997 to provide that the definition of “aggravated assault” applies to actions taken “to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person,” except where necessary for stated medical reasons.

- A 1998 law adopted by Côte d’Ivoire defines genital mutilation as a violation of the integrity of the female genital organ, by total or partial ablation, infibulation, desensitization, or by any other
procedure. Any person who commits a genital mutilation shall be punished by imprisonment from one to five years and by a fine of 360,000 to two million francs [approximately U.S. $576 to $3,200].

- In 1995, Djibouti amended its Penal Code to prohibit FC/FGM. The law provides that “acts of violence resulting in a genital mutilation are punishable by imprisonment for five years and a fine of one million francs” [approximately U.S. $5,814].

- In Egypt, the Minister of Health issued a decree in 1996 prohibiting FC/FGM for non-medical purposes. This decree was the subject of a legal challenge but was ultimately upheld by the highest administrative court in 1997.

- In New Zealand in 1995, the Crimes Amendment Act was amended to prohibit “any act involving female genital mutilation” and assigning a penalty of up to seven years in prison.

- Norway criminalized FC/FGM in 1995 with a law that provides that “[a]ny person who intentionally performs an intervention on a woman’s sexual organs, thereby damaging those organs or causing them to undergo permanent changes” shall receive a penalty of imprisonment for three to eight years depending on severity.

- Senegal amended its Penal Code in 1999 to state that “[a]ny person who violates or attempts to violate the integrity of the genital organs of a female person . . . shall be punished by imprisonment from six months to five years.”

- In 1998, Tanzania amended its Penal Code to provide that any person who causes female circumcision is punishable by imprisonment for a term between five and 15 years and/or a fine not exceeding 300,000 shillings [approximately U.S. $373].

- In 1998, Togo adopted a law providing that “[a]ny person who by traditional or modern methods practices or promotes female genital mutilations or participates in these activities” shall be punished by imprisonment from two months to five years and/or a fine of 100,000 to one million Francs [approximately U.S. $160 to $1,600]. This law also requires the directors of both public and private health facilities to ensure the most appropriate medical care to those arriving in their centers who have undergone FC/FGM.

- In the United States, a 1996 law entitled the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides in part that “whoever knowinglycircumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.” In addition, fifteen states have criminalized FC/FGM. With few exceptions, these laws have criminal provisions similar to those of the federal law.

In addition to these criminal law developments, Uganda adopted a new constitution in 1995, which provides that “[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution.”
A. Recent non-legal developments

Recognizing that laws by themselves will not change people's behavior, many African countries have sought different approaches to preventing the practice of FC/FGM. Some of these approaches are intended to supplement the criminal legislation described above, while others have been adopted in place of such laws.

Several African governments, including Benin, Djibouti, Eritrea, Ethiopia, and Tanzania, have undertaken education and/or outreach campaigns to discourage the practice of FC/FGM. A number of governments, such as Côte d'Ivoire and Mali, have formed special commissions within government ministries that are devoted to preventing FC/FGM. National strategies to stop FC/FGM have been adopted by several governments, including Guinea, Niger, Ghana, and Senegal.

Education and outreach programs are also active in a number of receiving countries, including Australia, Canada, Denmark, and the United Kingdom. The United States Congress, in 1996, required by law that the Secretary of Health and Human Services conduct a study of the prevalence of FC/FGM in the United States. It also required the Immigration and Naturalization Service (INS) to provide information about FC/FGM to people entering the United States from countries in which FC/FGM is practiced.

V. Recommendations

Stopping FC/FGM requires a change in societal and individual thinking. In order to bring about such change, governments and NGOs should take multiple approaches as part of a long-term strategy for achieving social justice for women.

• Governments should ensure that national constitutions contain protections of the rights of women and girls. Such protections may specifically recognize the right of women and girls to be free from harmful traditional practices. These provisions should have supremacy over customary and religious laws that may require women and girls to undergo the practice.

• If appropriate, governments should establish criminal sanctions for the practice of FC/FGM, provided that:

  • criminalization of FC/FGM is part of a broader governmental strategy to change individual behavior and social norms, and is accompanied by extensive education and outreach programs;

  • criminal law provisions are widely publicized, the punishable crime is precisely defined, and the parties potentially liable under the law are clearly delineated;

  • the best interests of the child are the primary consideration in determining penalties for parents who arrange for their daughters to undergo FC/FGM; given the effect on the children of long prison terms for their parents, governments should consider either assigning criminal sanctions only to the practitioners, or assigning lighter penalties to parents;

  • the law applies only to FC/FGM performed upon a child or upon a woman who is incapable of providing informed consent or is subject to coercion or violence; and

  • the law is not a pretext for harassment or persecution of minority groups or immigrants.
• Governments should explore the application of non-criminal legal mechanisms — including suits for civil damages and child-protection procedures — as a means of stopping the practice of FC/FGM.

• Governments should support education and outreach programs aimed at discouraging the practice of FC/FGM. Resources should be devoted to supplying information about the harmful effects of FC/FGM and conducting human rights education in communities in which FC/FGM is practiced.

• Governments should ensure access to reproductive health services as a means of providing women information about their reproductive and sexual health and about the dangers of FC/FGM.

• Governments should repeal laws that interfere with women's ability to achieve economic self-sufficiency, and should take positive steps to promote women's financial autonomy.

• Community-level NGOs can be highly effective in undertaking awareness and outreach programs designed to provide women with the information they need to choose to abandon FC/FGM.

• NGOs should draw upon their expertise to influence the content of legislation intended to stop the practice of FC/FGM.

• NGOs should build broad coalitions to support an end to the practice of FC/FGM.

• NGOs should monitor government action on this issue, collect and disseminate data and information regarding FC/FGM, and undertake public information and media campaigns.

• NGOs should consider ways to use the judicial system and regional and international human rights mechanisms to stop the practice of FC/FGM.
Chapter 6

RAPE AND OTHER SEXUAL VIOLENCE

“The term “violence against women” means 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.”

Beijing Platform for Action, Paragraph 113.

“(Actions to be taken by governments and international and regional organizations:) (d) Reaffirm that rape in the conduct of armed conflict constitutes a war crime and under certain circumstances it constitutes a crime against humanity and an act of genocide...(e) Undertake a full investigation of all acts of violence against women committed during war, including rape, in particular systematic rape, forced prostitution and other forms of indecent assault and sexual slavery...”

Beijing Platform for Action, Paragraph 145(d), (e).

I. Introduction

Violence against women is one of the most tangible consequences of the economic, social, political, and cultural inequalities that exist between men and women. It is also perpetrated by legal and political systems that have historically discriminated against women. The international community has recognized that violence against women constitutes a violation of their human rights and fundamental freedoms. Sexual violence in its various forms is also a violation of women’s reproductive rights since it impacts their sexual and reproductive health and autonomy.

This chapter will focus particularly on sexual violence against women and its impact on reproductive and sexual health. It will place rape, forced pregnancy, and other forms of sexual violence within a human rights framework and examine existing laws, policies, and practices that perpetuate sexual violence against women. The chapter also reviews legal developments since 1995 aimed at stopping sexual and other forms of violence against women. It concludes with recommendations to governments and NGOs to eradicate both legal and cultural norms that perpetuate such violence, and to work for the adoption of legislation that protects women against all forms of violence, including sexual violence.

II. Women’s Right to Live Free from Sexual Violence

As discussed in the introduction to this report, sexual violence violates women’s reproductive rights, particularly their rights to bodily integrity and to control their sexuality and reproductive capacity. It also severely compromises a woman’s right to health, including her physical, psychological, reproductive, and sexual health. Sexual violence occurs in both the private and the public spheres of women’s lives. It is a violation of women’s human rights whether an agent of the state or a private citizen is the perpetrator. It can occur against girls or women of any age; within the family or domestic unit or any other interpersonal relationship; within the community or in the workplace; in an educational institution; in a health facility; during armed conflict or other civil strife; or at any other time or place.
The international community has specifically recognized women’s right to be free from gender-based violence, including rape and other sexual violence. Not only are such acts direct violations of women’s health and reproductive rights, they also prevent women from enjoying other protected rights, including their rights to life, health, and bodily integrity. CEDAW has stated that “[g]ender-based violence is a form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” Discrimination on the basis of sex is prohibited by virtually all human rights treaties. As noted in Chapters 3 and 5, the Women’s Convention defines “discrimination against women” to include any distinction made on the basis of sex which has the effect or purpose of preventing women from enjoying their human rights and fundamental freedoms on the basis of equality with men. Sexual violence in its various forms is one of the most brutal methods men use to maintain women in subordinate gender-based roles — to discriminate against them on the basis of sex.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) directly addresses gender-based violence by specifically prohibiting rape and other forms of violence. Similarly, the ad hoc tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR, respectively), which have mandates to prosecute individuals for genocide, war crimes, and crimes against humanity following armed conflicts in those countries, have held that rape committed during armed conflict constitutes both torture and genocide under international law.

The Rome Treaty, adopted in 1998, explicitly defines, for the first time under international humanitarian law, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence as both crimes against humanity and war crimes. This codification builds on the foundation that was laid in the Beijing Platform and in the Vienna Programme of Action. The Rome Treaty places rape and other reproductive and sexual crimes on a par with the most egregious international crimes and rejects previous references under earlier humanitarian law treaties to rape and other sexual assault as exclusively “crimes against honour” and “outrages upon personal dignity” rather than violence and, in some cases, torture and genocide. Moreover, for the first time, international humanitarian law recognizes violations of women’s reproductive self-determination — both forced pregnancy in which women are compelled to bear a child against their will, and enforced sterilization in which women are prevented from bearing children — as among the most serious crimes under international humanitarian law.

III. Laws, Policies, and Practices that Perpetuate a Culture of Sexual Violence Against Women

As noted above, while rape commonly occurs as an act of violence against an individual woman, it also is used as a weapon of war, political repression, and ethnic cleansing. For example, during the conflict in the former Yugoslavia, “rape camps” were established in which tens of thousands of Muslim women were held and raped repeatedly. Many were subjected to forced pregnancy, i.e. forced to bear children against their will. Similarly, during the 1994 conflict in Rwanda, ethnically-targeted rape, often followed by murder, was carried out against even larger numbers of Tutsi women. And during riots in Indonesia in May 1998, ethnic Chinese women were the targets of widespread rape.
Every country in the world formally outlaws rape and at least some other sexual crimes, but in many cases enforcement is often sporadic, especially when allegations of rape relate to the “private” sphere of relations between men and women. Sometimes, the law itself fails to protect women against sexual violence and thus serves to perpetuate a culture of violence against women. Many countries, such as India, Malaysia, and Papua New Guinea, fail to recognize forced sexual relations within marriage as rape, thus exempting husbands from criminal liability. In Mexico, a Supreme Court decision in June of 1997 held that sexual relations within marriage that are the result of violence do not constitute a crime because such acts are the exercise of a “right.”

Other laws that condone sexual violence against women are those that permit a rapist to avoid criminal liability and punishment by marrying the victim. Such laws are in place in Costa Rica, Ethiopia, Lebanon, Guatemala, Romania, and Uruguay. A 1997 law repealed a similar provision in Peru, but let stand a provision negating criminal liability of anyone found guilty of seducing an adolescent (defined as having sexual relations with a girl between the ages of 14 and 18 through deception but without violence). Thus, if the perpetrator of the crime marries the girl with her consent, he is not liable. Moreover, the amendment also failed to modify the classification of the rape of an adult woman as a “private action,” which means that the state does not automatically prosecute such crimes, but does so only if the victim insists on pressing charges.

The practice of so-called honor killings, an extreme form of violence against women aimed at controlling their sexuality, is still allowed by law in some countries. For example, the Penal Code of Jordan states: “He who discovers his wife or one of his female unlawfuls committing adultery with another, and he kills, wounds, or injures one or both of them, is exempt from any penalty.” Under Syria’s law, the “right” to injure and kill is extended even further. The Penal Code reads: “He who catches his wife or one of his ascendants, descendants or sister committing adultery (flagrante delicto) or illegitimate sexual acts with another and he killed or injured one or both of them benefits from an exemption of penalty.” Even when the law does not explicitly condone such violence, “honor killings” are often not investigated or prosecuted. In Pakistan, hundreds of women are killed each year for “Hudood” crimes, which include “adultery,” “fornication,” and breaking arranged marriages. According to news reports, some women who are not killed are tortured by their families for practices such as refusing an arranged marriage.

In addition to laws that openly condone violence and sexual violence against women, rules of procedure or rules of evidence used by courts also often perpetuate a culture of violence against women. For example, rules of evidence sometimes require multiple corroborating witnesses to prove rape or other sexual offenses. An example of this type of discrimination can be found in the rules of evidence in Pakistan. In order for rape to be proven, “at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirement of [credibility] . . . [must] give evidence as eyewitnesses of the act of penetration necessary to the offense.” Such provisions render it virtually impossible for a woman to allege rape and see the perpetrator punished.

Some countries, including South Africa, have “cautionary rules” of evidence, which require that additional care be taken when accepting the uncorroborated testimony of women who have been raped. In effect, cautionary rules result in an additional burden of proof for the prosecution beyond that ordinarily required to prove other assault crimes. In other countries, evidence of a woman’s past sexual history is admissible to rebut charges of sexual assault. This is true in Zimbabwe, where evidence of the complainant’s prior sexual history may be admitted as relevant to the issue of consent.
Finally, a number of factors continue to impede investigations and prosecutions of sexual violence crimes, including attitudes of law enforcement and judicial personnel, investigative techniques, and presumptions disfavoring intrusion in “private matters” or requiring physical evidence or evidence of a “struggle.” These types of rules and practices serve to victimize doubly women who report sexual violence crimes and discourage women from coming forward when they see how other victims are treated by the criminal justice system.

IV. Developments Since 1995

- In Ecuador, the National Congress approved reforms to the Penal Code in April of 1998 to define “sexual attack,” and provide sanctions thereto. Furthermore, constitutional reforms of 1998 include a statement of commitment to adopting measures to prevent, eliminate, and punish violence against women.

- A 1997 law in Colombia increased the penalties for rape and eliminated an earlier provision by which a defendant could be exempted from punishment if he married the victim of his crime. Also, since 1996, marital rape has been formally recognized as a crime.

- Two countries in the Central and Eastern European Region have recently passed legislation dealing with trafficking in women out of their countries. In Hungary, as of March 1, 1999, both trafficking in persons and depriving a person of personal freedom is a crime. Similarly, in Croatia, as of 1998, trafficking in women of all ages is a criminal offense.

- One measure taken by many governments in recent years is the passage of laws that provide sanctions against domestic violence, that is, violence that occurs in the home (including sexual violence). These laws vary in their scope and in the remedies afforded to the victims. The adoption and ratification of the Convention of Belém do Pará in 1994 has prompted numerous countries in Latin America to undertake reforms. The following Latin American and Caribbean countries have passed laws to protect women from domestic violence since 1995: Bolivia (1995); Colombia (1996); Costa Rica (1996); Dominican Republic (1997); Ecuador (1995); El Salvador (1997); Guatemala (1996); Honduras (1997); Jamaica (1995); Mexico (Federal District, 1996); Nicaragua (1996); Panama (1995); Peru (1997); and Uruguay (1995).

- Some countries have passed legislation that is extremely comprehensive in its treatment of domestic violence. For example, the new law in Colombia implements a constitutional mandate to provide comprehensive treatment for different forms of domestic violence. The law provides that physical, psychological, or sexual abuse against a family member is a crime. Furthermore, this law empowers the Colombian Institute of Family Welfare to develop programs to prevent and remedy domestic violence. It also provides resources to state and city governments to establish “Family Prevention Councils” to study and promote activities to prevent domestic violence. In addition, the National Development Plan provides that the government must improve the training of law enforcement personnel and justices of the peace that deal with this issue. Since 1997, the National Office on Equality for Women has coordinated a task force concerning “Revisions in Procedures for Victims of Sexual Abuse.” The main goal of this task force is to improve protection and assistance to domestic violence-abuse victims by integrating and coordinating the institutions responsible for such cases.
• Another example of the use of legal provisions to protect women who have been victims of sexual crimes can be found in the rules of evidence of the ad hoc tribunals, the ICTY and ICTR. The tribunals have an identical rule regarding evidence in cases of sexual assault. Rule 96 of the ICTY provides:

In cases of sexual assault: (i) no corroboration of the victim’s testimony shall be required; (ii) consent shall not be allowed as a defence if the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear; (iii) before evidence of the victim’s consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible; (iv) prior sexual conduct of the victim shall not be admitted in evidence.

This rule has been important in ensuring the effective and gender-sensitive investigation and prosecution of the sexual-violence crimes involved in several of the tribunals’ cases, notably the Gagovic (aka Foca), Akayesu, Tadic, Furundzija, and Delalic (aka Celibici) cases. Without this rule, it would have been extremely difficult to ensure the rights of the victims and many of them likely would not have been willing to testify. Moreover, Rule 96 should also serve as a model to national-level jurisdictions committed to promoting the prosecution and punishment of sexual-violence crimes. Governments are currently negotiating the Rules of Procedure and Evidence for the ICC and women’s and victim’s rights advocates have been pressing for comparable rules to ensure adequate treatment of victims before the new court.

V. Recommendations

• Governments should enact and enforce legislation with appropriately severe penalties against the perpetrators of acts of violence against women, including rape, sexual assault, sexual exploitation, and sexual harassment.

• Governments should review and amend legislation that discriminates against women by condoning violence against them, such as exclusions found in penal codes for marital rape and “honor killings” and laws that excuse defendants from rape charges if they marry their victims.

• Governments should also ensure that practices and procedures do not in themselves violate women’s rights, but rather encourage women to report violations of their rights and provide them with full access to the mechanisms of justice and to just and effective remedies. To this end, governments should review the procedural and evidentiary rules of the courts and amend them to help protect victims of sexual violence. In addition, governments should enact witness protection measures, including shelters for victims of domestic violence and comprehensive psychological and medical support for victims.

• Governments should create programs to sensitize and train law enforcement and judicial personnel and health care providers to deal effectively with situations of sexual violence and other forms of violence against women. Governments also should create sensitization programs aimed at other civil society groups.
• Governments should collaborate with NGOs that deal with violence against women in the design, implementation, and evaluation of such programs, particularly those aimed at primary- and secondary-school students.

• Governments should ratify the Rome Treaty and support the work of international tribunals in prosecuting rape and other sexual and reproductive crimes as genocide, crimes against humanity, and war crimes, as appropriate.

• NGOs should conduct advocacy campaigns promoting the passage of laws that protect women against violence in all realms of their lives, and should monitor the enforcement of existing laws and policies.
I. Introduction

A woman’s rights under marriage and family law greatly affect her ability to control her life and make voluntary, informed reproductive choices. This chapter reviews international legal protections for women within marriage and the family and examines the obstacles women face to full enjoyment of their rights upon entering into marriage, during marriage, and at its dissolution. Following a review of some developments since 1995, the chapter closes with recommendations for government action to ensure women’s equality within marriage and the family.

II. Marriage and Family Law Under International Human Rights Law

The rights of women within marriage and the family were among the first human rights pertaining
to women’s status to be explicitly recognized under international law. One of the basic principles governing marriage under human rights law is that no one may be forced to enter marriage against her will. The Universal Declaration, the Civil and Political Rights Covenant, and the Economic, Social and Cultural Rights Covenant obligate States Parties to ensure that marriage is entered into only with the free consent of the intending spouses. Moreover, according to the Universal Declaration and the Civil and Political Rights Covenant, men and women have equal rights upon entry into marriage, during marriage, and at its dissolution.

The Women’s Convention also recognizes these rights. It goes further, however, by guaranteeing women’s right to equality as parents in matters relating to their children; in deciding on the number and spacing of their children; as guardians, wards, trustees, and adoptive parents; and in choosing a family name, a profession and an occupation. In addition, under the Women’s Convention, spouses have equal rights “in respect to ownership, acquisition, management, administration, enjoyment, and disposition of property.”

III. Violations of Women’s Rights Within Marriage and the Family

Despite international guarantees of women’s rights within marriage and the family, women continue to face violations of their rights in these contexts. Discrimination pervades the laws of many countries regulating marriage and the family. It is also manifested in official tolerance of cultural, societal, and customary norms that shape the institution of marriage and family life. Even countries that have adopted legislation that is protective of women’s rights often do not adequately enforce these laws.

A. Marriage formation: the right to consent to marriage

Under the laws and customs governing marriage in some countries, the consent of the bride and groom are not required to create a marriage. Instead, unions may be contracted by the families of the bride and groom, without consultation of the parties to be married. This is often the case in countries that permit customary or religious law to govern matters relating to marriage and the family. In Nigeria, for example, the law recognizes three types of marriage: customary, Islamic, and civil. Under customary law, marriages are arranged by families and the prospective husband is often required to pay a bride price to the bride’s family. Similarly, under the prevailing interpretation of Islamic law, a woman’s father retains the right to arrange her marriage, regardless of her age and without her consent. Another practice that nullifies a woman’s right to consent to marriage is the custom of “widow inheritance,” whereby a woman whose husband dies is forced to marry one of his close surviving relatives. In Burkina Faso, for example, where the practice has been specifically prohibited under the Code of Persons and the Family, it is known to continue to occur.

A number of countries around the world tolerate child marriage. Child marriage is the marriage of a person who is below the age of 18 — the age under which a person is still a child, according to the Children’s Rights Convention. This practice contravenes the specific provision of the Women’s Convention that states that “the betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age of marriage . . . .” Child marriage also nullifies women’s right to consent to marriage. A young girl or adolescent may be pressured by her family to marry a man who is chosen for her. Even a child who willingly enters into marriage may lack the knowledge or understanding required to make an informed decision about a matter of life-long consequence. In Niger, more than three-quarters of young women enter marriage
or consensual unions before the age of 18, and in many other countries in sub-Saharan Africa, about half do so. In Latin America and the Caribbean, some 20-40% of young women enter their first marriage before age 18, while in North Africa and the Middle East, 30% of women marry this young. In many of these countries, the average age of first marriage is considerably lower than 18. In Mali, for example, the median age of first marriage is 16.

In contrast, marriage during adolescence is not customary among young men anywhere in the world, mainly because a man's marriageability is often dependent upon his being able to support a family. Women are therefore likely to marry men who are older than they are. The resulting inequality in economic and social status may lead to unequal decision-making power within marriage, with significant repercussions for women's health and development. In many countries, this disparity in marital age is sanctioned by law. The minimum age of first marriage is often lower for females than it is for males, violating women's right not to be discriminated against on the basis of sex in the formation of marriage. For example, in Albania, Romania, and Argentina, the minimum age for first marriage for women is 16 and for men it is 18. In Ethiopia it is 15 for women and 18 for men. In Burkina Faso it is 17 for women and 20 for men. In Bolivia, it is 14 for women and 16 for men. For further discussion of the repercussions of these laws, see Chapter 8 on adolescents.

B. Rights within marriage: unequal status of spouses

Women also may be prevented from enjoying equality with their husbands during marriage. A number of laws explicitly provide for the subservience of women to their husbands. For example, in Turkey, the Civil Code provides that “[t]he husband is the head of the union. It is the husband who decides where the family will live and who is responsible for adequately maintaining the wife and the children.” Similarly, in Mali, the Code of Marriage and Guardianship of 1992 states that “[t]he husband is bound to protect his wife and the wife to obey her husband.” In a number of countries, discriminatory marital arrangements, such as polygamy, are sanctioned by law. Polygamy is legal in many sub-Saharan African countries. One exception is Côte d’Ivoire, which has criminalized polygamy, making it punishable with a prison sentence and a fine.

C. Protection from marital rape and domestic violence

Married women often encounter violence, including sexual violence, in the home. Aggravating this situation are laws, or the absence of laws, that either condone or fail to protect women from marital rape and domestic violence. In a number of countries, including Honduras and Nicaragua, there is no penal code provision expressly prohibiting rape within marriage. Domestic violence continues to be a grave concern around the world. It puts women's health, including their reproductive health, at risk and affects their abilities to enjoy other basic rights and freedoms. For further discussion of marital rape and domestic violence, see Chapter 6 on Rape and Other Sexual Violence.

D. Discrimination in family planning

Another type of discrimination in marriage is the requirement that a married woman inform or obtain the consent of her husband before obtaining contraception or having an abortion. Because of the ramifications of pregnancy and childbirth on a woman's health and access to education and employment, she alone must have the power to determine whether she will become pregnant and have a baby. Laws that require her to confer with her husband prior to accepting a contraceptive method deny her autonomy over
her reproductive capacity. Such a law is in place in Chad, where a woman must obtain the consent of her husband in order to be prescribed any reversible contraceptive method.\(^{380}\) Likewise, spousal authorization is required for a woman to have an abortion under the laws of Japan, Morocco, and Turkey.\(^{381}\)

E. Discrimination in ownership and inheritance of property

The property laws of certain countries further weaken women’s roles in the marital relationship, as well as their ability to leave a marital relationship. In Nepal, a woman has to be married for at least 15 years, and be a minimum of 30 years of age, before she may “obtain a share of the property from her husband.”\(^{382}\) In some countries, such as Cameroon, a woman is not empowered to enter into contracts involving the marital property.\(^{383}\) Other countries also severely limit women’s right to inherit property upon the death of a spouse. For example, most systems of customary law in Nigeria exclude widows from inheriting property in their own right, and a widow is forced to marry a close relative of her husband, such as a brother, to ensure the continuing support of her husband’s family.\(^{384}\) Under Islamic inheritance laws as practiced in Northern Nigeria, one eighth of a man’s estate is allocated to his surviving wife or wives, and the remainder of the estate is distributed so that male heirs receive twice the share of any female heirs.\(^{385}\) In Tanzania, four different systems of law govern the administration of an estate, and under one of these systems — customary law — a widow whose spouse dies intestate does not obtain a share of her husband’s estate if there are any children from the marriage.\(^{386}\)

Furthermore, in a number of countries, women’s ability to inherit from their parents is limited under the law. For example, although the Constitution of Ethiopia provides for women’s equal treatment in the inheritance of property, under customary laws still applied in the north of Ethiopia, a woman is not allowed to inherit land unless her father dies before giving her hand in marriage; under such circumstances, she is entitled to a dowry. In the south of Ethiopia, customary law still bars women from inheriting land, contrary to provisions of the Civil Code.\(^{387}\)

F. Discrimination in divorce

Just as discrimination is present in marriage, women often are discriminated against in divorce as well. In Chile and the Philippines, divorce is not recognized under law, denying women the ability to end a union that is abusive or otherwise oppressive.\(^{388}\) In many other countries, women face enormous economic difficulties when they divorce. A number of countries do not ensure a division of property that allows a woman to subsist independently of her spouse. In Cameroon, for example, a number of courts have imposed a “proportionality of contributions” rule at the time the community property is liquidated. Following this rule, one-quarter or one-third of the community property is allocated to the woman, but she still has to prove (generally by documentary evidence) that she participated in accumulating it.\(^{389}\)

IV. Developments Since 1995

Women’s rights within marriage and the family are the subject of continuing debate and legal reform, both within national legislatures and the courts. For the most part, changes during the last five years have been consistent with growing international recognition of women’s human rights within all sectors of society.

- Colombia enacted a law in 1996 that requires the signature of both spouses when transferring immovable property pertaining to the family domicile, thereby protecting women’s interest in
joint property. Also in 1996, Colombia passed a law to curtail the practice of avoiding alimony payments. This new law established the National Registry for Protection of the Family, which seeks to identify those who avoid alimony obligations and to enforce compliance.

- In Guatemala, the Civil Code was reformed in 1998, eliminating many, although not all, of the discriminatory laws therein. Under the reformed Code, either spouse can represent the couple in transactions. Furthermore, these reforms abolished a Civil Code provision giving the husband the right to oppose his wife's employment outside the home.

- In Egypt, a family law enacted in 2000 enables a woman to divorce her husband, with or without his assent. Previously, a husband's consent was needed in order for a woman to obtain a divorce. Furthermore, under this new law, a divorced woman will be able to garnish her husband's wages if he refuses to pay alimony. If the ex-husband cannot be found or cannot pay a court-ordered alimony, the woman will be able to draw from a special state bank account.

- In 1998 in Turkey, after years of lobbying by women's advocates, the Parliament approved a law on domestic violence permitting any member of a family subject to domestic violence to file a petition for a protection order against the perpetrator of the violence. Protection orders may direct the violent family member to cease all threatening behavior, leave the family dwelling, and surrender weapons to the police. An order may also instruct an abuser not to approach the dwelling or place of work of family members, damage family property, cause distress using means of communication, or arrive at the shared dwelling while under the influence of alcohol or other intoxicating substances, or use such substances in the dwelling.

- Many other countries, including Bolivia, Ecuador, and El Salvador, have promulgated domestic violence laws in an effort to curb violence — including sexual violence — against women. For a discussion of these laws see Chapter 6 on rape and other forms of violence against women.

Not all recent developments protect women's rights in the area of family law. In countries where women's rights receive only limited protection under national legal instruments, women's economic and social status is precarious.

- A 1999 decision by the Supreme Court of Zimbabwe permitted the application of customary law, which is recognized in that country, to be applied to prevent a woman who was an eldest child from inheriting from her father in favor of a younger male sibling. Although the Constitution guarantees non-discrimination, the Court recognized an exception to this guarantee, which permits discrimination where “devolution of property on death” is concerned and “customary law [is] applied between Africans.” The Court stated that:

> Whilst I am in total agreement with the submission that there is a need to advance gender equality in all spheres of society, I am of the view that great care must be taken when African Customary law is under consideration. In the first instance, it must be recognized that customary law has long directed the way African people conducted their lives and the majority of Africans in Zimbabwe still live in rural areas and still conduct their lives in terms of customary law. In the circumstances, it will not readily be abandoned, especially by those such as senior males who stand to lose their positions of privilege.
V. Recommendations

• Governments should deny legal force to religious or customary laws that conflict with guarantees of non-discrimination within marriage and the family under international law.

• Governments should prohibit the contracting of marriage made without the free consent of both intending spouses.

• Governments should enact legislation prohibiting the marriage of children who are below the age of 18. 402

• Governments should enact and enforce laws that prohibit violence within the family.

• Governments should reform all legislation requiring a husband’s consent in order for a woman to obtain contraception or undergo an abortion.

• Governments should protect women’s property and inheritance rights, granting women and men identical legal capacity in all civil matters. 403

• Governments should ensure that laws pertaining to the termination of marriage protect women’s ability to divorce at will and that adequate financial support is in place to enable them to do so.

• Governments should discourage customary norms that reflect notions of women’s inferiority to men.
Chapter 8

ADOLESCENTS

“The International Conference on Population and Development recognized in paragraph 7.3 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 [have] 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. In all actions concerning children, the best interests of the child shall be the primary consideration. Support should be given to integral sexual education for young people with parental support and guidance that stresses the responsibility of males for their own sexuality and fertility and that help[s] them exercise their responsibilities.”

Beijing Platform for Action, para. 267.404

“States Parties [to the Convention on the Rights of the Child] recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Convention on the Rights of the Child, art. 24. 405

I. Introduction

One out of five people in the world is an adolescent.406 The reproductive health needs of this group for the most part have been either ignored or neglected by governments and societies, or adolescent health has been treated as indistinguishable from childhood health concerns.407 Adolescents have reproductive rights just as adults do and they are entitled to have their reproductive health needs met. This chapter discusses the basis in international human rights law for the protection of adolescents’ reproductive rights. It then discusses why adolescents’ reproductive rights are especially vulnerable. The chapter includes an analysis of several specific aspects of adolescents’ reproductive rights: access to reproductive health care, sexual and reproductive health education, early marriage, contraception and early childbearing, unsafe abortion, HIV/AIDS and STIs, sexual violence, and FC/FGM. The chapter recommends that governments acknowledge the special needs of adolescents in all areas of reproductive health and that governments work to protect reproductive rights and to provide comprehensive reproductive health care to all adolescents.

While the concept of youth varies across cultures, in recent years there has been increasing global agreement that adolescence is a distinct and important period in a person's life.408 In a joint statement, WHO, the United Nations Children’s Fund (UNICEF) and the United Nations Population Fund (UNFPA) agreed that the term “adolescent” refers to people between the ages of 10 and 19. “Youth,” defined as people between 15 and 24 years of age, and “young people,” who are between 10 and 24 years old,409 make up distinct yet overlapping categories. Although puberty often begins after
Age 10, young adolescents — particularly girls — in many social and cultural contexts are confronted with sexual and reproductive health issues around age 10, sometimes even earlier. They may be forced into early marriage, become victims of rape or incest, or undergo FGM. At some point during adolescence, many may decide to become sexually active, but lack access to information and services to prevent STIs and unwanted pregnancy.

II. Adolescents’ Reproductive Rights

Adolescents’ right to health, which includes reproductive health, was first internationally recognized in the Children’s Rights Convention of 1990.410 By its terms, the provisions of the Children’s Rights Convention generally apply to persons under 18 years of age.411 Article 24 recognizes children’s right “to the enjoyment of the highest standard of health and to facilities for the treatment of illness and rehabilitation of health.”412 It also requires States Parties to take appropriate measures “to develop family planning education and services.”413 Furthermore, while the Children's Rights Convention requires States Parties to “respect the responsibilities, rights and duties of parents . . . to provide . . . appropriate direction and guidance in children's exercise of their rights,”414 it clearly recognizes that in all matters, the best interests of the child take precedence and the child should be enabled to exercise his or her rights.415 The Children’s Rights Convention was also the first international human rights treaty to explicitly recognize sexual violence and abuse, a major factor related to adolescents’ reproductive and sexual health.416 In addition, the Children’s Rights Convention addresses states’ obligation to ensure children’s privacy,417 and their obligation to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.”418 Full implementation of these provisions is highly relevant to adolescents’ ability to determine their future lives, including when and whether to bear children.419

At the ICPD and the Beijing Conference, governments again recognized and affirmed many of the reproductive rights articulated in the Children’s Rights Convention. The consensus documents agreed to at those conferences contain chapters420 devoted exclusively to adolescents which outline specific actions to better ensure protection and realization of adolescents’ reproductive rights.421 However, there remains a significant gap between the provisions contained in these instruments and the reality of adolescents’ reproductive health and lives.

The UN human rights treaty committees charged with overseeing such treaties’ implementation have emphasized the need to recognize and respect the reproductive rights of adolescents. In particular, the Committee on the Rights of the Child (CRC) and CEDAW have consistently stressed the need for governments to ensure adolescents’ reproductive rights. For example, in its concluding observations on Belize, the CRC expressed its concern over the limited availability of programs and services in the area of adolescent health and, specifically reproductive health.422 The CRC recommended that Belize increase its efforts to promote and strengthen policies and programs on reproductive health education and counseling services for adolescents.423 CEDAW, in its concluding observations on Chile, expressed concern over the alarming levels of teenage pregnancy and lack of access to sexual education for adolescents.424 In its concluding observations on Australia, CEDAW specifically inquired into the availability of family planning and contraceptive advice for adolescents without parental consent.425 CEDAW further inquired into the availability of abortion for adolescents on the same basis as adult women.426
III. Vulnerability of Adolescents’ Sexual and Reproductive Rights

Adolescent girls have reproductive health needs that are similar to those of adult women, but due to their age and life circumstances they tend to have less autonomy to ensure that their needs are met. Adolescents often face reproductive health risks associated with the broader social and economic conditions of their lives. Factors such as access to basic health care, standard of living, social status and autonomy, and access to information and medical services all help to determine adolescent girls’ reproductive health as well as their overall well-being.427

Cultural factors also prevent adolescents from fully enjoying their reproductive rights. In many cultures, there is a disparity in attitudes regarding the sexuality of young women and men, and the realities that confront them.428 Conservative elements in society often do not acknowledge adolescents’ sexuality, especially that of unmarried adolescent girls. This situation leaves the needs of these adolescents unattended. The reproductive rights of adolescent girls are also particularly vulnerable because they are more often subject to coercion in sexual relations. In addition, the consequences of unprotected sexual activity in adolescence are more onerous for young women than for their male peers.429 For example, adolescent girls are more likely to interrupt their education due to early childbearing. Doing so has tremendous consequences for their lifelong social and economic status.

Compounding the social and cultural factors that may prevent adolescents from exercising their reproductive rights are legal and policy barriers that have the same effect. For instance, some countries maintain burdensome restrictions for unmarried adolescents, either officially or in practice, on access to reproductive health services, including contraception and condoms to protect against STIs. South Africa offers two examples of such practices: the Child Care Act prohibits persons under the age of 15 from accessing contraceptives without the consent of their parent or guardian.430 Furthermore, the Medicines and Related Substances Control Act of 1965431 provides for the sale of oral contraceptives to a person under the age of 16 years only if the sale is made pursuant to a prescription issued by a medical practitioner, or pursuant to a written order disclosing the purpose for which the substance will be used. It must be signed by someone who the seller knows to be over the age of 16 years.432

In addition, numerous countries, including industrialized countries such as Denmark, Italy, and Norway, require parental consent for minors to obtain a legal abortion. 433

IV. Adolescents’ Rights in Laws and Policies

A. Access to reproductive health care

Adolescent reproductive health care needs vary with culture, age, and marital status, but all adolescents need access to affordable, high quality reproductive health services. In addition, it is essential that this care be confidential and that it respect adolescents’ privacy. This is particularly important for unmarried adolescents who may confront negative attitudes for being sexually active.

Due to controversies related to adolescent sexuality and the general lack of knowledge regarding the reproductive and sexual needs of this population, relatively few countries in the world have adequate reproductive health care services for young people. One example of a positive governmental initiative to address this issue is in Costa Rica, where a law relating to adolescents was passed
on January 6, 1998 entitled the Code of Childhood and Adolescents. This Code guarantees the establishment of programs — to be overseen by the Ministry of Health — that offer comprehensive services to adolescents in relation to prenatal, perinatal, postnatal, and psychological, and HIV/AIDS-related care. It further provides that the state should design a national education policy that includes issues such as sex education, reproduction, adolescent pregnancy, drugs, gender violence, STIs, HIV/AIDS, and other issues.434

In 1996, the government of Ghana enacted the Adolescent Reproductive Health Policy, which is aimed at addressing the reproductive health needs of adolescents and providing guidelines for government agencies.435 Most importantly, the policy recognizes the rights of adolescents to information and services relating to sexual and reproductive health. The goals of the policy are to promote the physical, mental, and social well-being of adolescents in Ghana and to encourage the development and implementation of activities and services to expand the reproductive health options available to adolescents. The long-term objectives of the policy include the following: promoting education programs on reproductive health for adolescents; implementing programs to reduce early pregnancy, reproductive tract infections, STIs (including HIV), unsafe abortions, FC/FGM, and early marriage; developing and strengthening programs for marginalized adolescent groups; and pursuing policies to eliminate violence against adolescents and biases against the girl-child. Ghana’s adolescent policy also recognizes the need for targeted research, monitoring, and evaluation of adolescent reproductive health issues and programs.436

B. Education, including sexual and reproductive health education

Education is a prerequisite for fulfilling the right to reproductive health. Education enables young people to obtain information that they can use to exercise and protect a range of interests and rights, including their sexual and reproductive rights. Studies indicate that educated women are able to have a greater say in their reproductive lives than women with little or no education, and that a minimum of five years of education greatly increases the likelihood that a woman will control her reproductive life.437 This has been demonstrated across many regions and cultures. Yet despite the numerous benefits associated with ensuring educational opportunities for young girls and women, many countries continue to lag in improving women’s education. Low school enrollment of girls is related primarily to enforcement of traditional gender roles and lack of economic resources.438

Another obstacle to education faced by young women is the fact that when adolescent girls become pregnant, they often suffer discriminatory treatment in educational institutions. Sometimes under these circumstances, the young woman is expelled from school and not allowed to continue her studies. Some governments have taken steps to put an end to such discrimination and allow these young women to continue their education, and some countries also attempt to facilitate the continuation of schooling both during pregnancy and after. For example, the Congress of Peru passed a law prohibiting any administrative action that inhibits continuity of school attendance of pregnant girls.439 The law places responsibility on the appropriate educational authority to adopt necessary measures to prevent discrimination against pregnant students.440 In some countries, the mere adoption of such measures may not be adequate. In Chile, pregnant adolescents continue to be pressured into abandoning school despite the existence of a Ministry of Education circular recommending that they be allowed to complete their studies.441

In Bangladesh, where a large number of adolescent girls have not attended school, the government has undertaken a comprehensive policy initiative to increase adolescent girls’ opportunity to obtain a sec-
The stated objectives of the initiative are to retain female students at the secondary stage and thereby promote higher education; to increase the enrollment rates and reduce dropout rates; and to control the population growth rate by discouraging girls from marrying before 18 years of age.

Along with formal education, it is equally important to provide young people with education about sexual and reproductive matters. Many countries resist such education in a formal setting under the erroneous assumption that educating adolescents about sexuality will encourage early sexual activity. On the contrary, studies indicate that sex education actually has the effect of delaying sexual activity.

Examples can be found from around the world of different types of efforts to integrate sex education into schools. In Panama, the Family Code that went into effect on January 3, 1995, has two separate articles that deal with sex education. Article 671 provides that the Ministry of Education will include official and obligatory programs on sex education and family life. Article 703 provides that sex and family education are to be obligatory for adolescent mothers and fathers. Sex education is also addressed in a 1995 law that seeks to reform the educational system and calls for the inclusion of education on issues of population and human sexuality in basic educational curricula.

C. Early marriage

Marriage contracted before the age of 18 is generally considered early marriage. Early marriage may negatively impact on a young woman’s life by affecting her full development, particularly in terms of education, economic autonomy, and physical and psychological health. Most adolescents who marry young are pressured to begin childbearing prior to physiological maturity. Tragically, this can lead to maternal mortality and morbidity. Furthermore, when a child or adolescent is compelled to marry at a young age and she refuses to consent to sexual relations or is too young to consent knowingly thereto, such marriages may result in sexual violence. In many cultures where the female age of marriage remains low, there is also a significant age differential between the spouses, which often leads to relationships of greater dependence and powerlessness for the woman.

In addition to the cultural pressure or coercion adolescents may face to marry young, many women are pressured or coerced into marrying a man chosen for them. Some customs and religious beliefs condone or require forced marriage, child marriage, dowry and bride price arrangements, consanguineous marriage, polygamy, and polygyny. Many of these practices violate numerous international human rights instruments, such as the provisions in the Women’s Convention and other instruments that provide that marriage shall be entered into only with the free and full consent of each spouse.

D. Early childbearing and contraception

Because adolescents are often not physiologically mature enough for childbearing, early childbearing is associated with high levels of maternal mortality and morbidity. The risks of early childbearing include hemorrhaging, anemia, malnutrition, delayed or obstructed labor, low birth weight, and death for the mother and/or the infant. Young adolescents are up to four times as likely as women over 20 to die from pregnancy-related causes. In addition to the decreased health risks, there are socio-economic benefits for delaying a pregnancy. A young woman who delays pregnancy has a better chance of furthering her education, thus acquiring skills and knowledge that will allow her to better take care of herself and her future family.
Due to the high level of sexual activity and unplanned pregnancy among adolescents, it is essential to ensure young people have access to contraceptives. Unfortunately, many adolescents have little or no information about contraceptives and their proper use. For additional discussion on contraception, see Chapter 2.

In an effort to make emergency contraceptives more available to young people, France became the first country in the world to dispense emergency contraception pills through school nurses. The pills are to be available in both high schools and junior high schools. Although the nurses are advised to make efforts to inform the child’s parents, they are not required to do so. French health and education officials hope the policy will help lower unwanted pregnancies among teenagers and reduce the country’s abortion rate, which is among the highest in the European Union. Despite protests from the Catholic Church and some parents’ groups, the measure has wide support in France. It is a major step toward making contraception more accessible to young people and is especially important to those who are victims of rape, who experience method failure, or who cannot afford to buy the pills over the counter, as well as those who are too shy to go to the local pharmacist.

E. Unsafe abortion

Adolescents worldwide are disproportionately victims of unsafe abortions due to their lower access than adults to quality, confidential reproductive health services and information, including contraception. Adolescents are less likely than older women to have the social contacts, access to transportation, and financial means to obtain a safe abortion. Furthermore, adolescents tend to delay obtaining an abortion until after the first trimester and often seek help from non-medical providers, leading to higher rates of complications. Self-induced abortion is also common among adolescents in many countries.

In countries where abortion is illegal, highly restricted, or inaccessible to certain sectors of the population, adolescents have even less access due to additional restrictions on them, notably those requiring parental consent. At least 28 countries require parental authorization, although in several, including Denmark, Italy, and Norway, a minor may forgo parental consent if she seeks authorization from a court or hospital committee instead.

F. HIV/AIDS and STIs

Of the 30 million people living with HIV in 1998, at least one-third were aged 10 to 24. Furthermore, around half of the 333 million new STIs each year are in people under 25 years old. Young women are especially susceptible to STI transmission because they have fewer antibodies than older women, and the immaturity of their cervix increases the likelihood that exposure to the infectious agent will result in the disease being transmitted. In addition to the physiological factors putting young women at risk, adolescent girls are often more vulnerable to HIV/AIDS and STIs than their male counterparts due to factors such as sexual violence and exploitation, early sexual initiation, and inability to negotiate safe sex with partners, who are often older than they are.

In communities that lack contraceptive services at health facilities or that restrict adolescent access to male and female condoms, it is nearly impossible for adolescents to protect themselves from STIs, HIV, and unwanted pregnancies. Some governments have undertaken specific initiatives to address the high rates
of STIs and HIV in adolescents. One of the components of Ghana’s 1996 Reproductive Health Service Policy is the prevention, control, diagnosis and treatment of reproductive tract infections, including HIV/AIDS, by targeting all sexually active individuals, including adolescents. In South Africa, as part of the Department of Health’s strategy to combat HIV and STD epidemics, life skills and responsible sex education programs in schools and youth centers have been implemented.

G. Sexual violence

Although there are relatively few studies regarding sexual violence against adolescents, those that have been conducted indicate that adolescents around the world are at high risk of exposure to various forms of sexual abuse, including rape, sexual assault, incest, commercial sexual exploitation, and sexual slavery.

Many adolescents around the world report that their first sexual experience was forced or coerced by an older partner, and the majority of victims of sexual violence are adolescent girls. Most sexual violence is committed by acquaintances, family members, and authority figures, a crucial factor in the underreporting of such incidences. The fear of reporting is compounded by health care providers and law enforcement agencies that are ill equipped to address such abuses. Lack of information, combined with the often low status of women in many societies, contribute to making adolescent girls one of the groups most vulnerable to sexual violence. Examples of efforts to curb sexual violence against women, including adolescent girls, can be found throughout the world. See Chapter 6 on rape and other sexual violence.

H. Female circumcision/female genital mutilation (FC/FGM)

Most commonly, girls experience FC/FGM between the ages of four and 12 years. Because FC/FGM most frequently occurs prior to or during adolescence, adolescent girls are particularly affected by this harmful traditional practice as they enter their reproductive years and become sexually active. It is important to note that this procedure is usually performed upon young girls who have no say in the matter.

The practice of FC/FGM constitutes a violation of girls’ and young women’s human rights. It violates the right to be free from all forms of gender discrimination, the right to life and physical integrity, and the right to health. Moreover, the international community generally has regarded FC/FGM as a violation of children’s rights. Because children are mostly unable to protect themselves adequately or make informed decisions about matters that could affect the rest of their lives, governments are obligated under human rights law, particularly the Children’s Convention, to protect the rights of children.

Governments have undertaken a variety of strategies to eliminate FC/FGM. When used in conjunction with outreach and education programs, it is appropriate for governments to adopt laws criminalizing this practice. Since 1995, several countries in Africa have passed legislation that criminalizes FC/FGM. For example, in 1999, Senegal amended its penal code to provide that “[a]ny person who violates or attempts to violate the integrity of the genital organs of a female person . . . shall be punished by imprisonment from six months to five years.” For more information on FC/FGM, see Chapter 5.
V. Recommendations

A. Reproductive health

• Governments should remove all legal and regulatory barriers to reproductive health care for adolescents and create comprehensive, age-specific health programs for them as part of the country's overall health policy. These services should be geared toward married and unmarried adolescents, and should include information and services addressing reproductive health, STIs, gender roles, sexuality, and responsible use of contraceptives.

• Governments should provide universal access to contraception and maternal health care, including pre- and post-natal care for pregnant adolescents, regardless of marital status.

• NGOs should work to sensitize governments and the community at large to the special reproductive health needs of adolescents.

• Family planning associations should provide services geared specifically towards adolescents.

• Donors should support NGOs working to offer services to young people.

B. Education

• Governments should enact laws to make primary school attendance mandatory for both sexes where it is not currently, and enact policies to encourage education for girls through the secondary and tertiary levels.

• Governments should also develop and implement sex education and life-skills programs for all levels of education — primary, secondary, and tertiary. It is also important that government policies reflect the special needs of marginalized adolescents, such as street children and out-of-school youth.

• Government should initiate education campaigns for STI- and HIV/AIDS-prevention specifically aimed at adolescents.

C. Early marriage

• Governments should adopt 18 as the minimum age of marriage for both women and men and they should enforce these or existing laws on minimum age of marriage and work toward establishing a uniform statutory law applicable to all marriages.

• Governments should enact and enforce laws to ensure that marriage is only entered into with the consent of the intended spouses.

D. Sexual violence

• Governments should create programs to sensitize the community, including health care providers and law enforcement officials, regarding the need to protect the girl child and adolescents against all forms of sexual violence, including rape, incest, and trafficking.
Conclusion

In the last five years, governments around the world have increasingly taken action to promote the human rights of women, including their reproductive rights. These advances can be attributed to the work of advocates for women's rights worldwide. While the Beijing Conference was undoubtedly a catalyst for change, it is only through the efforts of women's rights advocates that the Beijing principles are being translated into solid legislative and policy reforms. Through data collection, policy analysis, legislative drafting, organizing, lobbying, and litigation, women around the world have seen gains in the content of the laws and policies that govern their lives.

There is still much to be accomplished to fulfill the commitments made at Beijing. While women's rights advocates will be at the forefront of these changes, governments themselves should be mindful of the obligations they undertook by adopting the Beijing Platform for Action in 1995. They must address discrimination against women in every sector of society, understanding that all of women's rights are connected and interdependent. Government commitment to women's rights should be reflected in legal and policy reforms, which not only affect behavior, but can shape people's understanding of equity and justice. The adoption of laws and policies should be accompanied by vigorous efforts to enforce and implement these measures.

This report has highlighted the diverse fronts upon which advocates can work to promote reproductive rights. It has shown that a woman's ability to exercise her reproductive rights depends upon a host of conditions, including her access to health care and family planning information, her freedom from violence, and her rights within marriage and the family. Promotion of reproductive rights thus requires action on behalf of women's rights in every social sphere.

As seen in Chapter 1, women's reproductive rights can be promoted by influencing the content of governments' population, reproductive health, and family planning policies. While these policies may not have women's rights as their primary focus, their provisions affect women's ability to access reproductive health care, contraception, and information about family planning. Once in place, implementation of these policies must be carefully monitored to ensure that reproductive health services are delivered in a comprehensive manner, free of coercion, discrimination, and violence. Since the adoption of the ICPD Programme of Action in 1994, which was reinforced by the Beijing Platform for Action in 1995, the policies and implementation strategies of many countries have reflected the broad view of reproductive health articulated at the ICPD.

Access to specific methods for controlling fertility is also affected by law and broad governmental policies. As discussed in Chapter 2, while most forms of contraception are legal in most countries, some contraceptive methods — such as surgical sterilization and EC — are more strictly regulated or prohibited altogether. Similarly, as seen in Chapter 3, most of the world's women (62%) live in countries in which abortion is permitted with few restrictions. For a shrinking minority, however, abortion remains generally prohibited. Laws that limit access to safe methods and procedures for regulating fertility violate women's rights and expose them to health risks. The trend since 1995 has been toward liberalization of such laws. It is important to point out, though, that even in countries that permit abortion and the full range of contraceptives, their availability may not be guaranteed by law. Addi-
tional policies may be required to ensure that all women can access the family planning and abortion services they need. Such policies exist in many countries, but their fulfillment depends upon the availability of funds and other resources. Any effort to promote access to abortion and the full range of contraceptive methods must aim to ensure that services are delivered in a setting where adequate information is provided and clients give their informed consent.

Certain threats to women’s health are more a product of women’s vulnerable social status than their physiology. An example is HIV/AIDS, which is discussed in Chapter 4. The international community has recognized that, in many parts of the world, women are becoming infected with HIV at higher rates than men. Pervasive discrimination against women affects their ability to educate themselves and demand that their partners practice safer sex. In addition, because women in many countries face discrimination in every sector of society, women living with HIV/AIDS have little protection from persecution. Since 1995, a number of governments have undertaken legislative, policy and programmatic initiatives to prevent transmission and treat HIV/AIDS, as well as to address discrimination against those living with HIV/AIDS.

Women’s reproductive rights and health also are threatened directly by physical mistreatment, often endured without the protection of the community or the state. Two examples of this mistreatment, the subjects of Chapters 5 and 6 respectively, are harmful traditional practices, such as FC/FGM, and rape and other forms of sexual violence. These acts violate women’s right to physical integrity and severely impair women’s ability to enjoy their other reproductive rights. Since the Beijing Conference, governments have increasingly adopted legislation addressing these issues, extending the legal protection available to women in their homes and their communities. In addition, the use of rape as a weapon of war and political repression has in recent years been the subject of condemnation by the international community.

The rights a woman is able to exercise within marriage and the family greatly affect her status within society, as well as her ability to make informed and voluntary decisions about her reproductive health. As discussed in Chapter 7, numerous cultural norms, practices, laws and policies discriminate against women in the formation of marriage, as well as during marriage and at its dissolution. These include: forced marriage, early marriage, polygamy, discriminatory inheritance laws, marital rape, and domestic violence. Despite the international legal prohibition of these practices, they are protected by law or ignored by law enforcement officials in many countries. A number of recent developments in this area are positive, but much work remains to be done to ensure equality within marriage and the family worldwide.

Finally, certain groups of women face heightened obstacles to enjoying their reproductive rights. The needs of one such group — adolescent girls — are addressed in Chapter 8. Social and cultural norms, as well as discriminatory laws, deny adolescents their reproductive rights. Adolescents have many of the same reproductive health needs as adult women. However, because of their life circumstances, they are less likely to have these needs met. In recent years, there has been increased awareness of the needs of adolescents, and some governments have adopted laws and policies to protect and promote adolescents’ reproductive health and rights. For the most part, however, adolescents still lack access to a full range of contraceptive methods, safe abortion services, and comprehensive health services, including measures to prevent and treat HIV/AIDS.
and other STIs. In addition, government action is still needed to prevent early marriage and violence against adolescent girls.

The subjects addressed in this report are only a sampling of the key reproductive rights challenges facing women in the year 2000. Their diversity, however, reveals the breadth of social, cultural, and legal factors affecting women’s health and rights. As women worldwide move forward, each victory — no matter where in the world — helps to build a future in which women’s reproductive health and choices will be recognized as fundamental human rights.
Notes for Introduction


2. For purposes of this report, the term "reproductive rights" is intended to encompass a number of rights that are often also referred to as "sexual rights," including the right to be free from sexual violence and coercion and the right to the highest standard of sexual health. Similarly, we interpret the term "reproductive health" to encompass many of the elements of "sexual health." For further information on sexual rights and sexual health, see International Women's Health Coalition, *Sexual Rights* (visited April 13, 2000) <http://www.iwhc.org/defining.html>.


7. ICPD Programme of Action, supra note 1, para. 7.2.


9. Civil and Political Rights Covenant, supra note 3, art. 2; Economic, Social and Cultural Rights Covenant, supra note 5, art. 3.


12. Id. para. 14.


15. ICPD Programme of Action, supra note 1, para. 7.3.


19. Women's Convention, supra note 10, art. 16(1)(e).


21. Women's Convention, supra note 10, art. 10(h).


23. Id.


25. ICPD Programme of Action, supra note 1, para. 7.3.

26. Id.

27. Id. para. 7.2.

28. Id.

29. Id.

30. Id. para. 7.3.


34. Id.

35. Rome Treaty, supra note 32, art. 126.


38 Center For Reproductive Law and Policy (CRLP), ICPD+5: Gains For Women Despite Opposition 1 (1999).

Notes for Chapter 1

39 Beijing Platform for Action, supra note 1, para. 92.
40 ICPD Programme of Action, supra note 1, Principle 8.
42 ICPD Programme of Action, supra note 1, para. 4.1.
44 Id.
45 ICPD Programme of Action, supra note 1, Principle 8 and para. 7.3.
46 Beijing Platform for Action, supra note 1 para. 105, Strategic Objective C.1; para. 108, Strategic Objective C.4.
47 CRLP, A Global Mandate, supra note 41, at 19.
51 Id.
52 Id.
54 Id. art. 14(1).
56 Id.
57 CRLP & Federation for Women and Family Planning, supra note 50. Between 1981 and 1991, the natality rate decreased from 14.6% to 11.6%. In the period from 1991-1994, more people died in Croatia than were born. See id. 58 Id.
60 Id.
61 Id. at 61.
63 Id. The government is currently exploring the idea of providing contraceptives to unmarried adolescents and questioning whether such a policy would encourage sexual activity and erode social and moral standards. Id.
64 CRLP & DEMUS, supra note 55, at 192.
67 CRLP & DEMUS, supra note 55, at 57.
68 Id. at 170, citing The Program on Reproductive Health and Family Planning approved by Ministerial Resolution No. 071-96-SA/DM, Feb. 6, 1996. at p.5.
69 CRLP & CLADEM, Silencio y complejidad 23-28 (1998); CLADEM, supra note 66.

Notes for Chapter 2

73 Beijing Platform for Action, supra note 1, para. 94.
74 ICPD Programme of Action, supra note 1, para. 7.16.
76 Women's Convention, supra note 10, art.16 (1)(e).
77 Id.
78 Id. art. 12(1).
79 Id. art. 10(h).
80 General Recommendation on Health, supra note 11, para. 31(c).
83 CRLP & DEMUS, supra note 55, at 151.
85 CRLP & WOMEN’S CENTRE FOR PEACE AND DEVELOPMENT, WOMEN’S REPRODUCTIVE RIGHTS IN NIGERIA: A SHADOW REPORT 3 (1998).
86 id. at 4.
89 Id.
90 Id.
91 The Republic of Argentina Penal Code, Law No. 11,719, text codified by Decree No. 3992, Dec. 21, 1984 (B.O. j an. 16, 1985), art. 90
92 Id. art. 91
93 Id. art. 92.
94 CRLP & DEMUS, supra note 55, at 24.
95 CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, supra note 50, citing Criminal Code, art.156 (Dz.U. nr 88/97, poz. 553 and Nr 128/97, poz. 840)
96 Id.
97 CRLP & GREFELS, supra note 48, at 107.
100 Michael Klitsch, The Bumpy Road from Cairo to Now—and Beyond, 25 FAMILY PLANNING PERSPECTIVES 196, 199 (1999).
101 Id.
102 Id. For an explanation of why EC is not an abortifacient, see CRLP, EMERGENCY CONTRACEPTION, CONTRACEPTION, NOT ABORTION: AN ANALYSIS OF LAWS AND POLICIES AROUND THE WORLD (1999).
103 Id.
105 Id.
106 CRLP & GREFELS, supra note 48, at 35-36.
108 Id.
109 CRLP & GREFELS, supra note 48, at 81.
110 Id. at 174.
111 Id.
113 Special Rapporteur’s Report on Violence and Reproductive Rights, supra note 82, para. 52.
115 Id. at 7-11.
117 Id. para. 55.
118 Id.
119 Id.
120 Id.
122 Evy F. McElmeel, Legalization of the Birth Control Pill in Japan will Reduce Reliance on Abortion as the Primary Method of Birth Control, 8 PAC. RIM L. & POL’Y J. 681, 681 (1999).
129 Id. citing JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS), MICROBICIDES FOR HIV PREVENTION: UNAIDS TECHNICAL UPDATE (1998); FAMILY HEALTH INTERNATIONAL (FHI), MICROBICIDES/SPERMICIDES: OPPORTUNITIES FOR INDUSTRIAL COLLABORATION. SUMMARY OF AN INTERNATIONAL CONFERENCE (1999).
131 Id.
133 UNAIDS press release: Update on Female-Con-

134 The Female Condom and AIDS, supra note 132.

135 UNAIDS press release, supra note 133.

Notes for Chapter 3

136 Beijing Platform of Action, supra note 1, para. 106(4).


138 The right to physical integrity is rooted in a number of broader human rights principles, including the inherent dignity of the person and the right to liberty and security of the person. It is explicitly recognized in Article 4 of the Banjul Charter, supra note 14, and Article 5(1) of the American Convention, supra note 13.

139 Women's Convention, supra note 10, art. 16(1)(e). See Introduction for further discussion of this right.

140 Freedom from interference in one's privacy and family life is protected by Article 12 of the Universal Declaration, supra note 3, Article 17 of the Civil and Political Rights Covenant, supra note 3; Article 11 of the American Convention, supra note 13; and Article 8(1) of the European Convention, supra note 13.

141 The right to freedom from discrimination is found in: Article 2 of the Universal Declaration, supra note 3; Article 3 of the Civil and Political Rights Covenant, supra note 3; Article 3 of the Economic, Social and Cultural Rights Covenant, supra note 6; Article 2 of the Banjul Charter, supra note 14; Article 1 of the American Convention, supra note 13; and Article 14 of the European Convention, supra note 13.

142 Women's Convention, supra note 10, art. 1.

143 Economic, Social and Cultural Rights Covenant, supra note 5, art. 12.

144 WHO, Definition of Health, supra note 6.


146 Id.

147 ICPD Programme of Action, supra note 1, para. 8.25.

148 ICPD+5 Key Actions Document, supra note 37, para. 63(iii).

149 ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD 25 (1998) [hereinafter ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD].


151 Universal Declaration, supra note 3, art. 3; Civil and Political Rights Covenant, supra note 3 art. 6.


154 DIV. OF REPRODUCTIVE HEALTH, WHO, supra note 150 at 9.


159 CRLP, THE WORLD'S ABORTION LAWS, supra note 156.

160 Id.

161 Rahman, Katzive & Henshaw, supra note 158, at 60.

162 Id.

163 Id. at 59.

164 ADRIENNE GERMAN & THERESA KIM, INTERNATIONAL WOMEN'S HEALTH COALITION, EXPANDING ACCESS TO SAFE ABORTION: STRATEGIES FOR ACTION 17 (1998).

165 Id.


168 Id. para. 50.

169 Id.


171 In this report, gestational age limits are calculated from the last menstrual period (LMP), which is generally considered to occur two weeks prior to conception.


173 Id.


176 Id.


179 Id., art. 8.


(1995), art. 5.
182 Id., art. 6.
184 South Africa, Choice on Termination of Pregnancy Act, Act No. 92, art. 2 (1996).
189 Poland, Ruling of the Constitutional Tribunal of May 28, 1977, sign. of the records K 26/96, sect. 4.3 (unofficial translation).
190 Id.
192 Id. art. 4a.1 (1-3).

Notes for Chapter 4

196 This chapter is focused primarily on HIV/AIDS as a reproductive health and rights concern. Most of the principles discussed are equally applicable to sexually transmitted infections (STIs). In addition, STIs may be discussed in the descriptions of national-level initiatives, which may be defined broadly enough to encompass STIs.
197 Beijing Platform for Action, supra note 1, para. 98.
198 General Recommendation on Health, supra note 11, para 18.
200 Id.
more severe and it results in a more extensive removal of a
critical sexual organ. Furthermore, justifications for
FC/FGM often relate to societal control of women's sexual-
ity. RAHMAN & TOUBIA, supra note 247.
253 Women's Convention, supra note 10, art. 2(f).
254 Id. art. 5(a).
255 Economic, Social and Cultural Rights Covenant,
supra note 5, art. 12; WHO, Definition of Health, supra note
6.
256 ICPD Programme of Action, supra note 1, para. 7.2.
257 General Recommendation on Health, supra note
11, para.12(b).
258 Convention on the Rights of the Child, opened for
signature Nov. 20, 1989, G.A. Res. 44/25, 44 U.N.GAOR
Rights Convention].
259 Id. art. 1.
260 African Charter on the Rights and Welfare of the
Child, adopted 1991, art. 21, OAU Doc. CAB/LEG/24.9/49
(1990) [hereinafter African Charter].
261 L'O.U.A. exhorte les gouvernements à ratifier la
Charte africaine des enfants, INTERPRESS NEWS SERVICE, Dec.
2, 1999.
262 African Charter, supra note 260, art. 21.
265, Conakry: Republic of Guinea (unofficial translation).
264 Central African Republic, Ordinance No. 66/16 of
265 Michel Allaix, L'excision: approche juridique
nationale, internationale et pratiques judiciaires, in L'IMMI-
GRATION FACE AUX LOIS DE LA REPUBLIQUE 133, 135 (Edwige
Rude-Antoine ed., 1992); Code Penal (1992), art. 222-9,
Paris: Editions Techniques - Juris-Classeurs (unofficial trans-
literation).
266 Sweden, The Act Prohibiting the female genital
mutilation of women (1982:316, as amended in July 1999)
(unofficial translation).
267 United Kingdom, Prohibition of Female CIRCUM-
cision Act, 1985, ch. 38.
268 CONSTITUTION OF THE REPUBLIC OF GHANA (1992), art.
262, Ghana Publishing Corp.
269 CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF
ETHIOPIA, art. 35(4), (1994), translated in CONSTITUTIONS
270 Ghana, Criminal Code (Amendment) Act, 1994,
271 Id.
272 In addition to these 12 national-level develop-
ments, in 1999, FC/FGM was prohibited in the Edo State,
Nigeria, one out of 36 states and territories in Nigeria.
FCM Banned in Edo State, Nigeria, IAC NEWSLETTER (Inter-
African Committee on Traditional Practices Affecting the
Health of Women and Girls, Addis Ababa, Ethiopia), No.
273 Australian Capital Territory, Crimes Amendment Act


291 For an in-depth discussion of recommendations for government and NGO action see Rahman & Toubia, supra note 247.

Notes for Chapter 6

292 Beijing Platform of Action, supra note 1, para. 113.

293 Id., at Para. 145(d), (e).

294 In 1999, the U.N. Special Rapporteur on Violence Against Women issued a report, particularly focused on the link between violence against women and reproductive health. Special Rapporteur's Report on Violence and Reproductive Rights, supra note 82; see generally, Center for Health and Gender Equity (CHANGE), Population Reports, Ending Violence Against Women, Vol. XXVII, No. 4, at 3, 5 (Dec. 1999) [hereinafter CHANGE REPORT].

295 Beijing Platform of Action, supra note 1, para. 13; See also Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Convention of Belém Do Pará, art. 2 (1994).

296 UNFPA, Legislative Commitments to Sexual and Reproductive Health and Rights: A Five-Year Review of the Cairo and Beijing Conferences in Latin America and the Caribbean 25-28 (Prepared for the Eighth Regional Conference on Women of Latin America and the Caribbean, 8-10 February (Lima, 2000), and the UN Beijing plus Five Review Process, Dec. 1999), [hereinafter UNFPA, Legislative Commitments].


298 See e.g., Universal Declaration, supra note 3, art. 2; Civil and Political Rights Covenant, supra note 3, art. 3; Economic, Social and Cultural Rights Covenant, supra note 5, art. 2; African Charter, supra note art. 2; American Convention, supra note 13, art. 1; European Convention, supra note 13, art. 14.

299 Women's Convention, supra note 10, art. 1.

300 See General Recommendation on Violence, supra note 297.


303 Rome Treaty, supra note 32, arts. 7, 8.

304 Beijing Platform of Action, supra note 1, para. 145.

305 Vienna Declaration and Programme of Action, UN

306 Bedont & Hall-Martinez, supra note 33, at 70-71.


308 Special Rapporteur’s Report on Violence and Reproductive Rights, supra note 82, para. 17.

309 Id.

310 Id.

311 Id.


314 CRLP & DEMUS, supra note 55, at 156.

315 Equality Now, Words and Deeds, supra note 313, at 23 citing Penal Code, art. 93.


317 Equality Now, Words and Deeds, supra note 313, at 25 citing Penal Code, art. 522.

318 CRLP & DEMUS, supra note 55, at 119.

319 CRLP & Federation for Women and Family Planning, supra note 50.

320 Equality Now, Words and Deeds, supra note 313, at 26 citing Penal Code, art. 116.


322 Equality Now, Words and Deeds, supra note 313, at 29 citing Penal Code, No. 16 (1960).


325 Richard Valdmanis, Pak Women Seek Refuge from Forced Marriages, ETHNIC NEWSWatch, Aug. 27, 1999.

326 Id.


329 Id., at 144.


332 CRLP & DEMUS, supra note 55, at 82.

333 Id.

334 CRLP & Federation for Women and Family Planning, supra note 50.

335 Id.

336 For an analysis of many of these laws, see the appropriate chapter in CRLP & DEMUS, supra note 55; see also UNFPA, Legislative Commitments, supra note 296, at 26.

337 CRLP & DEMUS, supra note 55, at 82.


341 Patricia Viseur Sellers, supra note 339.

342 Prosecutor v. Dragan Gagovic et al., 1996 ICTY. No. IT-96-23-I (June 26).

343 Prosecutor v. Akayesu, 1998 ICTR-96-4-T (Sept. 2).


346 Prosecutor v. Zejnil Delalic et al., 1998 ICTY. No. IT-96-21-I (Nov. 16).

347 See Women’s Caucus, Beijing Platform in Action, supra note 307, at 28-29.

Notes for Chapter 7

348 Beijing Platform for Action, supra note 1, para 274 (e).

349 Id., para 274 (d).

350 Women’s Convention, supra note 10, art. 16.

351 Universal Declaration, supra note 3, art. 16; Civil and Political Rights Covenant, supra note 3, art. 23; Economic, Social and Cultural Rights Covenant, supra note 5, art (101).

352 Universal Declaration, supra note 3, art. 16; Civil and Political Rights Covenant, supra note 3, art. 23.

353 Women’s Convention, supra note 10, art. 16 (1)(a-c).

354 Id. art. 16 (1)(g).

355 Id. art 16 (1)(h).


357 CRLP & GREFELS, supra note 48, at 61.


359 Women’s Convention, supra note 10, art. 16(2); General Recommendation on Marriage, supra note 358, para. 36.

360 Alan Guttmacher Institute, Into a New World,
supra note 149, at 15.
361 Id.
362 Id.
363 Id.
364 CRLP & GREFELS, supra note 48, at 118.
365 ALAN GUTTMACHER INSTITUTE, INTO A NEW WORLD, supra note 149, at 17.
366 Id.
367 Id.
368 CRLP & FEDERATION FOR WOMEN AND FAMILY PLANNING, supra note 50.
369 Id.
370 CRLP & DEMUS, supra note 55, at 29.
372 CRLP & GREFELS, supra note 48, at 65.
373 CRLP & DEMUS, supra note 55, at 45.
374 EQUALITY NOW, WORDS AND DEEDS, supra note 313, at 8, citing Civil Code, art. 152
378 GIULIA TAMAYO (CLADEM), DERECHOS HUMANOS DE LAS MUJERES, VIOLENCIA CONTRA LA MUJER Y PAZ EN LA REGION 33 (2000).
379 General Recommendation on Marriage, supra note 358, para. 21.
380 CRLP & GREFELS, supra note 48, at 174.
381 CRLP, THE WORLD’S ABORTION LAWS, supra note 156.
382 EQUALITY NOW, WORDS AND DEEDS, supra note 313, at 18 citing Mulaki Ain, No. 10 of the Chapter on Partition.
383 CRLP & GREFELS, supra note 48, at 85.
385 Id.
391 Id. at 15.
392 WOMEN OF THE WORLD LAC UPDATE, supra note 234.
393 Id.
395 Id.
398 See note 336 and accompanying text.
400 Id. at 5.
401 Id. at 15.
402 General Recommendation on Marriage, supra note 356, para 36.
403 Women’s Convention, supra note 10, art. 15(1); General Recommendation on Marriage, supra note 358, para. 7.

Notes for Chapter 8

404 BEIJING PLATFORM FOR ACTION, supra note 1, para. 267.
405 Children’s Rights Convention, supra note 258, art. 24.
406 CRLP, ADOLESCENT REPRODUCTIVE RIGHTS: LAWS AND POLICIES TO IMPROVE THEIR HEALTH AND LIVES 1 (1999) [hereinafter ADOLESCENT REPRODUCTIVE RIGHTS].
407 Id.
408 Id., at 2.
410 Children’s Rights Convention, supra note 256, art. 1.
411 Id. art 1.
412 Id. art. 24.
413 Id. art. 24(f).
414 Id. art. 5.
415 Id. arts. 3(1) and (2), 14(2), 18(1).
416 Id. arts. 19 & 34.
417 Id. art. 16.
418 Id. art. 12(1)
419 The human right to determine the number, timing and spacing of one’s children was first recognized at the U.N. International Conference on Human Rights in Teheran in 1968. See also ICPD Programme of Action, para. 7.3 and Beijing Declaration and Platform for Action, para. 89.
420 ICPD Programme of Action, supra note 1, at chs. IV, VII, & VIII; Beijing Platform for Action, supra note 1, at chs. IV(C), (L).
421 ICPD Programme of Action, supra note 1, at ch VII(E); Beijing Platform for Action, supra note 1, at ch. IV(C).
423 Id.
424 Concluding observations of the Committee on the Elimination of Discrimination Against Women: Chile, U.N.
426 Id. para. 405.
427 Alan Guttmacher Institute, Into a New World, supra note 149, at 32.
429 Alan Guttmacher Institute, Into a New World, supra note 149, at 5.
430 Child Care Act No. 74 of 1983, §39(4).
432 Id. §22A(4).
433 Rahman, Katzive & Henshaw, supra note 158, at 59. Note that in the United States, such restrictions are determined at the state level and are not universal throughout the country.
436 Id.
438 Adolescent Reproductive Rights, supra note 406, at 5.
440 Id.
441 Corporación de la Mujer (La Morada) and CRLP, et al., Women's Rights in Chile: A Shadow Report 14 (1999).
443 Alan Guttmacher Institute, Into a New World, supra note 149, at 14.
445 Id.
446 Panama, Law No. 34 of 1995.
449 See generally Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children, U.N. High Commissioner for Human Rights (Dec. 18, 1979); See also United Nations Press Release: Cultural Patterns Hinder Zimbabwe’s Efforts to Implement Covenant on Civil, Political Rights, Human Rights Com-
470 Id. at 45.
471 NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 9 (2nd ed. 1995)
472 RAHMAN & TOUBIA, supra note 247.
473 See Chapter 5 for further discussion of FC/FGM as a violation of girls’ human rights.
474 RAHMAN & TOUBIA, supra note 247.
475 See Chapter 5 for further discussion of laws and policies addressing FC/FGM.