

# A YOUTH ACTIVIST'S GUIDE TO SEXUAL AND REPRODUCTIVE RIGHTS

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youth coalition

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# A Youth Activist's Guide to Sexual and Reproductive Rights

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# Glossary

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**Adolescents**

Individuals between the ages of 10 and 19.

**Advocacy**

Advocacy has been defined in different ways by a range of organizations that work in the sexual and reproductive rights field. CEDPA defines it as “speaking up, drawing a community’s attention to an important issue, and directing decision-makers towards a solution. Advocacy is working with other organizations and people to make a difference.”

**African Charter**

African Charter on Human and Peoples’ Rights; adopted in Nairobi, Kenya, on the 27<sup>th</sup> of June, 1981; entered into force on the 21<sup>st</sup> of October, 1986. It is a regional human rights treaty that focuses on civil and political rights. The Charter can be found at: <http://www.africa-union.org/>

**African Children’s Rights Charter**

African Charter on the Rights and Welfare of the Child; adopted in Addis Ababa, Ethiopia, in July 1990; entered into force on the 29<sup>th</sup> of November 1999. It is a regional human rights treaty that focuses specifically on children’s human rights. The Charter can be found at: <http://www.africa-union.org/>

**African Women’s Rights Protocol**

Protocol Additional to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; adopted in Maputo, Mozambique on the 11<sup>th</sup> of July 2003; the treaty has not yet entered into force. It is a regional human rights treaty that focused specifically on women’s human rights. The Protocol can be found at: <http://www.africa-union.org/>

**American Convention**

American Convention on Human Rights; adopted in San Jose, Costa Rica, on the 22<sup>nd</sup> of November 1969; entered into force on the 18<sup>th</sup> of July 1978. It is a regional human rights treaty that focuses primarily on civil and political rights. The Convention can be found at: [www.oas.org/juridico/english/Treaties/b-32.htm](http://www.oas.org/juridico/english/Treaties/b-32.htm)

**Beijing Declaration and Platform for Action**

Beijing Declaration and Platform of Action, Fourth World Conference on Women, adopted on the 15<sup>th</sup> of September 1995. This conference document provides guiding principles and commitments to action to protect women’s and

girls' human rights, promote gender equality and empower women. The document can be found at:

<http://www.un.org/womenwatch/daw/beijing/platform/>

**CEDAW Committee**

Committee on the Elimination of Discrimination against Women. The CEDAW Committee monitors implementation of the CEDAW Convention by governments that are state parties to the Convention. For more information, visit:

<http://www.un.org/womenwatch/daw/cedaw/>

**CEDAW Convention**

Convention on the Elimination of All Forms of Discrimination against Women; adopted in New York, United States on the 18<sup>th</sup> of December 1979; entered into force on the 3<sup>rd</sup> of September 1981. This international human rights treaty focuses specifically on women's human rights. The Convention can be found at:

<http://www.ohchr.org/english/law/cedaw.htm>

**CERD**

Committee on the Elimination of Racial Discrimination. This committee monitors implementation of the Convention against Racial Discrimination. For more information, see <http://www.ohchr.org/english/bodies/cerd/>

**Children's Rights Committee**

Committee on the Rights of the Child. This Committee monitors how well States are meeting the obligations contained in the Children's Rights Convention. For more information, visit:

<http://www.ohchr.org/english/bodies/crc/>

**Children's Rights Convention**

Convention on the Rights of the Child; adopted on the 20<sup>th</sup> of November 1989; entered into force on the 2<sup>nd</sup> of September 1990. This international human rights treaty focuses specifically on the protection of children's human rights. The Convention can be found at: <http://www.ohchr.org/english/law/crc.htm>

**Civil and Political Rights Covenant**

International Covenant on Civil and Political Rights; adopted on December 16<sup>th</sup>, 1966; entered into force on March 23<sup>rd</sup>, 1976. It is an international human rights treaty, which focuses on civil and political rights, such as the right to freedom of speech and political participation. The Covenant can be found at:

<http://www.ohchr.org/english/law/ccpr.htm>

**Committee against Torture**

The Committee against Torture monitors the implementation of the Convention against Torture. For more information, visit:  
<http://www.ohchr.org/english/bodies/cat/>

**Convention against Racial Discrimination**

International Convention on the Elimination of All Forms of Racial Discrimination; adopted on the 21<sup>st</sup> of December 1965; entered into force on the 4<sup>th</sup> of January 1969. This international human rights treaty focuses on the rights of all people to be free from all forms of racial discrimination. The Convention can be found at:  
<http://www.ohchr.org/english/law/cerd.htm>

**Convention against Torture**

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; adopted on the 10<sup>th</sup> of December, 1984; entered into force on the 26<sup>th</sup> of June, 1987. This international human rights treaty focuses on the elimination of torture and other cruel, inhuman or degrading punishment. The Convention can be found at:  
<http://www.ohchr.org/english/law/cat.htm>

**Convention of Belém do Pará**

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; adopted in Belém do Pará, Brazil, on the 9<sup>th</sup> of June, 1994; entered into force on the 5<sup>th</sup> of March, 1995. This regional human rights treaty focuses on women's human rights. The Convention can be found at:  
<http://www.cidh.oas.org/Basicos/basic13.htm>

**Consensus Document**

A negotiated document that has been agreed upon by all parties to the negotiation. Such documents include the ICPD Program of Action and the Beijing Declaration and Platform for Action. Consensus documents can include commitments for action by governments, as well as goals, and targets to measure progress. They are not legally binding, however they can be a tool for advocates to use to hold governments accountable to promises they have made in them.

**Declaration**

Declarations are a type of consensus document. They often articulate broad principles and may contain commitments to act according to those principles. In some cases, declarations may form the basis for legally binding human rights treaties.

**Human Rights Committee**

The Committee monitors the implementation of the Civil and Political Rights Covenant and its two optional protocols. For more information, please see:

<http://www.ohchr.org/english/bodies/hrc/index.htm>

**Economic, Social and Cultural Rights Committee**

The Committee monitors the implementation of the Economic, Social and Cultural Rights Covenant. For more information, please see:

<http://www.ohchr.org/english/bodies/cescr/>

**Economic, Social and Cultural Rights Covenant**

International Covenant on Economic, Social and Cultural Rights; adopted on the 16<sup>th</sup> of December 1966; entered into force on the 3<sup>rd</sup> of January 1976. This international human rights treaty focuses on economic, social and cultural rights, such as the right to the highest attainable standard of health and the right to education. The Covenant can be found at:

<http://www.ohchr.org/english/law/cescr.htm>

**European Convention on Human Rights**

Convention for the Protection of Human Rights and Fundamental Freedoms; adopted in Rome, on the 4<sup>th</sup> of November, 1950; entered into force on September 3<sup>rd</sup>, 1953. It is a regional human rights treaty. The Convention can be found at:

<http://conventions.coe.int/treaty/en/Treaties/Htm/005.htm>

**European Social Charter (Revised)**

European Social Charter; adopted in Turin, on the 18<sup>th</sup> of October 1961; revised in 1996. It is a regional human rights treaty. The Charter can be found at:

<http://conventions.coe.int/Treaty/EN/Treaties/Htm/163.htm>

**ICPD Programme of Action**

Programme of Action of the International Conference on Population and Development; Cairo, October 18<sup>th</sup>, 1994. The Programme includes a series of goals and objectives to be achieved in a specific time frame. The Programme can be found at:

[www.unfpa.org/icpd/icpd\\_poa.htm](http://www.unfpa.org/icpd/icpd_poa.htm)

**Protocol of San Salvador**

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; adopted at San Salvador, El Salvador on the 17<sup>th</sup> of November 1988; entered into force on the 16<sup>th</sup> of November, 1999. This regional human rights

treaty focuses on economic, social and cultural rights. The Protocol can be found at: [www.oas.org/juridico/english/Treaties/a-52.html](http://www.oas.org/juridico/english/Treaties/a-52.html).

**State parties**

According to the Vienna Convention on the Law of Treaties, a “state party” is a country that has consented to be bound by a treaty, which has entered into force.

**Treaty**

According to the Vienna Convention on the Law of Treaties, a treaty is an international agreement, in writing, between countries and governed by international law. The words “convention”, “covenant”, “pact” “accord” and “charter” are synonyms.

**Vienna Declaration and Programme of Action**

The Vienna Declaration and Programme of Action, World Conference on Human Rights; was adopted on June 25<sup>th</sup> 1993. This declaration, which emerged from the first World Conference on human rights, is not legally binding on governments. However, it outlines a full range of human rights principles and commitments by governments to promote and protect human rights. It can be found at: <http://www.ohchr.org/english/law/vienna.htm>.

**Youth**

Internationally, youth are defined as individuals between the ages of 15 and 24.

**Young people**

Internationally young people are defined as individuals between the ages of 10 and 24.

# Introduction

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Most of the world's young people are sexually active by the time we reach our 18<sup>th</sup> birthdays, if not before. Yet, in most countries young peoples' sexuality is taboo, creating an environment where our sexuality is seen as something negative that should be repressed. As a result, young people face the biggest barriers in accessing accurate, comprehensive and non-judgemental sexual and reproductive health information, education and services. At the same time, early pregnancies, sexually transmissible infections (STIs) including HIV/AIDS, and other sexual and reproductive health problems are a major threat to our personal development, health, and lives.

The reality is that sexuality plays an important part in young peoples' lives. To make sure it is a healthy part of our lives as well, it is vital that we have the information, education and services we need to make informed decisions about our sexuality and reproduction. In fact, it is our human right.

As young people, we believe that knowing our sexual and reproductive rights and advocating for governments to live up to their obligations to promote and protect them is an important step towards making sure that young people, everywhere, have access to youth-friendly sexual and reproductive health information, education and services. This guide is intended to:

- Provide an overview of the sexual and reproductive rights that are protected by international and regional human rights treaties and other agreements;
- Show how these rights apply to adolescents and young people; and
- Discuss ways that young people can advocate for their sexual and reproductive rights within their countries, regions, and globally.

## The History of Sexual and Reproductive Rights

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The concept of sexual and reproductive rights is relatively new in international human rights law. Over the past two decades, the advocacy efforts of feminist and youth activists worldwide has led to increasing international recognition of reproductive and sexual rights at the international and regional levels. Awareness has also increased about governments' obligations under human rights law to protect and promote these rights. In 1994, women's and young people's advocacy led to the adoption of the Programme of Action of the International Conference on Population and Development by 179 countries. This is the first international agreement that specifically recognizes the existence of reproductive rights.

### Defining Reproductive Health and Reproductive Rights

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Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.

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

ICPD Programme of Action 7.2-7.3

The broad conception of reproductive health and rights expressed in the ICPD Programme of Action is unprecedented. In this document, reproductive health is considered a cross-cutting issue that both "affects and is affected by the broader context of people's lives" (FCI 12). As a result, it recognizes that improving reproductive health requires addressing inequities within societies; eliminating gender-based discrimination, promoting gender equality, and empowering women and girls; ensuring sustained and sustainable economic development; protecting the environment; guaranteeing all individuals' access to education; and improving all peoples' living conditions; as well as improving people's access to reproductive health information and services. The document also sets priorities for action and establishes time-bound goals on a number of issues, including improving everyone's sexual and reproductive health.

Importantly, the ICPD Programme of Action recognizes that sexual and reproductive rights are not just for adults, but that they are important for young people as well. The document calls on governments to provide adolescents with access to sexual and reproductive health information

and education, as well as youth-friendly sexual and reproductive health services that protect their rights to confidentiality, privacy, and informed consent.

The ICPD Programme of Action built upon human rights principles and concepts that were developed over a period spanning decades, starting with the adoption of the Universal Declaration of Human Rights in 1948. In fact, as the definition of reproductive rights in the ICPD Programme of Action notes, reproductive rights are derived from human rights that were already protected by international human rights treaties. The following chapters will examine each of the human rights below to show how they protect young people's sexual and reproductive rights.

### **Defining Sexual Rights**

Although there is no formal definition of sexual rights in international consensus or legal documents, like reproductive rights, they stem from human rights that are already protected by national and international human rights standards.

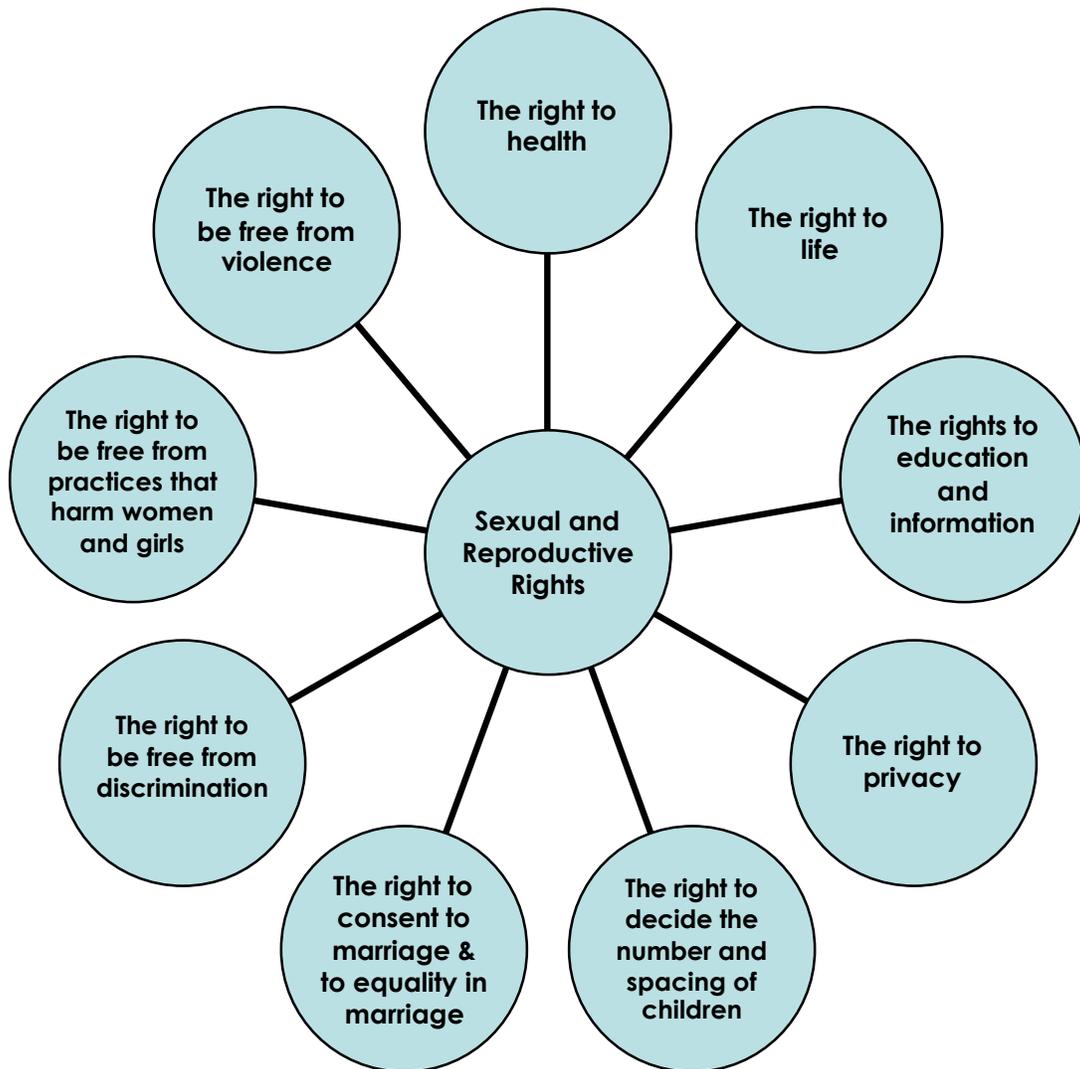
They include the rights to:

- be free from coercion, discrimination and violence related to their sexuality and sexual identity;
- the highest attainable standard of sexual health, including the right to access sexual health services;
- seek, receive and share information related to sexuality;
- sexuality education;
- respect for bodily integrity;
- choose one's partner;
- decide to be sexually active, or not;
- consensual sexual relations;
- marriage;
- pursue a safe, satisfying and pleasurable sex life.

Based on the working definition of sexual rights, available at:  
[http://www.who.int/reproductivehealth/gender/sexual\\_health.html#4](http://www.who.int/reproductivehealth/gender/sexual_health.html#4)

## Human Rights that Protect Young People's Sexual and Reproductive Rights

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## Major Sources of Protection for Sexual and Reproductive Rights

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At the international and regional levels there are a number of legal and policy documents that contribute to the recognition of, and legal protection for, reproductive and sexual rights.

First, are **human rights treaties**. These treaties form the highest level of protection for sexual and reproductive rights because the obligations and commitments that they contain are legally binding. When governments sign and ratify<sup>1</sup> a treaty and add it to its domestic laws, they are bound under international law to comply with the provisions of the treaty. This means that governments have the legal obligation to guarantee the rights protected by these treaties to all people within their territories.

There are six major *international* treaties that address human rights, including sexual and reproductive rights. These are:

- The International Covenant on Civil and Political Rights (Civil and Political Rights Covenant)
- The International Covenant on Economic, Social and Cultural Rights (Economic, Social, and Cultural Rights Covenant)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention)
- The Convention on the Rights of the Child (Children's Rights Convention)
- The International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination)
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture)

The implementation of these treaties is monitored by United Nations Human Rights Committees, or Treaty Bodies, formed by independent experts on human rights. These committees review periodic reports from countries who are party to the treaty, and, in some cases, can hear and make judgements on complaints from individuals (see annex I for more details about the work of these committees and governments' reporting obligations).

### The Treaty Bodies

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights
- Committee on the Elimination of Discrimination against Women
- Committee on the Rights of the Child
- Committee on the Elimination of Racial Discrimination
- Committee against Torture

At the *regional level*, major human rights treaties that address sexual and reproductive rights include:

#### *Human Rights Treaties of the Organization of Inter-American States*

- American Convention on Human Rights (American Convention)

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<sup>1</sup> It's important to note that the process to ratify a treaty varies among countries. The fact that a country signs a treaty does not mean that they have ratified it. According to the Vienna Convention on the Law of Treaties, "ratification" is the international act by which a country makes manifest, at the international level, its consent in being obligated by the treaty. In some countries, ratification is done by certain Ministries, whereas, in others, it is done in Parliament.

- American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)

*Human Rights Treaties of the Council of Europe*

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
- European Social Charter (Revised)

*Human Rights Treaties of the African Union*

- African Charter on Human and Peoples' Rights (Banjul Charter)
- African Charter on the Rights and Welfare of the Child (African Children's Charter)
- Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)

The Organization of American States, Council of Europe and African Union all have human rights courts that are empowered to hear individual complaints and issue judgements on violations of these treaties. However, individual complaints can only be filed with regional human rights courts when individuals have first “exhausted domestic remedies.” This means that they must first pursue judicial remedies in national courts. Domestic remedies can also be exhausted if national courts are not empowered or otherwise unable to hear the case, or if the courts are taking an unreasonable time to do so.

**Resolutions, declarations and conference documents** are a second source of protection for reproductive and sexual rights at the international and regional levels. These agreements are created through a negotiation process, agreed to by consensus by governments.

International resolutions and declarations that support reproductive and sexual rights include:

- Universal Declaration of Human Rights
- American Declaration on the Rights and Duties of Man
- Vienna Declaration and Programme of Action,
- Programme of Action of the International Conference on Population and Development (ICPD)
- Key Actions for the Further Implementation of the ICPD Programme of Action
- Beijing Declaration and Platform for Action, Fourth World Conference on Women
- Further Actions and Initiatives for the Implementation of the Beijing Declaration and Platform for Action
- Millennium Declaration
- 2005 World Summit Outcome

Unlike treaties, these documents are not legally binding. However, because governments make commitments in declarations and resolutions, they do have some obligation to their citizens and other governments implement them. Advocates can also use these documents as tools to put pressure upon their governments to keep their commitments and hold them accountable when they do not.

Resolutions, declarations and conference documents contribute greatly to the recognition and interpretation of human rights and often lay the groundwork for future human rights treaties. In addition, some of these declarations, such as the Universal Declaration of Human Rights and the American Declaration on the Rights and Duties of Man, are considered “international customary

law," which means they are widely accepted and endorsed by governments. Customary law is legally binding. Although important, these documents are not the focus of this guide.

Lastly, **communities, non-governmental Organizations (NGOs), and human rights defenders**, also play a fundamental role when it comes to demanding that our governments stay true to their commitments and respect and guarantee our human rights. It is important that we, as young people, be aware that our governments have the obligation to guarantee our sexual and reproductive rights, so that we can hold them accountable.

## **The Work of the Human Rights Treaty Bodies**

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The human rights treaty bodies that monitor governments' compliance with the six major international human rights treaties serve three vital functions:

- They interpret human rights treaties and make recommendations on their implementation through "general recommendations" or "general comments;"
- They monitor individual states parties' implementation of the treaty and make country-specific comments and recommendations called "concluding observations;" and
- In some cases, they hear and make judgements on complaints submitted by individuals.

The work of the treaty bodies is important. The treaty bodies' interpretations of often-abstract rights push the boundaries of international human rights law, by defining human rights norms and concepts before they are widely accepted by countries. This is particularly true in the area of sexual and reproductive rights, where they have made firm recommendations on issues that are deemed too controversial for governments to agree upon in other arenas, such as how unsafe abortion violates women's rights to health and life, how people have the right to be free from discrimination on the basis of sexual orientation, or how adolescents have the right to access sexual and reproductive health services.

Because they identify governments' shortfalls and make concrete country-specific recommendations, they give non-governmental organizations (NGOs) tools they can use at the national level to hold governments accountable for human rights violations and advocate for increased protection for human rights.

Lastly, the treaty bodies are an excellent forum for NGO advocacy: they welcome alternative reports or letters from NGOs to help them understand human rights situations in various countries; they often invite NGO comments when they are working on general recommendations; and NGOs can observe their open sessions and advocate with Committee Members to ask specific questions or make certain recommendations.

### **Treaty Body Members**

These bodies are comprised of people with recognized competence within the field of human rights. They are independent and serve in a personal capacity, not as representatives of governments. However, countries that have ratified the treaty in question can nominate experts from their country to serve on the treaty body. Once experts are elected, they serve for four-year terms, which can be renewed.

### **Treaty Body Sessions**

Each treaty body holds two or three sessions per year to hold governments' periodic reviews, make judgements on individual complaints (if they are empowered to do so), and do other work, such as developing general recommendations. The frequency and length of these sessions vary per treaty body, depending on their workload.

### **Periodic Reviews**

Once a country has ratified one of the six major international human rights treaties, they are required to submit periodic reports on how they are protecting the rights contained within the treaty to the Treaty Bodies, usually every four years.

The periodic review process starts several months before the formal review takes place in the treaty body's semi-annual session. Once they receive the initial report from governments, they conduct an initial review during a closed preparatory session, where the experts will examine the report and prepare an initial list of questions for governments on issues where they require more information or clarification. The list of questions is sent to governments two to three months in advance of their formal reviews, in order to give them ample time to respond.

As they review the periodic report submitted by the government, they will also review and consider any independent information they receive from non-governmental organizations, UN agencies, and other interested parties. NGO alternative reports and letters play a huge role when it comes to providing the committees with a comprehensive view on what the status of certain human rights actually is in a country.

During the formal review session, government representatives usually make a presentation to the committee, elaborating on the actions they have taken to protect human rights. This is followed by a question and answer session, where committee members will probe governments on certain human rights issues. At the end of their semi-annual session, they will issue concluding observations to governments that commend them on areas where they are doing well in implementing the treaty, identify areas of concern, and provide recommendations on how to better fulfil their obligations.

Under international law, there is no police force or other coercive means to ensure governments' compliance with the commitments it has made under a treaty. However, their recommendations and expressions of concern constitute an important way of exerting political pressure on governments, in order to ensure their compliance. These recommendations are also useful for NGOs at the national level who are working to ensure greater protection of human rights.

### **General Recommendations or Comments**

The treaty bodies issue general comments or recommendations, which are applicable to all governments that have ratified the treaty. These are statements that interpret and expand upon the often-abstract language contained within the treaty, make specific recommendations on governments' obligations to implement the treaty, and provide guidance to governments on what issues should be addressed in their periodic reports.

### **Individual Complaints**

Some treaty bodies have a judicial function and are empowered to hear and make judgments on complaints submitted by individuals. Countries must first agree to allow the committee to hear individual complaints against them, and they do so by ratifying an "additional protocol" or giving notification that they agree to be bound by the decisions of the committee if the judicial function is outlined in the original human rights treaty.

The individual complaint system allows people who believe that a government has violated their human rights to file a legal claim. But, in order to be able to do this, the individuals need to have "exhausted all domestic remedies" within the country that the complaint is against. This means that you first have made use of all the ordinary judicial actions that are available within the country in order to put a stop to or seek repairs of a human rights violation. If the case has gone through the national judicial system without finding a human rights violation and prescribing remedies, or if national courts are not empowered to hear the case, or if the courts are taking

an unreasonable time to do so, then an individual complaint can be filed with the appropriate treaty body.

When a complaint is presented to a treaty body, the experts will review it to make sure that it is admissible, or that there is a legal basis for the claim. To have legal basis, the complaint must invoke a right that is recognized by the Convention with regards to which the treaty body has competence.

If a complaint is admissible, both the complainant and the government will have the opportunity to present information and their points of view before the committee. The committee will then issue a decision. If the decision is in the favour of the complainant, it may contain strong recommendations to governments, as well as explanations about why certain acts or omissions violate human rights.

This system has proven to be an important way of raising international awareness about human rights issues, as well as contributing to clarifying and elevating human rights standards.

### **The Case of Nicholas Toonen**

With regards to sexual and reproductive rights, there are a number of cases that have helped to advance the recognition of these rights. One such case is that of Nicholas Toonen, who submitted a complaint against Australia before the Human Rights Committee in 1991. He based his complaint on the fact that the Criminal Code of Tasmania, a state in Australia, criminalized various forms of sexual contact, including sex between consenting adult homosexual men in private. It is important to note that he had not been prosecuted under this law, nor had the Australian government enforced that part of the criminal code for a considerable number of years. Nonetheless, he stated that the mere existence of such a law violated his right to privacy, non-discrimination and equal protection of the law.

The Human Rights Committee declared the complaint admissible and found that the law violated individuals' right to privacy. The Committee asked the State to report back to it on the measures that it would be taking to remedy the situation. This case constitutes just one example of the way in which this system can be used to advance the respect of everyone's, including young people, sexual and reproductive rights.

Human Rights Committee; Communication No. 488/1992; Australia; 04/04/94;

## Sexual and Reproductive Rights and Young People

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Because sexual and reproductive rights are human rights, which are applicable to all people, they also apply to young people. However, international law also recognizes limitations on the rights of people under age 18, as well as the rights of parents to make decisions regarding the wellbeing of their minor children. As such defining adolescents' rights can be complicated, especially in the area of sexual and reproductive rights, which are still very controversial.

The Children's Rights Convention, which entered into force in 1990 and applies to everyone under age 18, notes that although parents do have decision-making rights over the welfare of their children, parental rights are balanced by the evolving decision-making capacities of the child and they are not absolute.<sup>2</sup> The Convention also establishes that a child's "best interests" must be kept paramount.<sup>3</sup>

The Children's Rights Committee, charged with monitoring implementation of the Convention and interpreting it for governments, has outlined a rights-based approach on how adolescent's rights should be balanced with the rights of parents in relation to their sexual and reproductive health. In General Recommendation 4 on Adolescent Health and Development in the Context of the Convention of the Rights of the Child,<sup>4</sup> the Committee states that parents' role is to:

7. ... fulfil with care their right and responsibility to provide direction and guidance to their adolescent children in the *exercise by the latter of their rights*. They have an obligation to take into account the adolescents' views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop. Adolescents need to be recognised by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction.

8. The right to express views freely and have them duly taken into account (art. 12) is also fundamental in realising adolescents' right to health and development. States parties need to ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities. In order for adolescents to be able safely and properly to exercise this right, public authorities, parents and other adults working with or for children need to create an environment based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents' participating equally including in decision-making processes.

This position is also reflected in the ICPD Programme of Action, which notes that while parents' have a responsibility to guide adolescents' decision making, parents do not have absolute decision-making rights over adolescents' health or lives. It says that parental rights should be balanced with adolescents' rights to the highest attainable standard of health, to privacy, confidentiality, education and informed consent and it also calls for removing barriers, both social and legal, to adolescent access to reproductive health services.<sup>5</sup>

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<sup>2</sup> Convention on the Rights of the Child, art. 5.

<sup>3</sup> *Ibid.*, art. 3

<sup>4</sup> Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child* (33<sup>rd</sup> Sess., 2003).

<sup>5</sup> ICPD Programme of Action, ¶ 7.45; *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, ¶¶ 73(e)-73(f).

## The Right to Health

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The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Art. 12, Economic, Social and Cultural Rights Covenant

The right to the highest attainable standard of health is considered amongst the most fundamental human rights. It is recognized by many key international human rights instruments, including: the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man, and the International Covenant on Economic, Social and Cultural Rights.

The right to health does not guarantee the right to be healthy, but it does require that governments ensure that all people have access

to “a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”<sup>6</sup> The right to health is dependent on the realization of other human rights that impact health, including the right to housing, work, food, privacy, life, non-discrimination, equality and access to information.<sup>7</sup> As such, the right to health “extend[s] not only to timely and appropriate health care but also to . . . access to safe and potable water and adequate sanitation, and adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”<sup>8</sup> It also includes the right of persons to participate in “all health-related decision-making at the community, national and international levels.”<sup>9</sup>

In order to protect the right to health, governments need to make sure that health services are *available* in sufficient quantity throughout the country, *accessible* to everyone without discrimination, *affordable* for everyone, *culturally acceptable*, *respectful of medical ethics*, and of *good quality*.<sup>10</sup> They must also ensure that everyone has access to health-related information and education.<sup>11</sup> Governments also have the obligation to ensure that everyone has *equal* access to health care services as well as to the goods and services that are necessary for maintaining good health, regardless of their gender, race or ethnicity, economic status, education levels, or other status.

| Legal Protection for the Right to Health   |
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| <b>International Treaties</b>  |
| <ul style="list-style-type: none"><li>• Economic, Social and Cultural Rights Covenant, articles 10.2 and 12</li><li>• CEDAW Convention, articles 10(h), 12 and 14.2</li><li>• Convention on the Rights of the Child, article 24</li><li>• Convention against Racial Discrimination, article 5(e)(iv)</li></ul> |
| <b>Regional Treaties</b>   |
| <ul style="list-style-type: none"><li>• Protocol of San Salvador, article 10</li><li>• Banjul Charter, article 16</li><li>• African Children's Charter, article 14</li><li>• African Women's Rights Protocol, article 14</li><li>• European Social Charter (Revised), article 11</li></ul>                     |

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<sup>6</sup> Committee on Economic, Social and Cultural Rights. *General Comment 14: The Right to the Highest Attainable Standard of Health* (22<sup>nd</sup> Sess., 2000), ¶ 9.

<sup>7</sup> *Ibid.*, ¶ 3.

<sup>8</sup> *Ibid.*, ¶ 11.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, ¶ 12.

<sup>11</sup> *Ibid.*

### African Women's Rights Protocol

#### Article 14: Health and Reproductive Rights

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted.

This includes:

- a) the right to control their fertility;
- b) the right to decide whether to have children, the number of children and the spacing of children;
- c) the right to choose any method of contraception;
- d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
- g) the right to have family planning education.

2. States Parties shall take all appropriate measures to:

- a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
- b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
- c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

### CEDAW Convention

**Article 10 (h)** [States Parties shall ensure] [a]ccess to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

**Article 12.1** States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

**Article 12.2** States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Of the legally binding human rights treaties, only the African Women's Rights Protocol specifically protects the right to reproductive health. This Protocol, which was adopted in 2001, provides the most comprehensive legal protection for reproductive rights. It builds upon, and even goes further than, the definition in the ICPD Programme of Action. Notably, the protocol obligates governments who ratify it to provide safe abortion services in the case of rape, incest, or sexual assault, or when the pregnancy threatens the health of the pregnant woman or foetus.

Other human rights treaties specifically protect some aspects of reproductive rights: both the CEDAW Convention and the Children's Rights Convention protect women's and adolescents rights to information and services for family planning, while the Economic, Social and Cultural Rights Covenant and CEDAW Convention call for special protection for mothers before and after childbirth.

Despite the limited explicit recognition of the right to reproductive health specifically, the right to health clearly includes the right to reproductive health and the treaty bodies charged with monitoring implementation of the international human rights treaties have produced comments and recommendations on how sexual and reproductive health issues relate to the right to health.

The CEDAW Committee, for example, discusses reproductive health extensively in their General Recommendation on Women and Health,<sup>12</sup> noting that governments have the obligation to ensure access to a full range of health services for women and girls, including access to contraception, family planning services and information, and treatment for HIV/AIDS and other sexually transmissible infections (STIs).

Similarly, in General Comment 14 on the Right to the Highest Attainable Standard of Health, the Economic, Social and Cultural Rights Committee states that as part of protecting the right to health, governments must “[i]mprove child and maternal health, sexual and reproductive health services, including access to family planning, pre-and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.”<sup>13</sup>

## Adolescents' Right to Health

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Despite the controversy that exists about adolescents' sexual and reproductive rights, international and human rights treaties have widely been interpreted to protect their right to health, including to sexual and reproductive health. The most far-reaching protection for adolescents' right to reproductive health comes from the **Children's Rights Convention**.

In General Comment 4 on Adolescent Health, the Committee expands upon Article 24 of the Convention, which protects adolescents' right to health. In this comment they specify, among many other things, that:

- Adolescents have the right to access sexual and reproductive health information “regardless of their marital status and whether their parents or guardians consent” (¶ 28).
- Adolescents of “sufficient maturity” have the same rights to privacy and confidentiality with respect to health care counselling and advice as adults. As such, health care providers cannot disclose information about this counselling to others (including parents) without adolescents' consent, or under the same circumstances where violating this right would apply to adults (¶ 11, 32).
- Adolescents, who are mature enough to receive confidential counselling, are also entitled to privacy and to request confidential health care services, including treatment and sexual and reproductive health services, without third-party consent (¶ 11, 32-33).

| <b>The Children's Rights Convention</b>  |
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| <p><b>Article 24.1</b> States Parties recognise 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.</p> <p><b>Article 24.2</b> States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: . . . (d) To ensure appropriate pre-natal and postnatal health care for mothers; . . . (f) To develop preventive health care, guidance for parents and family planning education and services.</p> |

They also note that governments must take certain actions to protect adolescent's right to sexual and reproductive health, including to:

- “provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)” (¶ 28);

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<sup>12</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health* (20<sup>th</sup> Sess., 1999).

<sup>13</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14*.

- “develop effective [HIV/AIDS/STI] prevention programmes, including measures aimed at changing cultural views about adolescents' need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality” (¶ 30);
- “develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling” (¶ 31); and
- “take measures to remove all barriers hindering the access of adolescents to information, preventive measures such as condoms, and care” (¶ 30).

The Children's Rights Convention is the most widely ratified human rights treaty in history. As a result, every country in the world, with the exception of the U.S. and Somalia, has expressly recognised their obligation to protect adolescents' right to sexual and reproductive health.

### **How Governments' Reservations can Undermine Rights**

It is important to note that a number of countries have substantial reservations to certain parts of the treaty. For example, upon ratifying the Convention, Argentina declared “questions relating to family planning are the exclusive concern of parents in accordance with ethical and moral principles and understands it to be a State obligation, under this article, to adopt measures providing guidance for parents and education for responsible parenthood.”<sup>14</sup>

Some countries have gone so far as to ratify the Convention in a way that seeks to limit the effectiveness of its provisions. In this sense, the Islamic Republic of Iran made a reservation to the Convention, stating that ““The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.”<sup>15</sup>

Reservations such as these ones not only defeat the purpose and spirit of the Convention, but also act as obstacles to the full realization of adolescents' rights.

Other international human rights treaty bodies have specifically recognised adolescents' rights to sexual and reproductive health. For example, the CEDAW Committee notes in General Recommendation 24 on Women and Health that the term “women” in the CEDAW Convention also refers to adolescent girls and in concluding observations to specific governments it has noted that they have the obligation to ensure that adolescent girls have access to sexual and reproductive health information and services. Likewise, the Economic, Social and Cultural Rights Committee in General Comment 14 on the Right to the Highest Attainable Standard of Health notes that that principles of non-discrimination in the Economic, Social and Cultural Rights Convention protects adolescents' right to health and guarantees their equal access to health services. The Committee also emphasises adolescents' rights to confidentiality.

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<sup>14</sup> Declarations and Reservations to the Convention on the Rights of the Child;  
<http://www.unhchr.ch/html/menu2/6/crc/treaties/declare-crc.htm>

<sup>15</sup> Ibid.

## The Right to Life

Every human being has the inherent right to life. This right shall be protected by law.

Art. 6.1, Civil and Political Rights Covenant

In order for any other human right to be ensured, the right to life must to be respected and guaranteed for all people. Because of the connection between health and life, **the right to life** under international law is often considered an extension of the right to health. This is particularly important when it is applied to sexual and reproductive rights. Many reproductive health problems, such as unsafe abortions and early childbearing, are a major cause of death for women and girls of reproductive age and HIV/AIDS is the fourth-leading cause of death for all people worldwide.

### Legal Protection for the Right to Life

#### International Treaties

- Civil and Political Rights Covenant, articles 6.1
- Convention on the Rights of the Child, article 6

#### Regional Treaties

- American Convention on Human Rights, article 4
- Banjul Charter, article 4
- European Convention on Human Rights, article 2

The strongest source of legal protection for the right to life at the international level comes from the **Civil and Political Rights Covenant**. The Human Rights Committee, which is responsible for monitoring states' parties implementation of Covenant, notes in General Comment 6 on the Right to Life (article 6) that the "'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. . . [including] measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics."<sup>16</sup> In the same sense,

the Committee made the link between the right to life and the right to health in General Comment 28 on Equality of Rights between Men and Women (article 3).

### Linking the Right to Life to Sexual and Reproductive Rights

While noting the information provided orally by the delegation on sex education in schools, the Committee is concerned at the high rate of unwanted pregnancies and abortions among young women between the ages of 15 and 19, and the high number of these women contracting HIV/AIDS, with consequent risks to their life and health (art. 6).

The State party should take further measures to help young women avoid unwanted pregnancies and HIV/AIDS, including strengthening its family planning and sex education programmes.

Concluding Observation of the Human Rights Committee to Lithuania, 4 May, 2004, ¶ 12.

Since 1994, the Human Rights Committee has increasingly linked the right to reproductive health with the right to life. In Concluding Observations to specific governments, the Committee has noted that a lack of access to reproductive health services and information, including those related to abortion, constitutes a violation of the right to life because it increases the number of unwanted pregnancies, unsafe abortions, and maternal mortality. In this context, the Committee has noted that countries are obligated to remove barriers that prevent women and adolescents

from using sexual and reproductive health services and recommends that they take additional legal and policy actions to ensure equal access to comprehensive sexual and reproductive health services and education.<sup>17</sup>

<sup>16</sup> Human Rights Committee, *General Comment 6 on the Right to Life* (16<sup>th</sup> Sess., 1982).

<sup>17</sup> See Center for Reproductive Rights, *Bringing Rights to Bear* (CRR: New York, 2003).

Recently, the Human Rights Committee has also commented that high rates of HIV infection and lack of access to life-saving anti-retroviral drugs constitute violations of the right to life. In order to meet their obligations to protect the right to life, the committee has advised governments to increase access to anti-retroviral treatment and to increase HIV/AIDS prevention efforts.<sup>18</sup>

## Adolescents' Right to Life

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There is strong protection for adolescents' right to life under international law from both the Children's Rights Convention (art. 6) and the Civil and Political Rights Covenant (art. 6).

In General Comment 6 on the Right to Life, the Human Rights Committee specifically states that "as individuals, children benefit from all of the civil rights enunciated in the

Covenant," including the right to life. In concluding observations to specific governments, the Committee has coupled adolescents' reproductive health with the right to life, specifically in relation to unwanted pregnancies, unsafe abortions and HIV/AIDS. The concluding observations to Lithuania are a good example of this linkage. Thus, governments' failures to address adolescents' needs for youth-friendly sexual and reproductive health information, education and services that enable them to make informed decisions about their sexuality and health can be considered a violation of adolescents' right to life.

The Children's Rights Committee takes a similar approach to reproductive health and the right to life. In General Comment 3 on HIV/AIDS and the Rights of the Child, the Committee states:

Children have the right not to have their lives arbitrarily taken, as well as to benefit from economic and social policies that will allow them to survive into adulthood and develop in the broadest sense of the word. State obligation to realise the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and/or forced marriage, which violate her rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education and information. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.<sup>19</sup>

Consequently, governments cannot consider adolescents' right to life narrowly, but must take a holistic approach to make sure that this right is protected. Ensuring adolescents' sexual and reproductive rights is one of the most important components of protecting their right to life.

### The Children's Rights Convention

**Article 6.1** State Parties recognise that every child has the inherent right to life.

**Article 6.2** State Parties shall ensure to the maximum extent possible the survival and development of the child.

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<sup>18</sup> Human Rights Committee, *Concluding Observations to Lithuania* (18<sup>th</sup> Sess., 2004); Human Rights Committee, *Concluding Observations to Namibia* (81<sup>st</sup> Sess., 2004).

<sup>19</sup> Committee on the Rights of the Child, *General Comment 3: HIV/AIDS and the Rights of the Child* (32<sup>nd</sup> Sess., 2003), ¶ 12.

## The Rights to Education and Information

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 19.2, Civil and Political Rights Covenant

The rights to education and to information are core components of sexual and reproductive rights. Having factual, non-judgemental information about sexuality and reproductive health is one of the best ways of ensuring that people make healthy and informed decisions. Studies show that adolescents who receive comprehensive sexuality education are more likely to delay sexual activity, less likely to engage in risky sexual practices, more likely to use condoms and other contraceptives, have fewer sexual partners, and have sex less often than those who do not.<sup>20</sup>

The right to education also impacts other aspects of peoples' reproductive and sexual lives. For example, girls who are educated are more likely to delay marriage and childbearing, decide who they will marry, use family planning, and, when they do become pregnant, they are more likely to utilise skilled care and experience pregnancy and childbirth safely. At the same time, they are less likely to perpetuate practices that are harmful to women, such as early marriage and female genital cutting/mutilation (FGC/M), and are more likely to participate in decision-making. Education is also instrumental in breaking the cycle of poverty, a major predictor of poor sexual and reproductive health, and opens up greater opportunities for self-development and means of livelihood.<sup>21</sup>

Not surprisingly then, the rights to information and education are some of the most widely protected human rights in existence. Almost every human rights treaty contains some measure of protection for these rights; the strongest protection comes from the Civil and Political Rights Covenant, which states that the right to information is a fundamental aspect of the right to free expression, and the Economic, Social and Cultural Rights Covenant, which requires governments to provide free primary education to all, without discrimination. Both the Human Rights Committee and the Economic, Social and Cultural Rights Committee have advocated for sexuality and reproductive health education to be included as part of school curricula.<sup>22</sup>

The CEDAW Convention specifically discusses women's rights to access information and education related to family planning and reproductive health. In Concluding Observations to governments, the CEDAW Committee has repeatedly emphasised the importance of sexuality

### Legal Protection for the Rights to Education and Information

#### International Treaties

- Civil and Political Rights Covenant, article 19.2
- Economic and Social Rights Covenant, article 13
- Convention on the Rights of the Child, articles 23, 24.2(e)-(f), 28-29
- CEDAW Convention, articles 10(h)
- Convention against Racial Discrimination, article 5(e)(v)

#### Regional Treaties

- American Convention on Human Rights, article 13
- Banjul Charter, article 17.1
- African Children's Rights Charter, article 11
- African Women's Rights Protocol, article 12
- European Convention on Human Rights, article 10
- European Social Charter, article 17

<sup>20</sup> Advocates for Youth and the Sexuality, Information and Education Council of the United States, *Toward a Sexually Healthy America: Roadblocks Imposed by the Federal Government's Abstinence-Only-Until-Marriage Program*. (New York: SEICUS, 2001).

<sup>21</sup> Council on Foreign Relations, *What Words in Girls' Education* (CFR: New York, 2004).

<sup>22</sup> See Center for Reproductive Rights, *Bringing Rights to Bear*.

### **The CEDAW Convention**

**Article 10 (h)** [States Parties shall ensure] [a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

education, making links between education and prevention of HIV/AIDS, unwanted pregnancies, and abortions, and asking governments to include sexuality education in school curricula. They have also specified that such education should include information on reproductive rights and gender relations.<sup>23</sup>

### **Convention on the Rights of the Child**

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

#### **Article 28**

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

#### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

#### **Article 24.2(f)**

States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: . . . To develop preventive health care, guidance for parents and family planning education and services.

<sup>23</sup> *Ibid.*

## **Adolescents' Rights to Education and Information**

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Of all the human rights related to sexual and reproductive rights, the rights to education and information are perhaps the most easily applied to adolescents and every international human rights treaty body has recognised the importance of sexuality and reproductive health education and information for adolescents. The CEDAW Committee and the Children's Rights Committee are the most consistent advocates for these rights.

In General Comment 1 on the Aims of Education, the Children's Rights Committee states that the primary purpose of education is to provide children with the skills needed to, ". . . develop a healthy lifestyle, good social relationships and responsibility, a critical way of thinking, creative talents, and other abilities which give children the tools needed to pursue their life options."<sup>24</sup> Although the Committee does not specifically discuss sexuality and reproductive health education and information in this general comment, later statements and the Committee's concluding observations show that it is an important component of this.

In General Comment 3 on HIV/AIDS and the Rights of the Child, the committee states:

Education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding of this pandemic and prevent negative attitudes towards victims of HIV/AIDS (see also the Committee's General Comment No. 1 on the aims of education). Furthermore, education can and should empower children to protect themselves from the risk of HIV infection. In this regard, the Committee wishes to remind States parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS.<sup>25</sup>

The Children's Rights Committee also links the right to information with the right to sexual and reproductive health. The Committee demands in General Comment 3 that governments "refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information," and that governments "must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality."

In General Comment 4 on Adolescent Health, it states that, in light of article 3 on the right to information and article 24 on the right to health, "governments should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent."<sup>26</sup>

As mentioned above, the CEDAW Committee has been a strong advocate for the inclusion of sexuality and reproductive health education in school curricula. In General Recommendation 24 on Women and Health, it notes that governments "should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality."

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<sup>24</sup> Committee on the Rights of the Child, *General Comment 1: The Aims of Education* (26<sup>th</sup> Sess., 2001).

<sup>25</sup> Committee on the Rights of the Child, *General Comment 3*.

<sup>26</sup> Committee on the Rights of the Child, *General Comment 4*, ¶ 28

Reinforcing the general comments of the Children's Rights Committee and CEDAW Committee are numerous concluding observations to specific governments on their obligation to provide sexual and reproductive health education and information to adolescents.

## The Right to Privacy

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1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 17, Civil and Political Rights Covenant

One aspect of the right to reproductive self-determination is the right to privacy, which is protected by most human rights treaties. It forms the basis for individuals' rights to make decisions about sexuality and reproduction free from interference and to confidentiality in sexual and reproductive health care. As such, it is a vital part of sexual and reproductive rights.

### Legal Protection for the Right to Privacy

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#### International Treaties

- Civil and Political Rights Covenant, article 17
- Convention on the Rights of the Child, article 16

#### Regional Treaties

- American Convention on Human Rights, article 11
- African Children's Rights Charter, article 10
- European Convention on Human Rights, article 8

At the international level, the right to privacy is protected by the Civil and Political Rights Covenant. The Human Rights Committee specifically links the right to privacy with reproductive and sexual rights in General Comment 28 on the Equality of Rights between Men and Women (see text box below).

Although the CEDAW Convention does not specifically address the right to privacy, in General Recommendation 24 on Women and Health, the CEDAW Committee interprets the convention to protect women's right to privacy and confidentiality in relation to their sexual and reproductive health.

### Linking the Right to Privacy to Sexual and Reproductive Rights

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States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women's right to enjoy privacy and other rights protected by article 17 on the basis of equality with men. An example of such interference arises where the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections, including protection against rape. Another area where States may fail to respect women's privacy relates to their reproductive functions, for example, where there is a requirement for the husband's authorisation to make a decision in regard to sterilisation; where general requirements are imposed for the sterilisation of women, such as having a certain number of children or being of a certain age, or where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake. Women's privacy may also be interfered with by private actors, such as employers who request a pregnancy test before hiring a woman. States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference.

Human Rights Committee, General Comment 28 on the Equality of Rights between Men and Women (2003).

## Adolescents' Right to Privacy

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The right to privacy is particularly important for adolescents and lack of privacy can be a barrier to adolescents' access to sexual and reproductive health counselling and care. The fear that health-care workers will inform parents about their sexual and reproductive health is a major reason why young people do not seek sexual and reproductive health counselling and services.

The Children's Rights Convention protects adolescents' rights to privacy in article 16 and, in General Comment 4 on Adolescent Health, the Children's Rights Committee links the right to privacy to the need for confidentiality in health services. In General Comment 4, the committee states that “[i]n order to promote the health and development of adolescents, States parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters.”<sup>27</sup>

However, the right to privacy as protected by the Convention is not absolute: it is balanced against parental decision-making rights by adolescents' “evolving capacities” to make informed decisions in their best interest. Despite this, the Children's Rights Committee strongly advocates for full protection of adolescents rights to privacy and confidentiality in relation to their reproductive and sexual health. They have repeatedly called upon governments to eliminate parental consent requirements for sexual and reproductive health care services and for adolescents' rights to reproductive self-determination.

The CEDAW Committee has also stated that adolescents' have the right to privacy in relation to their sexual and reproductive health. For example, in concluding observations to governments, they have asked them to eliminate parental consent requirements for adolescents' access to contraception.<sup>28</sup>

### Convention on the Rights of the Child

#### Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

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<sup>27</sup> Committee on the Rights of the Child, *General Comment 4*, ¶ 11.

<sup>28</sup> See Center for Reproductive Rights, *Bringing Rights to Bear*.

## The Right to Decide the Number and Spacing of One's Children

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States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: . . . (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

Art. 16(e), CEDAW Convention

The right to decide the number and spacing of one's children is a component of the right to reproductive self-determination. It implies the right to access information and counselling on family planning and contraceptives, and a government duty to ensure such access.

### Legal Protection for the Right to Decide the Number and Spacing of One's Children

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#### International Treaties

- CEDAW Convention, article 16.1

#### Regional Treaties

- African Women's Rights Protocol, article 14

In General Recommendation 24 on Women and Health, the CEDAW Committee strongly states that women's decisions about whether or not to have children is theirs alone to make, and that they should not be subjected to interference from spouses, partners, parents or government.

Although other human rights treaties do not explicitly recognise the "right to decide the number of one's children," this right is implicitly protected by the rights to health and life, which have been defined to protect women's and men's access to family planning information, counselling, services and contraceptive methods, as well as the right to privacy (*see relevant sections above for more information*).

### Defining the Right to Decide the Number and Spacing of One's Children

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21. The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.

22. Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilisation. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services. . . .

CEDAW Committee, General Recommendation 24 on Women and Health (2000)

## **Adolescents' Right to Decide the Number and Spacing of One's Children**

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The CEDAW Committee has been a strong advocate for adolescent's reproductive self-determination and their right to access information on family planning and contraceptive methods. They have consistently recommended that governments ensure that adolescent girls have access to information and counselling for family planning, and modern methods of contraception.<sup>29</sup>

General Recommendation 24 notes that for the purposes of the recommendation that the term "women" also includes adolescents and girls. As such, the right to reproductive self-determination, as elaborated in General Recommendation 24 and discussed above apply equally to adolescent girls.

The Children's Rights Convention has also been interpreted to protect adolescents' rights to family planning information, counselling and services, including contraception. In General Comment 4 on Adolescent Health the Children's Rights Committees note that governments are obligated to "develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law."

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<sup>29</sup> See Center for Reproductive Rights, *Bringing Rights to Bear*.

## The Right to Consent to Marriage and to Equality within Marriage

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1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

Article 16, Universal Declaration of Human Rights

The right to consent to marry and the right to equality within marriage is one of the longest-standing human rights principles. It is based on the recognition that no individual should be forced to marry against her or his will and respect for self-determination and freedom. It also has particular historical importance: it was specifically included in the 1948 Universal Declaration of Human Rights to counter the harmful practices of forced and early marriage.

Today however, early and forced marriages continue to be practiced in many countries, violating women's rights and leaving them vulnerable to numerous reproductive health risks. Gender

inequality within marriage also remains a problem. In some cases traditional gender power relations within marriage still curtail women's freedom and decision-making power; in other cases, gender inequality is backed by laws which deny women the right to divorce, the right to travel or seek health-care services without the consent of her spouse, or the right for her children to have the same nationality that she does if her spouse has a different nationality.

The right to consent to marriage and to equality within marriage is protected by most human rights treaties. However, the greatest measure of protection for these rights comes from the CEDAW Convention's article 16, which goes further than other human rights treaties by specifying that the rights, roles and responsibilities of both partners in a marriage are equal.

### Legal Protection for the Right to Consent to Marriage and to Equality within Marriage

#### International Treaties

- Civil and Political Rights Covenant, articles 23.2-23.4
- Economic and Social Rights Covenant, article 10.1
- CEDAW Convention, article 16
- Convention against Racial Discrimination, article 5(d)(iv)

#### Regional Treaties

- American Convention on Human Rights, article 17.2-17.4
- African Children's Rights Charter, article 21.2
- African Women's Rights Protocol, articles 6, 7
- European Convention on Human Rights, article

### **CEDAW Convention**

16. State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- a. The same right to enter into marriage;
- b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- c. The same rights and responsibilities during marriage and at its dissolution;
- d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- h. The same rights for both spouses in respect to ownership, acquisition, management, administration, enjoyment, disposition of property, whether free of charge or for a valuable consideration.

### **Adolescents' Rights Related to Marriage**

This right is particularly important for adolescent girls, because they are most frequently subjected to forced and early marriages. In fact, UNFPA estimates that 82 million girls in developing countries who are now between the ages of 10 and 17 will be married by the time they reach 18, often without their consent.<sup>30</sup> Married adolescent girls, who comprise the majority of sexually active adolescent girls in developing countries, are less likely to continue education and have a

sustainable means of livelihood; are more likely to have children early and in quick succession leading to higher rates of complications from pregnancy and childbirth; and are more likely lack the power needed to negotiate safe sexual practices with their husbands leaving them vulnerable to STIs, including HIV/AIDS.<sup>31</sup> Consequently, early marriage not only violates their rights to consent to marriage and to equality within marriage, it also violates many of their economic, social, civil and political rights, including their rights to education, work, participation in decision-making, general health and to reproductive health.

The Children's Rights Convention does not specifically discuss adolescents' rights within marriage. However, in General Comment 4 on Adolescent Health, the Children's Rights Committee "strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys." In making this recommendation, the Committee links early marriage with violations of their sexual and reproductive rights. The African Children's

#### **African Children's Rights Charter**

##### **Article 21.2**

Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

<sup>30</sup> UNFPA, *State of the World Population 2003: Making 1 Billion Count* (New York: UNFPA, 2003).

<sup>31</sup> UNICEF, *Adolescence: A Time That Matters*. (New York: UNICEF, 2002).

Rights Charter also states that the minimum legal age for marriage should be 18, and requires countries to prohibit early marriage and child betrothal.<sup>32</sup>

The CEDAW Convention does specify that “the marriage of a child shall have no legal effect,”<sup>33</sup> and that governments should legally establish a minimum age for marriage as well as the requirement that all marriages be registered. In General Recommendation 21 on Equality in Marriage and Family Relations, the CEDAW Committee states that the minimum age should be 18 for both men and women.<sup>34</sup>

In addition, the Human Rights Committee has stated that the minimum age for marriage should be set by the State on the basis of equal criteria for men and women, and that these criteria should ensure women’s capacity to make a decision that is informed and not coerced.<sup>35</sup>

**Linking the Right to Consent to Marriage and  
to Equality within Marriage to Sexual and Reproductive Rights**

The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalised from social activities. Further, in some States parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. . . .

Children’s Rights Committee, General Comment 4, ¶ 20

<sup>32</sup> African Charter on the Rights and Welfare of the Child, art. 21.2

<sup>33</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 16.2

<sup>34</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 21 on Equality in Marriage and Family Relations* (13<sup>th</sup> Sess., 1994).

<sup>35</sup> Human Rights Committee; General Comment No. 28; Equality of Rights between men and women (article 3); U.N.Doc. CCPR/C/21/Rev.1/Add.10 (2000); paragraph 23.

## The Right to Be Free from Discrimination

Everyone is entitled to all the rights and freedoms set forth in [the Universal Declaration of Human Rights], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2, Universal Declaration of Human Rights

The right to be free from discrimination is a core human rights principle. It is protected by every human rights treaty, with two treaties dedicated entirely to eliminating racial and gender discrimination. Discrimination is defined by the Human Rights Committee as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>36</sup>

In General Comments and Concluding Observations to states parties, some Human Rights Treaty Bodies have elaborated on other grounds for protection from discrimination. The Children’s Rights Committee has been a leader in expanding the grounds for non-discrimination, requesting in its General Comments that governments take special measures to eliminate discrimination based on HIV status and sexual orientation. The CEDAW Committee has also called for the elimination of discrimination based on HIV Status in a General Recommendation, while Human Rights Committee, Economic, Social and Cultural Rights Committee, and Committee on the Elimination of Racial Discrimination have addressed discrimination based on HIV status in concluding observations to states parties. The CEDAW Committee, Human Rights Committee and Economic, Social and Cultural Rights Committee have also commented on the need to eliminate discrimination based on sexual orientation in some concluding observations to specific governments.

In addressing the right to non-discrimination, it is important to recognise that some individuals may be discriminated against on more than one ground and that forms of discrimination interact to affect certain groups of people differently. Women, for example, may experience racial discrimination in different forms than men because of their gender; sexual violence, forced pregnancy, and forced sterilisation are some examples of how gender and race-based discrimination is manifested. Some treaty bodies are starting to examine the interaction between different forms of discrimination; in 2000, the Committee on the Elimination of Racial Discrimination released General Comment 25 on the Gender-related Dimensions of Racial Discrimination.

| <b>The Right to Be Free from Discrimination</b>  |
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| <p><b>International Treaties</b></p> <ul style="list-style-type: none"> <li>• Civil and Political Rights Covenant, articles 2.1, 3 and 24</li> <li>• Economic and Social Rights Covenant, article 2.2</li> <li>• Convention on the Rights of the Child, articles 2, 5</li> <li>• CEDAW Convention</li> <li>• Convention against Racial Discrimination</li> <li>• Convention against Torture</li> </ul> <p><b>Regional Treaties</b></p> <ul style="list-style-type: none"> <li>• American Convention on Human Rights, article 1.1</li> <li>• Protocol of San Salvador, article 3</li> <li>• Convention of Belém do Pará, article 6(a)</li> <li>• Banjul Charter, articles 2, 18.3, 28</li> <li>• African Children’s Charter, articles 3, 21.1(b), &amp; 26</li> <li>• African Women’s Rights Protocol, articles 2, 22(b), 23(b)</li> <li>• European Convention on Human Rights, article 14</li> <li>• European Social Charter (Revised), article e</li> </ul> |

<sup>36</sup> Human Rights Committee, *General Comment 18: Non-Discrimination* (37<sup>th</sup> Sess., 1989).

Treaty bodies are clear that states parties have an obligation to eliminate discrimination in all its forms. Both the CEDAW Convention and the Convention against Racial Discrimination allow affirmative measures to be taken to diminish the effects of discrimination.<sup>37</sup> The Human Rights Committee has also stated that governments have an obligation to undertake affirmative action to limit the effects of discrimination on peoples' opportunities and to eliminate conditions that cause or perpetuate discrimination.<sup>38</sup>

There is a very clear relationship between the right to be free from discrimination and sexual and reproductive rights. Discrimination based on gender, HIV/AIDS status and sexual orientation often plays out in ways that violate individuals' sexual and reproductive rights. For example, gender-based discrimination often results in sexual violence. Limitations on women's autonomy and decision-making because of traditional gender norms can restrict their access to sexual and reproductive health care information and services and lead to the perpetuation of practices that are harmful to girls and women, such as early marriage and FGC/M. Discrimination against people living with HIV/AIDS within health-care settings can limit their ability to access health services, particularly sexual and reproductive health services. The interaction of gender and race-based discrimination, discussed above, can manifest in particularly harmful practices, such as forced sterilisation to limit childbearing among certain racial or ethnic groups as has occurred to indigenous women in Peru and Romani women in Slovakia. Eliminating all forms of discrimination is vital for the protection of all peoples' sexual and reproductive rights.

#### **Linking the right to non-discrimination with sexual and reproductive rights**

Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilisation of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. Racial discrimination may have consequences that affect primarily or only women, such as pregnancy resulting from racial bias-motivated rape; in some societies women victims of such rape may also be ostracized. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.

Committee on the Elimination of Racial Discrimination, General Comment 25, ¶ 2

### **Adolescents' Right to be Free from Discrimination**

#### **Adolescents' Rights to be Free from Discrimination**

States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". These grounds also cover adolescents' sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.

Children's Rights Committee, General Comment 4, ¶ 6

Like all other human rights treaties, the Children's Rights Convention protects adolescents' rights to be free from discrimination based on certain grounds. However, adolescents face an additional form of discrimination that is not explicitly defined as a ground in any human rights

<sup>37</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 4; Convention on the Elimination of All Forms of Racial Discrimination, art. 2.2.

<sup>38</sup> Human Rights Committee, *General Comment 18*.

treaty: that of age-based discrimination. Because children require special protections under some circumstances, most human rights treaties allow countries to take different approaches to children's and adolescents rights, but only if these approaches are in their best interest. As the Human Rights Committee notes, in some cases, this may lead to additional protection for certain rights for children and adolescents, while in others this may lead to the restriction of some rights, for example the right to work.<sup>39</sup> In light of this, a sweeping condemnation of age-based discrimination in international law is unlikely.

At the same time however, age-based discrimination often does impact adolescents' rights and states do have the obligation to combat it. This is generally the case in the area of adolescents' sexual and reproductive rights. Age-based discrimination is often a huge barrier for adolescents who are seeking access to sexual and reproductive health services and information. In some cases they may be treated disrespectfully by health-care workers who disapprove of their sexual activity. In other cases they may be refused access to certain services altogether, such as information and counselling on family planning, as well as to contraceptive methods, or age-based discrimination may lead health-care providers to violate adolescents' rights to privacy and confidentiality.

Recognising this, several human rights treaty bodies have taken steps to address age-based discrimination in relation to sexual and reproductive health. In Concluding Observations to specific governments, the Children's Rights Committee and the CEDAW Committee have lamented adolescents' lack of access to sexuality and reproductive health information and services, particularly to contraception, and have called upon governments to address barriers to care, including by eliminating age-based discrimination in this area.<sup>40</sup>

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<sup>39</sup> Human Rights Committee, *General Comment 17: Rights of the Child* (35<sup>th</sup> Sess., 1989), ¶ 2.

<sup>40</sup> See Center for Reproductive Rights, *Bringing Rights to Bear*, chs. 4-5.

## The Right to be Free from Harmful Practices

[State Parties shall 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 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.

Article 5(a), CEDAW Convention

Practices that harm women and girls include: female genital cutting/mutilation (FGC/M), female infanticide, son preference, food taboos for pregnant women or nursing mothers, honor killings, dowry, child betrothal, early and forced marriage, polygamy, bride price, widow inheritance, virginity testing, ritual prostitution, debt bondage, and sororate (the marriage of one man to two or more sisters usually successively and after the first wife has been found to be barren or after her death). Many of these practices directly impact women's and girls' sexual and reproductive health. FGC/M, for example, restricts women's and girls' ability to enjoy their sexuality and increases their risks of reproductive tract infections and complications during pregnancy and childbirth; while early and forced marriage often lead to early pregnancies, which pose great risks to girls' health.

### The Right to Be Free from Harmful Practices

#### International Treaties

- Convention on the Rights of the Child, article 24.3
- CEDAW Convention, articles 2(f) and 5(a)

#### Regional Treaties

- African Women's Rights Protocol, art. 5
- African Children's Rights Charter, art. 21.

### African Women's Rights Protocol

#### Article 5

##### Elimination of Harmful Practices

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

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Few international human rights treaties specifically prohibit practices that harm women and girls: the Children's Rights Convention is the only international-level convention to do so explicitly, calling for the elimination of practices "prejudicial to the health of children." The CEDAW Convention prohibits practices that are based on perceptions of women's inferiority or stereotyped roles.

At the regional level, the African Women's Rights Protocol and the African Children's Rights Charter provide the most extensive level of protection, and outline more specific governmental obligations to ensure that these practices are stopped.

Most human rights treaty bodies do interpret these practices to violate other human rights including the right to be free from discrimination, the right to consent to marriage and to equality within marriage, the right to health and reproductive health, and the right to

privacy, among others.<sup>41</sup> It is also important to note that while many of these practices are based on culture, custom, and tradition, the human rights principles that protect rights to practice cultural or religious beliefs do not extend to practices that violate other human rights.

### **Women's and Girls' Right to be Free from Harmful Practices**

The committee is concerned about continued practices, in violation of various provisions of the Covenant, including Articles 3 and 24, such as *kuzvarira* (pledging of girls for economic gain), *kuripa ngozi* (appeasement to the spirits of a murdered person), *lobola* (bride price), female genital mutilation, early marriage, the statutory difference in the minimum age of girls and boys for marriage. The committee recommends that these and other practices which are incompatible with the Covenant (Articles 3, 7, 23, 24 and others) be prohibited by legislation. Moreover, the committee urges the Government to adopt adequate measures to prevent and eliminate prevailing social attitudes and cultural and religious practices hampering the realisation of human rights by women.

Human Rights Committee, Concluding Observations: Zimbabwe, 4 August, 1998, ¶ 12

### **Adolescents' Right to be Free from Harmful Practices**

#### **African Children's Rights Charter**

##### **Article 21: Protection against Harmful Social and Cultural Practices**

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, 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.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

#### **Children's Rights Convention**

##### **Article 24.3**

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Many of the harmful practices discussed above primarily affect girls and adolescents, particularly those that are most widespread, such as FGC/M, child betrothal, early and forced marriage, and son preference. Consequently, the strongest protection for the right to be free from such practices comes from human rights treaties that specifically address children's rights.

The African Children's Rights Charter, which calls for the elimination of both practices that are harmful to children's health and life and those that are based on gender or other forms of discrimination. It also places specific emphasis on eliminating child betrothals and early marriage. The Children's Rights Convention, by contrast, calls only for the elimination of harmful practices that violate the right to health.

<sup>41</sup> See Center for Reproductive Rights, *Bringing Rights to Bear*.

## The Right to Be Free from Violence

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Every woman has the right to be free from violence in both the public and private spheres.

Article 3, Convention of Belém do Pará

Violence against women and girls is one of the most pervasive and harmful manifestations of gender-based discrimination. Unfortunately, far too many women, at least one in three, will be subjected to some form of physical or sexual violence in their lifetimes. Violence takes many forms: physical abuse and sexual abuse, including rape and incest, are the most common. Other forms of violence against women include emotional abuse, female infanticide, honour killings, FGC/M, forced pregnancy, and forced abortions. It also has major implications for sexual and reproductive health. Violence increases women's risk of unwanted pregnancy, HIV/AIDS and other sexually transmissible infections, complications during pregnancy and chronic reproductive health problems.<sup>42</sup>

### Legal Protection for the Right to Be Free from Violence

#### International Treaties

- Civil and Political Rights Covenant, articles 6, 7 and 9
- Economic, Social and Cultural Rights Covenant, art. 12
- CEDAW Convention, art. 5
- Convention on the Rights of the Child, article 19
- Convention against Racial Discrimination, article 5(b)
- Convention against Torture

#### Regional Treaties

- American Convention on Human Rights, articles 5, 6.1
- Convention of Belém do Pará
- African Charter on Human Rights, articles 4, 5
- African Women's Rights Protocol, articles 3, 4, 5
- European Convention on Human Rights, article 5
- European Social Charter, art. 17.1(b)

The right to be free from violence stems from three key human rights: the right to security, the right to physical integrity, and the right to not be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. These rights are widely protected under international law and have been interpreted to protect individuals' rights to be free from violence. The rights to life, the right to health and the right to non-discrimination have also been interpreted to protect the right to be free from violence. For example, in General Comment 14 on the Right to the Highest Attainable Standard of Health, the Economic, Social and Cultural Rights Committee states that the failure to "protect women against violence or to prosecute perpetrators" is a violation of the right to health.<sup>43</sup> Similarly, in General Comment 28 on the Equality of Rights between Men and Women, the Human Rights Committee notes that violence against women is a violation of the right to be free from torture or to cruel, inhuman, or degrading punishment or treatment as well as the right to non-discrimination.<sup>44</sup> The CEDAW Committee has also strongly advocated for women's rights to be free from violence in general recommendations and concluding observations to governments, and states that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."<sup>45</sup>

The right to be free from violence explicitly is protected by the Convention against Racial Discrimination, the Children's Rights Convention, the Inter-American Convention of Belém do Pará and the African Women's Rights Protocol. The strongest measure of protection comes from the Convention of Belém do Pará, which focuses entirely on women's rights to be free from

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<sup>42</sup> Population Information Program, John Hopkins University and the Center for Health and Gender Equity. *Ending Violence against Women*. Population Reports, Volume XXVI, Number 4, December 1999.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14*

<sup>44</sup> Human Rights Committee, *General Comment 28*, ¶ 11.

<sup>45</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 19: Violence against Women* (11<sup>th</sup> Sess., 1992).

violence. In addition to unequivocally establishing this right within the Americas, it clearly defines the actions governments must take to comply with their obligation to protect women from violence. The African Women's Rights Protocol contains similar provisions, and also links women's rights to be free from violence to their right to dignity.<sup>46</sup>

### **Convention of Belém do Pará**

#### **Article 2**

Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

#### **Article 7**

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

## **Adolescents' Right to Be Free from Violence**

Violence has particular implications for adolescents' human rights, just as it does for women. However, both adolescent boys and girls, may be even more vulnerable to violence—particularly from family members, as well as from teachers and peers. Because of their age or their relationship to the aggressors, they often have less ability to seek protection from violence through judicial systems.

<sup>46</sup> Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 3

Violence also affects adolescents' ability to enjoy their sexual and reproductive rights. Unfortunately, sexual relations for many adolescents are not consensual and adolescents often lack the life skills and power necessary to refuse unwanted sex, particularly if the aggressor is a family member or older person. Between 1/3 and 2/3 of rape victims worldwide are 15 years old or younger.<sup>47</sup>

Recognising adolescents' additional vulnerabilities to violence, the Children's Rights Convention provides strong protection for children's rights to be free from violence and establishes governments' obligations to prevent such violence.

### Children's Rights Convention

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

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<sup>47</sup> Population Reference Bureau. *The World's Youth 2000*. (Washington, DC: PRB, 2000).

## Opportunities to Advocate for Adolescents' Sexual and Reproductive Rights

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- Find out which human rights treaties your government has ratified, and which ones they have not yet agreed to.

If you have access to the internet, you can find out this information on the following websites:

International treaties:

<http://www.ohchr.org>

Organization of American States treaties:

<http://www.oas.sam.gov>

African Union treaties:

<http://www.africa-union.org>

Council of Europe treaties:

<http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>

- If your government has not ratified a treaty that protects your sexual and reproductive rights, you can:
  - ◆ Raise awareness among your peers, community members and others about the existence of the treaty and the rights it protects.
  - ◆ Advocate with your government to ratify the treaty.
- If your government has ratified a treaty, you can:
  - ◆ Raise awareness among your peers, community members and others about the existence of the treaty and the rights it protects.
  - ◆ Evaluate how well your government is doing and identify areas where it is falling short and where human rights are being violated.
  - ◆ Raise awareness of human rights violations in the media and with government officials and advocate for remedies.
  - ◆ Report on shortfalls in implementation and human rights violations to the appropriate international human rights treaty bodies through letters or alternative reports when it is time for your country's periodic review. Advocate with the committees to include recommendations on these issues in their concluding observations.

### Advocacy Tips

- The purpose of advocacy is **change**. Before you start any advocacy campaign, first define your ultimate goal and then set some concrete and achievable objectives that will help you reach your goal.
- There are many different ways you can advocate. Petitions or letters, face-to-face meetings with government representatives and parliamentarians, briefings for government representatives and parliamentarians, and media campaigns are just a few ways. Think of creative ways to get the attention of the decision makers that can help you achieve your advocacy goal.
- Be flexible and ready to pounce on opportunities for advocacy as they come up. Sometimes the best opportunities for advocacy are the ones you don't plan for.
- Working with other individuals or organizations in a coalition and having the backing of large numbers of people can strengthen your advocacy campaign and increase its chance of success.
- Constantly monitor and evaluate how your advocacy campaign is doing. If you're not achieving your objectives, you may need to come up with some different strategies to achieve your goal.

If you have access to the internet, you can find out when your country's periodic review by a human rights committee will take place at this website: <http://www.iachr.ch>.

- If a human rights treaty body does issue strong concluding observations, raise awareness about them in the media and with government officials and follow up to make sure your government is taking steps to implement these recommendations.
  - Advocate with government officials and parliamentarians for better implementation of a treaty or certain provisions within a treaty and remind them of their legal obligations to do so.
  - If your government has placed reservations or made declarations that weaken the protection of a treaty, advocate with them to formally remove those reservations.
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- Advocate with governments at regional and international forums for stronger recognition of certain human rights and better implementation of existing ones. Such forums include the UN Commission on Human Rights, regional intergovernmental bodies, such as the African Union, Council of Europe or the Organization of American States, and international and regional intergovernmental conferences that aim to set plans of action on relevant issues, such as population and development or youth.

## Resources

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### International Resources on Sexual and Reproductive Rights

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United Nations High Commissioner of Human Rights Website: <http://www.ohchr.org>

Here you can find the full text of international human rights treaties, general comments and recommendations issued by the treaty committees, concluding observations to governments, governments' reports to the committees, and schedules for the committees' sessions, among other useful information.

Center for Reproductive Rights, *Bringing Rights to Bear: An Analysis of the Work of the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (Center for Reproductive Rights: New York, 2003). Available online at: [http://www.reproductiverights.org/pub\\_bo\\_tmb.html](http://www.reproductiverights.org/pub_bo_tmb.html)

Center for Reproductive Rights, *Bringing Rights to Bear: An Advocate's Guide to the Work of the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (Center for Reproductive Rights: New York, 2003). Available online at: [http://www.reproductiverights.org/pub\\_bp\\_tmb.html](http://www.reproductiverights.org/pub_bp_tmb.html)

Center for Reproductive Rights, *Reproductive Rights are Human Rights*, 4<sup>th</sup> ed. (Center for Reproductive Rights: New York, 2004).

Julie Stanchieri, Isfahan Merali and Rebecca Cook, *The Application of Human Rights to Reproductive and Sexual Health: A Compilation of the Work of International Human Rights Treaty Bodies*, 2<sup>nd</sup> ed. (Action Canada for Population and Development: Ottawa, 2003). Available online at: <http://www.acpd.ca/compilation/>

### Regional Resources on Sexual and Reproductive Rights

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#### Africa

African Union website: <http://www.africa-union.org>

Here you can find the full text of regional human rights treaties, information about which countries have ratified them, and the work of the African Commission on Human and Peoples' Rights.

Ipas, *A Handbook for Advocacy in the African Human Rights System: Advancing Reproductive and Sexual Health* (Ipas: Chapel Hill, North Carolina 2002). Available online at: [http://www.ipas.org/english/publications/international\\_health\\_policies.asp](http://www.ipas.org/english/publications/international_health_policies.asp)

#### The Americas

Inter-American Commission on Human Rights website: <http://www.iachr.org>

Here you can find the full text of regional human rights treaties, decisions of the Inter-American Commission on Human Rights, country reports on the state of human rights, and information about filing individual complaints.

Center for Reproductive Rights, *Reproductive Rights in the Inter-American System for the Promotion and Protection of Human Rights* (Center for Reproductive Rights: New York, 2003). Available online at: [http://www.reproductiverights.org/pub\\_bp\\_ias.html](http://www.reproductiverights.org/pub_bp_ias.html)

Profamilia, *El Sistema Interamericano de Derechos Humanos: Derechos Sexuales y Reproductivos en Acción [The Inter-American Human Rights System: Sexual and Reproductive Rights in Action]*, Vol. 1-4 (Profamilia: Bogotá, 2000). Available online at: <http://www.profamilia.org.co/profamilia/P4/index.asp>

## **Europe**

Council of Europe Treaty Office website: <http://conventions.coe.int>

Here you can find the full text of regional human rights treaties and which countries have ratified them.

European Court of Human Rights website: <http://www.echr.coe.int/>

Here you can find information about the work of the European Court of Human Rights, as well as the court's judgments and decisions on human rights issues.

ASTRA, Federation for Women and Family Planning – Poland, International Programme of Reproductive and Sexual Health Law, University of Toronto, and the Danish Centre for Human Rights, *The Application of Human Rights to Reproductive and Sexual Health: A Compilation of the Work of the European Human Rights System* (ASTRA: Warsaw, 2002). Available online: [ftp://ftp.astra.org.pl/tor/index\\_1.html](ftp://ftp.astra.org.pl/tor/index_1.html)



youth coalition

Working internationally for  
sexual and reproductive rights

