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RIGHTS, RESPECT, RESPONSIBILITY: ADVANCING THE SEXUAL AND  
REPRODUCTIVE HEALTH AND RIGHTS OF YOUNG PEOPLE THROUGH  
INTERNATIONAL HUMAN RIGHTS LAW

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INTRODUCTION

The past thirty years have brought about significant changes in the global landscape. Whether it is the discovery of HIV, the rise of new democracies, or the proliferation of social media, young people have been at the forefront of the social justice movement for decades. The most recent milestone in this global transformation occurred in late 2011 when the world's population reached seven billion—more than double the number of people living just fifty years ago.<sup>1</sup> Forty-three percent of those seven billion people are under the age of twenty-five, and in

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many of the least developed countries, this percentage is close to sixty or seventy percent.<sup>2</sup> The current and future direction of this planet will largely depend on how well we educate, empower, and engage the largest generation of young people in history. In no area is this of more paramount importance than in the realm of sexual and reproductive health, where education, health, self-determination, and human rights intersect to create the foundations for healthy decision-making.

This article will examine the use of international human rights law as a framework to advance the sexual and reproductive health and rights of young people around the world. Section I will provide an overview of the realities young people face in today's world of seven billion people and why it is imperative that their needs are prioritized in policies and programs. Section II reviews the history, principles, and mechanisms of international human rights law, while Section III enumerates language from binding and non-binding documents recognizing sexual and reproductive health rights as human rights. Section IV explores three specific sexual and reproductive health issues affecting young people—forced sterilizations, comprehensive sexuality education, and sexual orientation and gender identity (SOGI)—through analysis of relevant international and national human rights case law and United Nations (UN) recommendations, resolutions, and observations. Each of these case studies involves a different level of human rights advocacy, from the use of international human rights norms in domestic litigation, to regional committee decisions and UN country reports, to recent attempts to realize rights never before officially recognized by the UN. Section V outlines a host of recommendations for various actors in this movement, including the UN, national governments, legal professionals, young people, and civil society groups. Section VI concludes with a call to action for continued advances in recognizing and respecting the sexual and reproductive health rights of youth.

## I. CONTEXTUALIZING YOUTH SEXUAL AND REPRODUCTIVE HEALTH

Youth, defined by the UN as individuals aged fifteen to twenty-four,<sup>3</sup> are a unique subset of the forty-four percent of people under the age of twenty-five living in the world today.<sup>4</sup> Comprising a total of 1.2 billion people—eighty-seven percent of whom live in the developing world<sup>5</sup>—youth face a myriad of challenges brought about by limited access to resources, health care, education, training, employment, and economic opportunities.

Young girls, in particular, bear the brunt of violations of sexual and reproductive health and rights, including physical and sexual abuse as well as harmful traditional practices. From

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<sup>1</sup> *World Population Prospects: The 2010 Revision: Frequently Asked Questions*, POPULATION DIVISION, U.N. DEP'T OF ECON. & SOC. AFFAIRS (Oct. 31, 2011), [http://esa.un.org/wpp/other-information/pr\\_faq.htm](http://esa.un.org/wpp/other-information/pr_faq.htm).

<sup>2</sup> Population Division, U.N. Dep't of Econ. & Soc. Affairs, *World Population Prospects: The 2010 Revision, Highlights and Advanced Tables 8* (Working Paper No. ESA/P/WP.220, 2011).

<sup>3</sup> The UN defines adolescents as individuals aged ten to nineteen, youth as those aged fifteen to twenty-four, and young people as within the full range from ten to twenty-four. This article will use the terms youth and young people interchangeably and will identify adolescents separately when warranted.

<sup>4</sup> UNITED NATIONS POPULATION DIVISION, *WORLD POPULATION PROSPECTS, THE 2010 REVISION, VOL. II: DEMOGRAPHIC PROFILES 8* (2010), available at [http://esa.un.org/unpd/wpp/Documentation/pdf/WPP2010\\_Volume-II\\_Demographic-Profiles.pdf](http://esa.un.org/unpd/wpp/Documentation/pdf/WPP2010_Volume-II_Demographic-Profiles.pdf).

<sup>5</sup> Population Division, U.N. Dep't of Econ. & Soc. Affairs, *supra* note 2, at 8.

1986 to 2004 globally (excluding China), thirty-six percent of women aged twenty to twenty-four were married or in a union before they reached the age of eighteen.<sup>6</sup> Early and/or forced marriage is most common in Sub-Saharan Africa and South Asia, with seventy-seven percent of women aged twenty to twenty-four in Niger and sixty-five percent of women aged twenty to twenty-four in Bangladesh married before their eighteenth birthday.<sup>7</sup> With early marriage comes early pregnancy and the resulting complications of bearing children before a young girl's body is prepared to do so. These complications, along with unsafe abortion, make pregnancy a leading cause of death for young women aged fifteen to nineteen in low- and middle-income countries.<sup>8</sup> In fact, these young women are twice as likely to die during pregnancy or childbirth as those over age twenty, while girls under the age of fifteen are five times more likely to die than women over age twenty.<sup>9</sup> Coupled with other harmful traditional practices such as dowry deaths, honor killings, and female genital cutting/mutilation, just growing up as a young girl can be a dangerous endeavor.

When humanitarian crises, violence, and conflict are added to the mix, survival becomes a daily challenge. The UN High Commissioner for Refugees estimates that half of the twenty million refugees in the world are young people aged fifteen to twenty-four displaced by armed conflict.<sup>10</sup> Young women are particularly vulnerable to sexual abuse and exploitation, rape, unintended pregnancy, and HIV as they flee to refugee camps where many of them will live for months and years without adequate protection or health care facilities.<sup>11</sup> For young boys, armed conflict poses threats as well. Currently, there are roughly 250,000 child soldiers involved in armed conflict worldwide.<sup>12</sup> These young boys are recruited to serve as fighters, porters, cooks, messengers, and spies, while young girls are often forced into sex slavery.<sup>13</sup> The long-term psychological trauma resulting from serving in conflict is accompanied by an elevated risk of contracting sexually transmitted infections, including HIV, and the commission of gender-based violence—particularly rape—as a weapon of war.<sup>14</sup>

Given the numerous ways in which young people are exposed to gender inequality, violence, and sexual assault, it comes as little surprise that forty-two percent of new HIV infections worldwide among those aged fifteen and older occur among young people aged fifteen

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<sup>6</sup> UNICEF, *THE STATE OF THE WORLD'S CHILDREN 2006*, at 131 (2005).

<sup>7</sup> *Id.* at 130–31.

<sup>8</sup> THORAYA AHMED OBAID, U.N. POPULATION FUND, *STATE OF THE WORLD POPULATION 2004: THE CAIRO CONSENSUS AT TEN 76* (2004). *See also* RUTH LEVINE ET AL., *THE CENTER FOR GLOBAL DEV., GIRLS COUNT: A GLOBAL INVESTMENT & ACTION AGENDA 49* (2d ed. 2009).

<sup>9</sup> RUTH LEVINE ET AL., *supra* note 8, at 49; *see also* MIRIAM TEMIN & RUTH LEVINE, *THE CENTER FOR GLOBAL DEV., START WITH A GIRL: A NEW AGENDA FOR GLOBAL HEALTH 26* (2009) (“Adolescent mothers are two to five times more likely to die in pregnancy and childbirth than women in their twenties.”).

<sup>10</sup> Marie T. Benner et al., *Reproductive Health and Quality of Life of Young Burmese Refugees in Thailand*, *CONFLICT & HEALTH*, March 2010, at 1, 1.

<sup>11</sup> Judy Austin et al., *Reproductive Health: A Right for Refugees and Internally Displaced Persons*, *REPROD. HEALTH MATTERS*, May 2008, at 10, 10.

<sup>12</sup> Gary Humphreys, *Healing Child Soldiers*, 87 *BULL. WORLD HEALTH ORG.* 330, 330 (2009).

<sup>13</sup> *Id.*

<sup>14</sup> *See generally* WORLD HEALTH ORGANIZATION, *VIOLENCE AGAINST WOMEN AND HIV/AIDS: CRITICAL INTERSECTIONS—SEXUAL VIOLENCE IN CONFLICT SETTINGS AND THE RISK OF HIV* (2004) (discussing the increased risk of physical and sexual violence against women in conflict settings).

to twenty-four.<sup>15</sup> Young women are more vulnerable to the HIV epidemic than are young men, accounting for more than sixty percent of all young people with HIV. Sub-Saharan Africa—the site of much of the world’s conflict and gender inequality—is the hardest-hit region, with young women comprising seventy-two percent of the cases of HIV among young people.<sup>16</sup> In fact, worldwide, young women aged fifteen to twenty-four are 1.6 times more likely to be infected than young men of the same age.<sup>17</sup> In addition to gender inequality, gender-based violence, and biological factors, the feminization of HIV is also attributable to insufficient access to quality and comprehensive sexuality education. Ideology, politics, and religion have long influenced the sex education agenda, denying young people the accurate information necessary to make healthy decisions about sex and sexuality. Fewer than seventy percent of countries with generalized HIV epidemics have implemented school-based HIV education programs, and those that do exist are not necessarily comprehensive or evaluated for quality.<sup>18</sup> This helps explain why, globally, only thirty-six percent of young people (twenty-four percent of women and thirty-four percent of young men from low- and middle-income countries) can answer correctly the five basic questions about HIV and how to prevent it.<sup>19</sup>

Discriminatory laws further entrench inequalities in much of the world. Whether it is parental or spousal consent laws, abortion restrictions,<sup>20</sup> or criminalization of certain sexual activities, the impact of harmful laws and policies are felt by young people. Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, in particular, face some of the most stigmatizing laws of all. Seventy-six countries and five entities (cities, regions, or administrative units within countries) criminalize same-sex relationships with imprisonment or corporal punishment, while five countries impose the death penalty for same-sex relations.<sup>21</sup> Only fifty-eight countries and sixty entities have anti-discrimination laws in place, while only thirty-two countries and thirty entities recognize same-sex unions.<sup>22</sup> Due to marginalization imposed by these discriminatory laws as well as cultural and religious beliefs, LGBTQ youth experience heightened vulnerability to an array of economic, education, health, and legal issues. Often forced out of their homes, many LGBTQ youth may turn to commercial sex work to make ends

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<sup>15</sup> UNAIDS, WORLD AIDS DAY REPORT 2011: CORE EPIDEMIOLOGY SLIDES, at slide 11 (Nov. 21, 2011), available at <http://www.slideshare.net/UNAIDS/unaidsworldaidsdayreport2011-core-slides-10250153%20>.

<sup>16</sup> UNICEF, OPPORTUNITY IN CRISIS: PREVENTING HIV FROM EARLY ADOLESCENCE TO YOUNG ADULTHOOD 4 (2011).

<sup>17</sup> Sofia Gruskin et al., *Reproductive Health and HIV: Do International Human Rights Law and Policy Matter?*, 3 MCGILL INT’L J. SUST. DEV. L. & POL’Y 69, 71 (2007).

<sup>18</sup> NICKIE IMANGULI, ADVOCATES FOR YOUTH, YOUTH AND THE GLOBAL HIV/AIDS PANDEMIC: THE FACTS 3 (2008), available at <http://www.advocatesforyouth.org/storage/advfy/documents/fsglobalhiv.pdf>.

<sup>19</sup> UNAIDS, AIDS AT 30: NATIONS AT THE CROSSROADS 52 (2011), available at <http://www.unaids.org/unaidresources/aidsat30/aids-at-30.pdf>.

<sup>20</sup> An analysis of abortion through international human rights law is outside the scope of this article. See *R.R. v. Poland*, App. No. 27617/04, Eur. Ct. H.R. (2011); *A, B and C v. Ireland*, App. No. 25579/05, Eur. Ct. H.R. (2010); *Tysi c v. Poland*, App. No. 5410/03, Eur. Ct. H.R. (2007); Rep. of the Human Rights Comm., 85th Sess., Oct. 17–Nov. 3, 2005, U.N. Doc. CCPR/C/85/D/1153/2003 (Oct. 24, 2005); CENTER FOR REPROD. RIGHTS, BRINGING RIGHTS TO BEAR: ABORTION AND HUMAN RIGHTS (2008); Christina Zampas & Jamie M. Gher, *Abortion as a Human Right—International and Regional Standards*, 8 HUM. RTS. L. REV. 249 (2008).

<sup>21</sup> *Lesbian and Gay Rights in the World*, INT’L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS’N (May 2011), [http://old.ilga.org/Statehomophobia/ILGA\\_map\\_2011\\_pride.pdf](http://old.ilga.org/Statehomophobia/ILGA_map_2011_pride.pdf).

<sup>22</sup> *Id.*

meet, putting them at risk of violence and arrest. Because they do not have the funds to pay school fees and/or because their schools are not LGBTQ-inclusive, many drop out of school, further limiting their economic and educational opportunities. This increased marginalization is further exacerbated by threats of sexual violence and abuse, “corrective rape,” hate crimes, physical and verbal attacks, and death.<sup>23</sup>

Despite the numerous obstacles which impede youth access to comprehensive sexual and reproductive health information and services, young people around the world have proven that they are resilient, innovative, and powerful voices in the movement for youth sexual and reproductive health and rights. They have created youth-led organizations in countries around the world; served on local, national, regional, and international advisory boards; trained health care providers in the provision of youth-friendly services; and designed, implemented, and evaluated youth-specific programs and interventions.<sup>24</sup> They have also documented human rights abuses committed against young people, issued shadow reports exposing their countries’ human rights violations, and advocated for policy changes domestically as well as at the UN. Involving young people in these processes not only leads to innovative programs, but it also increases success rates, while further helping youth build skills in communication, negotiation, and civic participation.<sup>25</sup>

Young people have made tremendous progress in advancing their rights, but they cannot and should not do it alone. National governments and the entire international community must not only recognize the rights of youth and respect them as equal partners and rights-holders, but they also have a responsibility to prioritize youth sexual and reproductive health and rights. The international human rights system can play a significant role in shaping policies and programs affecting young people in UN Member States.

## II. FOUNDATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

While the notion of human rights has existed in some form or another for much of human history, the field of international human rights law is a relatively recent one, born out of the atrocities committed in World War II. At that time, the Member States of the UN, under the leadership of First Lady of the United States Eleanor Roosevelt, drafted the Universal Declaration of Human Rights (UDHR),<sup>26</sup> which enumerated the hopes and aspirations for the common rights of all human beings. The UDHR, unanimously adopted in 1948, became the watershed moment in the history of international human rights law. No longer would the treatment of a nation’s citizens be considered solely a domestic concern. Human rights were recognized as rights inherent to every person simply by virtue of their being human.

Key to the recognition of human rights are four fundamental principles—universality, inalienability, indivisibility, and interdependency. First and foremost, human rights are universal, meaning they apply to everyone equally without discrimination. They are also inalienable, and therefore cannot be taken away except in extremely rare circumstances. Third, all rights are indivisible and equally important to the full realization of one’s humanity. As such, they cannot

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<sup>23</sup> Author communications with a focal group of young LGBTQ individuals from Nigeria and Jamaica.

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., *Adolescents and Youth: Full citizens, Full Rights*, UNICEF, [http://www.unicef.org/adolescence/index\\_rights.html](http://www.unicef.org/adolescence/index_rights.html) (last visited Jan. 28, 2012).

<sup>26</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

be ranked in hierarchical order to prioritize some over others. Finally, given the interdependent nature of rights, a violation of one right often affects several others. For example, the right to participate in government is directly affected by the right to receive information, the right to express one's beliefs, and the right to assemble, among others.<sup>27</sup>

These rights, and many others, are enumerated in several forms. International treaties, also called conventions, covenants, and pacts, provide the highest level of protection of human rights because they are legally binding international agreements between states with formal enforcement mechanisms.<sup>28</sup> Examples of such treaties are the International Covenant on Civil and Political Rights (ICCPR),<sup>29</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>30</sup> and the Convention on the Rights of the Child (CRC).<sup>31</sup> Treaties, however, only become binding on states after signature *and* ratification, which is the formal process whereby treaties are incorporated into a country's domestic law. In some countries, this automatically happens upon signature of a treaty, while in other countries, an additional act is required to ratify a treaty. For example, the Constitution of the United States requires a two-thirds vote of the U.S. Senate to ratify treaties, creating a sometimes insurmountable hurdle to ratification and implementation.<sup>32</sup> There are cases, however, when even non-signatories can be bound by treaties. Known as customary international law, this occurs when almost all the nations of the world have adopted a particular treaty, demonstrating that its provisions are recognized as the common standard of achievement for all nations regardless of signature and ratification.<sup>33</sup>

Although treaties do not *establish* human rights because those are inherent to all human beings, they do *guarantee* those rights and place obligations on States Parties to respect, protect, and fulfill them. Respecting rights means that parties must refrain from making laws or policies that either directly or indirectly result in the infringement of citizens' enjoyment of their rights (e.g. restrictions on voting rights for women). Meanwhile, States must also protect rights by taking proactive steps to prevent rights violations by state actors (unlawful detention by law enforcement officials, for example). Finally, States are obligated to fulfill rights by putting in place mechanisms that will ensure the full realization of human rights. Fulfilling rights can take many forms, including enacting laws and policies that support human rights, fully funding health care services, enhancing and training the judiciary to ensure that citizens have appropriate redress

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<sup>27</sup> For an overview of these basic foundations of human rights law, see UNICEF, THE STATE OF THE WORLD'S CHILDREN 2004, ANNEX B 91–92, available at <http://www.unicef.org/sowc04/files/AnnexB.pdf>.

<sup>28</sup> See *International Human Rights Law*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited Feb. 2, 2012). In international law, "States" and "Member States" are the terms used to denote countries recognized by the United Nations and "Parties" and "States Parties" are the terms used to denote countries that are parties to each international treaty.

<sup>29</sup> International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

<sup>30</sup> International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

<sup>31</sup> Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

<sup>32</sup> See U.S. CONST. art. II, § 2, cl. 2.

<sup>33</sup> See, e.g., *The Paquete Habana*, 175 U.S. 677, 700 (1900) ("[I]nternational law is part of our law . . . [and] where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations.").

for rights violations, and establishing other accountability mechanisms for rights violations.<sup>34</sup>

While international treaties are legally binding, other consensus documents such as declarations and resolutions are not. These instruments of international human rights law are general statements of principles, laying out non-binding aspirations to which States should adhere. They include such declarations as the Cairo Programme of Action,<sup>35</sup> the Beijing Platform for Action,<sup>36</sup> and the Millennium Development Goals (MDGs).<sup>37</sup> Each of these instruments, agreed to by consensus rather than signature and ratification, serve to clarify the meaning of rights as they have evolved over time, and outline new benchmarks or goals that states commit to achieving. While not binding in their own right, declarations and resolutions often include provisions, such as prohibitions against torture, slavery, and genocide, which amount to customary international law and are therefore prohibited no matter which treaties a State has signed.

A third area of international human rights law involves determinations made by Treaty Monitoring Bodies (TMBs), which serve to interpret the treaties in their jurisdiction as well as monitor States Parties' compliance with those treaty obligations.<sup>38</sup> TMBs are committees composed of independent experts who review country reports submitted every few years by States Parties.<sup>39</sup> During these reviews, the committees examine what steps States Parties have taken to comply with treaty obligations and then issue Concluding Observations, which express areas of concern and recommendations for how States Parties can comply with their obligations.<sup>40</sup> Each TMB is also responsible for issuing General Comments or Recommendations, which cover broad themes and help to guide States Parties in treaty implementation.<sup>41</sup> In addition to reviews by the TMBs, every UN Member State must also submit to a more comprehensive review every four years by the Human Rights Council. Unlike the TMB reviews, these Universal Periodic Reviews analyze a country's entire human rights record rather than just those rights enshrined within a single treaty.<sup>42</sup>

Because international human rights obligations fall on governments rather than individual citizens, States are usually the parties that must bring actions against other States for violations of human rights, something many of them are reluctant to do. However, some treaties are accompanied by Optional Protocols, which if signed by a State, specifically allow an individual to bring a complaint against a State.<sup>43</sup> In order to do so, individuals must, in most

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<sup>34</sup> See, e.g., Rep. of the Comm. on the Elimination of Discrimination against Women, 46th, 47th, & 48th Sess., July 12–July 30, 2010, Oct. 4–Oct. 22, 2010, & Jan. 17–Feb. 4, 2011, at 110 U.N. Doc. A/66/38; GAOR, 66th Sess., Supp. No. 38 (2011).

<sup>35</sup> International Conference on Population and Development, Cairo, Egypt, Sept. 5–13, 1994, *Cairo Programme of Action*, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *Cairo Programme of Action*].

<sup>36</sup> Fourth World Conference for Women, Beijing, China, Sept. 4–15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20/Rev.1 (1996) [hereinafter *Beijing Platform for Action*].

<sup>37</sup> United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

<sup>38</sup> CENTER FOR REPROD. RIGHTS, *GAINING GROUND: A TOOL FOR ADVANCING REPRODUCTIVE RIGHTS LAW REFORM* 17 (2006).

<sup>39</sup> Gruskin et al., *supra* note 17, at 74.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See *Basic Facts About the UPR*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (Nov. 2008), <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

<sup>43</sup> See, e.g., Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against



cases, first exhaust all other available remedies within their country. These complaints by individuals against States are heard by the respective TMBs who then issue final determinations finding a State in compliance or in violation of its treaty obligations. While not binding on other States, these decisions do provide persuasive precedent for future complaints heard by UN TMBs.<sup>44</sup>

Outside the UN system, national governments and individual citizens have also utilized international human rights law to push for legal and policy reforms within their national legislative and judicial systems. Through domesticating standards set out in treaties and non-binding declarations, resolutions, and Concluding Observations, States have taken important and proactive steps to respect, protect, and fulfill the human rights of its citizens. For example, Ghana and Uganda have incorporated human rights principles, such as protection against harmful traditional practices, in their constitutions.<sup>45</sup> At the same time, individuals have cited international human rights law in domestic lawsuits brought against their governments. While these efforts have resulted in many positive changes in the application of international human rights law in the domestic sphere, laws and court decisions protecting rights are only effective if the obligations they place on States are actually put into practice.<sup>46</sup> However, before this can be accomplished, it is necessary to understand the rights that are articulated in the body of international human rights law.

### III. SEXUAL AND REPRODUCTIVE HEALTH RIGHTS ARE HUMAN RIGHTS

As previously stated, one of the principles of human rights law is interdependency. That is, the ability to enjoy one particular right is often predicated upon the enjoyment of other rights. Just as the right to participate in the political process is dependent on the rights to receive information, express one's beliefs, and assemble, so too are sexual and reproductive health rights dependent on other rights, such as the rights to health, education, life, liberty, privacy, and non-discrimination. This section will review each of those rights as they apply to sexual and reproductive health, and when so enumerated, how those rights affect young people in particular.

#### A. *The Right to Health*

Clearly, the ability of young people to realize their sexual and reproductive health and rights is most closely related to the right to health. Health is also one of the most basic rights enshrined in a number of international human rights instruments, including the founding document, the UDHR.<sup>47</sup> Nearly twenty years later Article 12 of the ICESCR again articulated this right, requiring States Parties to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>48</sup> ICESCR's sister treaty, the ICCPR, also

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Women, G.A. Res. 54/4, U.N. Doc. A/54/49 (Vol. I), at 5 (Dec. 22, 2000).

<sup>44</sup> See generally *Human Rights Bodies—Complaints Procedures*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/petitions/index.htm> (last visited Feb. 2, 2012) (describing various methods for state-to-state complaints, individual complaints, and inquiries to TMBs).

<sup>45</sup> CENTER FOR REPROD. RIGHTS, *GAINING GROUND*, *supra* note 38, at 19.

<sup>46</sup> Sofia Gruskin et al., *History, Principles, and Practice of Health and Human Rights*, 370 LANCET 449, 452 (2007) (discussing domestic lawsuits in South Africa and Latin America).

<sup>47</sup> UDHR, *supra* note 26, at art. 25.

<sup>48</sup> ICESCR, *supra* note 30, at art. 12.

protects the right to health.<sup>49</sup>

In 1979 the first treaty dedicated exclusively to women's rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), further elaborated on the right to health by requiring States to ensure the equal rights of women to access information and advice on family planning.<sup>50</sup> In addition to information, Article 12 commits States Parties to ensuring equal access to health services, including family planning services.<sup>51</sup> These rights also include the equal rights of women and men 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."<sup>52</sup> Recognizing the impact of customary practices on gender inequality and access to health, CEDAW also calls upon States to eliminate customs and harmful traditional practices.<sup>53</sup>

In addition to the UDHR, the ICESCR, the ICCPR, and CEDAW, the CRC also explicitly recognizes the right to the highest attainable standard of health. As such, the convention requires States Parties to "develop preventive health care, guidance for parents and family planning education and services" for all children under the age of 18.<sup>54</sup> Just as CEDAW calls upon States to abolish harmful traditional practices, so too does the CRC.<sup>55</sup>

A few short years after the CRC entered into force, the International Conference on Population and Development (ICPD) took place in Cairo, Egypt. Although it is a non-binding consensus document, the resulting 1994 Cairo Programme of Action is widely hailed by advocates around the world because it was the first time governments explicitly acknowledged that sexual and reproductive rights are human rights.<sup>56</sup> Accepted by the 179 nations in attendance at the ICPD, the Programme of Action defined reproductive health and rights in the following manner:

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 . . . . In line with the

<sup>49</sup> ICCPR, *supra* note 29, at art. 24.

<sup>50</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 10(h), *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

<sup>51</sup> *Id.* at art. 12; *see also id.* at art. 14.2(b) (requiring States to ensure that women in rural areas also have access to health care information and services).

<sup>52</sup> *Id.* at art. 16(e).

<sup>53</sup> *Id.* at art. 2(f), 5(a); *see also* Cairo Programme of Action, *supra* note 35, at ¶ 5.5 (further elaborating the standard set in the CEDAW by recommending that governments adopt and enforce measures to eliminate child marriage and female genital mutilation); Beijing Platform for Action, *supra* note 36, at ¶ 224 ("Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated.").

<sup>54</sup> CRC, *supra* note 31, at art. 24(2)(f).

<sup>55</sup> *Id.* at art. 24(3).

<sup>56</sup> CENTER FOR REPROD. RIGHTS, REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS 5 (2009), *available at* [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RRareHR\\_final.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RRareHR_final.pdf).

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 recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make all decisions concerning reproduction free of discrimination, coercion, and violence . . . .<sup>57</sup>

In addition to defining reproductive health and rights, the Cairo Programme of Action also drew specific attention to adolescents. Paragraph 7.3 states that “full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality.”<sup>58</sup> It goes on to acknowledge the vulnerability that adolescents face as a result of inadequate access to sexual and reproductive health information and services.<sup>59</sup> In order to address these vulnerabilities, the Programme of Action called on countries to provide:

[I]n a manner consistent with the evolving capacities of the adolescent, appropriate direction and guidance in sexual and reproductive matters [and to] ensure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need [while safeguarding] the rights of adolescents to privacy, confidentiality, respect, and informed consent . . . .<sup>60</sup>

A year after Cairo, nations reached another consensus when they agreed to the rights included in the Beijing Platform for Action. Paragraph 89 of the Platform for Action reaffirms the right to the

<sup>57</sup> Cairo Programme of Action, *supra* note 35, at ¶ 7.2–7.3. The right to decide the number, spacing, and timing of children free of discrimination, coercion, and violence is reaffirmed in the Beijing Platform for Action, the 5- and 15-year reviews of the Cairo Programme of Action, the 2010 Commission on Population and Development (CPD), and the 2011 CPD. See Beijing Platform for Action, *supra* note 36, at ¶ 223; *Key Actions for the Further Implementation of the Programme of Action of the Int’l Conference on Population and Dev.*, G.A. Res. S-21/2, ¶ 3, U.N. Doc. A/RES/S-21/2 (1999) [hereinafter ICPD +5]; Rep. of the Comm’n on Population & Dev., 42nd Sess., Apr. 11, 2008 & Mar. 30–Apr. 3, 2009, preamble, U.N. Doc. E/CN.9/2009/10; ESCOR, Supp. No. 5 (2009) [hereinafter ICPD +15]; Comm’n on Population & Dev. Res. 2010/1, Health, Morbidity, Mortality and Development, 43rd Sess., Apr. 3, 2009 & Apr. 12–16, 2010, ¶¶ 11–12, U.N. Doc. E/CN.9/2010/9; ESCOR, Supp. No. 5 (2010) [hereinafter CPD 2010]; Comm’n on Population & Dev. Res. 2011/1, Fertility, Reproductive Health and Development, 44th Sess., Apr. 16, 2010 & Apr. 11–15, 2011, U.N. Doc. E/CN.9/2011/8; ESCOR, Supp. No. 5 (2011), at 3 [hereinafter CPD 2011].

<sup>58</sup> Cairo Programme of Action, *supra* note 35, at ¶ 7.3.

<sup>59</sup> *Id.* at ¶¶ 7.3, 7.41–7.43.

<sup>60</sup> *Id.* at ¶ 7.45.

highest attainable standard of health,<sup>61</sup> while other provisions recommit to the rights to decide freely and responsibly on matters related to sexuality free of coercion, discrimination, and violence,<sup>62</sup> and to decide on the number, spacing, and timing of children with all information and means to do so.<sup>63</sup>

Although not agreed to by signature or consensus, TMB General Comments and Recommendations provide further clarification on the right to health in an effort to help States implement their binding treaty obligations. For example, the Committee on Economic, Social, and Cultural Rights (CESCR) issued General Comment 14 which clarifies that the right to health requires States to not only provide health care itself, but to also ensure access to “a variety of facilities, goods, services and conditions” necessary to achieve the right to health, including sexual and reproductive health education and information.<sup>64</sup> Meanwhile, General Comment 4 of the Committee on the Rights of the Child is specifically dedicated to adolescent health and development. As such, it calls upon States to “ensure that health facilities, goods and services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents’ concerns are available to all adolescents.”<sup>65</sup> General Comment 4 also calls for the creation of programs that provide adolescents with access to comprehensive sexual and reproductive health services, including family planning information and commodities, as well as obstetric care and safe abortion services, where legal.<sup>66</sup>

#### *B. The Right to Education and Information*

In order to achieve the full realization of the right to health, individuals need information about how to make healthy decisions, prevent unintended pregnancy, and protect themselves from sexually transmitted infections, including HIV. While this right belongs to all human beings, it is of particular importance to adolescents and young people who are too often denied this information. Numerous studies have shown that young people who receive age-appropriate, medically-accurate, evidence- and rights-based comprehensive sexuality education are more likely to delay sexual initiation and use contraception when they do have sex, compared to their peers who receive no sex education or abstinence-only education.<sup>67</sup> While sex education is often provided in school settings, given the fact that young girls are less likely than boys to be enrolled in school in many parts of the world, incorporating comprehensive sex education programs in out-of-school settings is also essential. Efforts should also be undertaken to re-enroll young girls who

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<sup>61</sup> Beijing Platform for Action, *supra* note 36, at ¶ 89.

<sup>62</sup> *Id.* at ¶ 96.

<sup>63</sup> *Id.* at ¶ 223.

<sup>64</sup> Comm. on Econ., Soc. & Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health, 22nd Sess., Apr. 25–May 12, 2000, ESCOR, 2000, Supp. No. 2, U.N. Doc. E/C.12/2000/4, ¶¶ 9, 11 (2000) [hereinafter CESCR General Comment 14].

<sup>65</sup> Comm. on the Rights of the Child, General Comment 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 33rd Sess., July 1, 2003, U.N. Doc. CRC/GC/2003/4, ¶ 39(c), available at <http://www2.ohchr.org/english/bodies/crc/comments.htm> [hereinafter CRC General Comment 4].

<sup>66</sup> *Id.* at ¶¶ 27, 31(a).

<sup>67</sup> ADVOCATES FOR YOUTH, SCIENCE AND SUCCESS: SEX EDUCATION AND OTHER PROGRAMS THAT WORK TO PREVENT TEEN PREGNANCY, HIV, AND SEXUALLY TRANSMITTED INFECTIONS 3 (2nd ed. 2008); ADVOCATES FOR YOUTH, SCIENCE AND SUCCESS IN DEVELOPING COUNTRIES: HOLISTIC PROGRAMS THAT WORK TO PREVENT TEEN PREGNANCY, HIV & SEXUALLY TRANSMITTED INFECTIONS 1 (2005).

have had to leave school for any number of reasons, including prohibitive school fees, son preference, child marriage, early pregnancy, humanitarian emergencies, or armed conflict.<sup>68</sup>

Like the right to health, the right to education and information is protected in several international human rights instruments. As previously stated, the CESCR interpreted its right to health to include access to sexual and reproductive health education and information.<sup>69</sup> Furthermore, while CEDAW does not explicitly reference the right of young people to access this information,<sup>70</sup> the CEDAW Committee's General Recommendation 24 does. This recommendation, which interprets CEDAW's provisions relating to women and health, clarifies that:

States parties should ensure . . . the right to sexual health information, education and services for all women and girls . . . . In particular, States parties 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 right to privacy and confidentiality.<sup>71</sup>

General Recommendation 24 goes on to call upon States to pay particular attention to the health education needs of adolescents, including information related to family planning.<sup>72</sup> This recommendation was articulated again by the CEDAW Committee in 2010 when it specifically called for the sexual and reproductive health education of adolescent girls.<sup>73</sup>

In addition to CEDAW, the CRC also protects the right to seek, receive, and impart information,<sup>74</sup> as well as the right to education for all children.<sup>75</sup> Just as the CEDAW Committee clarified the right to education and information enshrined in its treaty, so too does the Committee on the Rights of the Child. In its General Comment 3, the Committee clearly articulates the right of children to access information related to HIV/AIDS prevention and care, and demands that sex education and information not be censored, withheld, or intentionally misrepresented in any way by States.<sup>76</sup> A few short months later, the Committee issued another General Comment, this time exclusively on adolescent health rights within the CRC. General Comment 4 specifically enumerated the topics adolescents should receive in their sexual and reproductive health

<sup>68</sup> See generally WORLD BANK, WORLD DEVELOPMENT REPORT 2012: GENDER EQUITY AND DEVELOPMENT (2011).

<sup>69</sup> See CESCR General Comment 14, *supra* note 64, at ¶¶ 9, 11.

<sup>70</sup> CEDAW, *supra* note 50, at art. 10(h).

<sup>71</sup> Rep. of the Comm. on the Elimination of Discrimination against Women, General Recommendation 24: Women and Health, 20th and 21st Sess., Jan. 19–Feb. 5 & June 7–25, 1999, ¶ 18, U.N. Doc. A/54/38/Rev.1; GAOR 54th Sess., Supp. No. 38 (1999) [hereinafter CEDAW General Recommendation 24].

<sup>72</sup> *Id.* at ¶ 23.

<sup>73</sup> Comm. on the Elimination of Discrimination against Women, General Recommendation 28: Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 47th Sess., Oct. 4–22, 2010, ¶ 21, U.N. Doc. CEDAW/C/GC/28 (2010) [hereinafter CEDAW General Recommendation 28].

<sup>74</sup> CRC, *supra* note 31, at art. 13.

<sup>75</sup> *Id.* at art. 28.

<sup>76</sup> Committee on the Rights of the Child, General Comment 3: HIV/AIDS and the Rights of the Child, UN CRC, 32d Sess., U.N. Doc. CRC/GC/2003/3 (2003), ¶ 16 [hereinafter CRC General Comment 3]. This prohibition against censorship of sexual health education is also articulated in CESCR General Comment 14, *supra* note 64, at ¶ 34.

education, including information on family planning and contraceptives, early pregnancy, and STI and HIV prevention and treatment, and states that this information should be accessible to all adolescents regardless of marital status or parental consent.<sup>77</sup> General Comment 4 further requests that States take action to remove all barriers to adolescents accessing sexual and reproductive health information and condoms.<sup>78</sup>

The Cairo Programme of Action and subsequent five-year and annual review documents further protect the right to sexual and reproductive health education for young people. Cairo specifically called for the active involvement of youth in the design, implementation, and evaluation of sex education programs that are innovative in making information and services accessible to adolescents.<sup>79</sup> A year later, the right of adolescents to receive sexual and reproductive health information and education received additional protection in the Beijing Platform for Action.<sup>80</sup>

In 1999, nations gathered to review progress made in the five years since Cairo. This conference, known as ICPD +5, articulated the right to sex education no less than eighteen times, including provisions to integrate programs in-school as well as out-of-school,<sup>81</sup> to reduce HIV infections among young people,<sup>82</sup> to meet the particular needs of married adolescents,<sup>83</sup> and to develop action plans for young people that include sex education.<sup>84</sup> It also reaffirmed the commitment of “ensur[ing] that at least . . . 95 per cent . . . of young men and women aged 15 to 24 have access to the information, education and services . . . necessary to reduce their risk of HIV infection,”<sup>85</sup> a goal which, unfortunately, has not been achieved. Recognizing that many obstacles prevent young people from having access to such information, ICPD +5 also called for the removal of legal, regulatory, and social barriers to reproductive health information and care.<sup>86</sup> Further protections for the right to adolescent sexual and reproductive health education and information were articulated in the 2005,<sup>87</sup> 2007,<sup>88</sup> 2009,<sup>89</sup> 2010,<sup>90</sup> and 2011<sup>91</sup> CPD consensus

<sup>77</sup> See CRC General Comment 4, *supra* note 65, at ¶¶ 26–28.

<sup>78</sup> See *id.* at ¶ 30.

<sup>79</sup> Cairo Programme of Action, *supra* note 35, at ¶¶ 6.15, 7.7–7.9.

<sup>80</sup> Beijing Platform for Action, *supra* note 36, at ¶¶ 95, 107(g), 108(k), 267, 281(e).

<sup>81</sup> ICPD +5, *supra* note 57, at ¶¶ 35(b), 73(c), 73(e).

<sup>82</sup> *Id.* at ¶¶ 67–68.

<sup>83</sup> *Id.* at ¶ 40.

<sup>84</sup> *Id.* at ¶ 73(c).

<sup>85</sup> *Id.* at ¶ 70. This specific language was reaffirmed in the goals set out in the 2001 United National General Assembly Special Session on HIV/AIDS. Declaration of Commitment on HIV/AIDS, G.A. Res. S-26/2, U.N. Doc. A/RES/S-26/2; GAOR, 26th Special Sess. (2001) [hereinafter G.A. Res. S-26/2].

<sup>86</sup> ICPD +5, *supra* note 57, at ¶ 73(f).

<sup>87</sup> Population, Development and HIV/AIDS, with Particular Emphasis on Poverty, Commission on Population and Development Res. 2005/1, 38th Sess., E/2005/25 (2005), at ¶ 14 (“[T]he importance of ensuring that young women and men have access to information, education, including peer education and youth-specific HIV education, sexual education and services necessary to develop the life skills required to reduce their vulnerability to HIV infection and reproductive ill health.”) [hereinafter CPD 2005].

<sup>88</sup> The Changing Age Structures of Populations and their Implications for Development, Commission on Population and Development Res. 2007/1, 40th Sess., E/CN.9/2007/9, at ¶ 20 (“[E]ncourages Governments to address the rising rates of HIV infection among young people to ensure HIV-free future generations through the implementation of comprehensive, evidence-based prevention strategies, responsible sexual behaviour, including the use of condoms, evidence- and skills-based, youth-specific HIV education, mass-media interventions and the provision of youth-friendly

documents.

The most recent reaffirmation of the right to sex education occurred at the UN High-Level Meeting on HIV/AIDS held in New York in 2011. This meeting, the ten-year review of the UN General Assembly's Special Session on HIV/AIDS (UNGASS), examined progress made in achieving the goals set out in the 2001 UNGASS meeting. Because UN Member States failed to reach the 95 percent target mentioned in the previous paragraph, the 2011 UNGASS asked States to redouble their efforts on this target as well as undertake efforts aimed at "expanding good quality, youth-friendly information and sexual health education and counseling services, strengthening reproductive and sexual health programmes, and involving families and young people in planning, implementing and evaluating HIV and AIDS prevention and care programmes . . . ."<sup>92</sup>

### C. *The Right to Life*

The right to life goes hand in hand with the rights to health and education; accessing education helps young people make healthy decisions, which protect them from life-threatening illnesses and infections. This is particularly true in the area of sexual and reproductive health, where the myriad challenges outlined in Section I intersect to create deep inequalities that make

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health services.") [hereinafter CPD 2007]. This specific language reaffirmed the 2006 United Nations General Assembly Special Session on HIV/AIDS. Political Declaration on HIV/AIDS, G.A. Res. 60/262, ¶ 26, U.N. GAOR, 60th Sess., A/RES/60/262 (2006) [hereinafter G.A. Res. 60/262].

<sup>89</sup> ICPD +15, *supra* note 57, at ¶ 7 ("[P]roviding young people with comprehensive education on human sexuality, on sexual and reproductive health, on gender equality and on how to deal positively and responsibly with their sexuality"); *id.* at ¶ 9 ("[P]rioritize universal access to sexual and reproductive information and health-care services, including family planning . . . ."); *id.* at ¶ 13 ("[E]nsure that all . . . young people have information about and access to the widest possible range of safe, effective, affordable, evidence-based, and acceptable methods of family planning . . . ."); *id.* at ¶ 19 ("[I]ncrease the capacities of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and health services, including for sexual and reproductive health . . . and [through] prevention education that promotes gender equality.").

<sup>90</sup> CPD 2010, *supra* note 57, at ¶¶ 12, 16 ("[R]eaffirms the commitment to intensify efforts to ensure a wide range of [HIV] prevention programmes . . . such as information, education and communication . . . ."); *id.* at ¶ 22 ("[E]nsure that health education starts early in life and that special attention is paid to encouraging health-enhancing behavior among adolescents and young people in a gender-sensitive manner, especially by . . . providing information on sexual and reproductive health . . . .").

<sup>91</sup> CPD 2011, *supra* note 57, at ¶ 4 ("[T]he right of women and girls to education at all levels as well as access to life skills and sex education based on full and accurate information."); *id.* at ¶ 6 (reaffirming ICPD +15, ¶ 7); *id.* at ¶ 12 (reaffirming ICPD +15, ¶ 9); *id.* at ¶ 16 (reaffirming ICPD +15, ¶ 13); *id.* at ¶ 18 ("[E]nsure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted infections and sexual abuse . . . countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents."); *id.* at ¶ 20 ("Recognizes that the largest generation of adolescents in history is now entering sexual and reproductive life and that their access to sexual and reproductive health information, education and care, and family planning services and commodities, including male and female condoms, as well as voluntary abstinence and fidelity, are essential to achieving the goals set out in Cairo 17 years ago."); *id.* at ¶ 21 ("Calls upon Governments, with the full involvement of young people and with the support of the international community, to give full attention to meeting the reproductive health-care service, information and education needs of adolescents . . . .").

<sup>92</sup> Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS, G.A. Res. 65/277, ¶ 43, U.N. GAOR, 65th Sess., U.N. Doc. A/RES/65/277 (2011) [hereinafter G.A. Res. 65/277].

young people, especially young girls, highly susceptible to morbidity and mortality.

The right to life is explicitly recognized in Article 3 of the UDHR,<sup>93</sup> Article 6 of the ICCPR,<sup>94</sup> and Article 6 of the CRC.<sup>95</sup> Originally understood as protection against the arbitrary loss of life in war and violence, the right to life is also now recognized as a duty upon States to ensure that sufficient services are available to reduce preventable deaths, particularly those that occur during pregnancy and childbirth.<sup>96</sup> This is clearly stated in the UN Human Rights Committee's General Comment 6, which provides clarification on the right to life guaranteed under the ICCPR. Paragraph 5 of the General Comment asks that States "take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics."<sup>97</sup> The Committee on the Rights of the Child has also called for the elimination of practices that jeopardize adolescents' right to life.<sup>98</sup>

#### D. *The Right to Liberty and Security*

The use of coercion in matters of health is one of the most abhorrent rights violations committed by State actors. Whether it is forced sterilization,<sup>99</sup> forced abortion, or harmful traditional practices, all of these occurrences violate the inherent right to liberty and security of the person, protected in the UDHR<sup>100</sup> and the ICCPR.<sup>101</sup> A closely related right is the right to be free from torture and cruel, inhuman, or degrading treatment or punishment.<sup>102</sup> General Comment 14 on the Right to Health specifies that non-consensual medical treatment constitutes a violation of the right to be free from torture.<sup>103</sup>

In addition to the binding treaty obligations listed above, annual CPD agreements have also articulated variations of the right to liberty and security of the person. For example, ICPD +15 specifically obligates States to ensure "the right of women to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence . . . ."<sup>104</sup> Subsequent CPDs reaffirm this right,<sup>105</sup> while the Human Rights Committee (HRC) General Comment 28 asks States Parties to report on actions taken to specifically prevent incidences of forced sterilization or abortion, as

<sup>93</sup> UDHR, *supra* note 26, at art. 3.

<sup>94</sup> ICCPR, *supra* note 29, at art. 6.1.

<sup>95</sup> CRC, *supra* note 31, at art. 6.

<sup>96</sup> Gruskin et al., *supra* note 17, at 80.

<sup>97</sup> Human Rights Committee, General Comment 6 on the Right to Life, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), 16th Sess. (Apr. 30, 1982) [hereinafter HRC General Comment 6].

<sup>98</sup> CRC General Comment 4, *supra* note 65, at ¶ 24.

<sup>99</sup> See discussion *infra* Section IV for more information on forced sterilizations.

<sup>100</sup> UDHR, *supra* note 26, at art. 3.

<sup>101</sup> ICCPR, *supra* note 29, at arts. 6, 9.1, 37.

<sup>102</sup> UDHR, *supra* note 26, at art. 5; ICCPR, *supra* note 29, at art. 7; and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 16.1, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (Dec. 10, 1984) [hereinafter CAT].

<sup>103</sup> CESCR, General Comment 14, *supra* note 64, at ¶ 8.

<sup>104</sup> ICPD +15, *supra* note 57, at ¶ 7.

<sup>105</sup> CPD 2010, *supra* note 57, at ¶ 11; CPD 2011, *supra* note 57, at 3.



well as female genital mutilation.<sup>106</sup>

### E. *The Right to Privacy*

When making personal decisions regarding one's sexual and reproductive health, the right to privacy is essential, especially for young people. In many low-resource settings, particularly those in the Global South,<sup>107</sup> primary health care facilities and providers may be difficult to find. Where they do exist, they may be inaccessible for young people due to the cost of services, the location of the clinic, and/or its hours of operation. For example, many health facilities are located in highly-trafficked areas like the town market or the village square. In these circumstances, many young people may avoid seeking needed services because of the visibility of doing so. Likewise, if clinics are only open during school hours, adolescents and youth have no recourse unless they skip class, which could further exacerbate visibility problems. When young people do actually access services, the quality of those services can be so poor they decide not to return for follow-up care. Not only are many health care providers unskilled in the provision of care specifically tailored to youth, but they may often be judgmental of young patients based on what they deem to be inappropriate choices and behaviors that run counter to cultural norms and gendered expectations. Additionally, lack of privacy and confidentiality pose significant barriers to youth seeking medical care, particularly in small villages and towns.<sup>108</sup>

Failure to provide youth-friendly services runs counter to the right to privacy enshrined in a number of international human rights instruments, including the UDHR,<sup>109</sup> the ICCPR,<sup>110</sup> the CRC,<sup>111</sup> and in consensus documents such as the Cairo Programme of Action.<sup>112</sup> In addition to expressing the right to privacy for all, the Cairo Programme also specifically addressed the issue of youth-friendly services, stating that "countries must ensure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse. . . . [T]hese services must safeguard the rights of adolescents to privacy, confidentiality, respect and informed consent . . . ."<sup>113</sup> The Beijing Platform for Action and ICPD +5 further expand on the right to privacy for adolescents.<sup>114</sup>

<sup>106</sup> Human Rights Committee, General Comment 28: Equality of Rights between Men and Women, U.N. HRC, 68th Sess., U.N. Doc. CCPR/C/21/Rev. 21/Add.10 (2000), at ¶ 11 [hereinafter HRC General Comment 28].

<sup>107</sup> Global South refers to countries ranked either medium or low on the human development index. For a list of countries, please see <http://hdr.undp.org/en/statistics/>.

<sup>108</sup> CECILIA MOYA, *ADVOCATES FOR YOUTH, CREATING YOUTH-FRIENDLY SEXUAL HEALTH SERVICES IN SUB-SAHARAN AFRICA* (2002), available at [http://www.advocatesforyouth.org/storage/advfy/documents/youth\\_friendly.pdf](http://www.advocatesforyouth.org/storage/advfy/documents/youth_friendly.pdf).

<sup>109</sup> UDHR, *supra* note 26, at art. 12.

<sup>110</sup> ICCPR, *supra* note 29, at art. 17.1.

<sup>111</sup> CRC, *supra* note 31, at art. 16.1.

<sup>112</sup> Cairo Programme of Action, *supra* note 35, at ¶ 7.14(c).

<sup>113</sup> *Id.* at ¶ 7.45.

<sup>114</sup> Beijing Platform for Action, *supra* note 36, at ¶ 107(e) ("[E]nsure that women and men, particularly young people, can acquire knowledge about their health, especially information on sexuality and reproduction, taking into account the rights of the child to access information, privacy, confidentiality, respect and informed consent."); *id.* at ¶ 267 ("[M]eeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality, taking into account the rights of the child to access to information, privacy, confidentiality, respect

### F. *The Right to be Free from Discrimination*

The most basic principle of human rights, enshrined in all human rights treaties, is that all humans are equal before the law. Realizing this promise of equality requires freedom from discrimination. The Human Rights Committee provides the following definition of discrimination:

[A]ny 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>115</sup>

While not every protected class is specifically enumerated in treaties protecting the right to be free from discrimination,<sup>116</sup> these treaties have been interpreted to include sexual orientation, gender identity in some cases, and health status including HIV/AIDS.<sup>117</sup>

Given their marginalization and susceptibility to other rights violations, other human rights instruments specifically call attention to the rights of people living with HIV/AIDS. For example, ICPD +5 requires States to enact laws and policies to ensure that people living with HIV and AIDS do not face discrimination and rights violations due to their health status.<sup>118</sup> Furthermore, the 2011 UNGASS calls specifically for comprehensive and age-appropriate HIV information to meet the needs of children living with HIV as they transition from adolescence to adulthood.<sup>119</sup> In addition, as explained in the next section, sexual orientation and gender identity are slowly gaining acceptance as independently significant human rights, particularly in relation to the right to freedom from discrimination.

## IV. APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW THROUGH CASE STUDIES

While all individuals possess the rights enumerated in the previous section simply by virtue of being human, the mere existence of these rights does not guarantee they will be respected, protected, and fulfilled. This section uses case studies to examine three specific sexual and reproductive health issues affecting young people: forced sterilization of women living with HIV/AIDS, comprehensive sexuality education, and sexual orientation and gender identity (SOGI). Each case study has been selected to demonstrate a distinct approach to advancing the

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and informed consent . . . ."); ICPD +5, *supra* note 57, at ¶ 73(a) ("In order to protect the right of adolescents to the enjoyment of the highest attainable standard of health, provide appropriate, specific, user-friendly and accessible services [while safeguarding] the rights of adolescents to privacy, confidentiality and informed consent").

<sup>115</sup> Human Rights Comm., General Comment 18: Non-Discrimination, 37th Sess., Nov. 10, 1989, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) at ¶ 7 [hereinafter HRC General Comment 18].

<sup>116</sup> UDHR, *supra* note 26, at art. 2; ICESCR, *supra* note 30, at art. 2 (2); ICCPR, *supra* note 29, at arts. 2, 26; CEDAW, *supra* note 50, at arts. 1, 12(1); CRC, *supra* note 31, at art. 2.

<sup>117</sup> CRC General Comment 4, *supra* note 65, at ¶ 6; CRC General Comment 3, *supra* note 76, at ¶ 8; CESCR General Comment 14, *supra* note 64, at ¶ 18; CEDAW General Recommendation 28, *supra* note 73, at ¶ 18.

<sup>118</sup> ICPD +5, *supra* note 57, at ¶ 67.

<sup>119</sup> G.A. Res. 65/277 (2011), *supra* note 92, at ¶ 82.

sexual and reproductive health and rights of youth using international human rights legal frameworks. The first case study invokes international human rights obligations in domestic litigation. The second demonstrates the power of regional human rights committees as well as the UN Treaty Monitoring Bodies. The final case study is the most nascent, utilizing resolutions to realize rights never before officially recognized at the UN.

#### A. Forced Sterilization

The failure of many governments to recognize the reproductive rights of women living with HIV/AIDS is most egregious in countries that have forcibly or coercively sterilized HIV-positive women. Despite medical advances that have virtually eliminated mother-to-child transmission of HIV/AIDS, involuntary sterilizations of HIV-positive women have been reported in countries such as Namibia, Chile, the Dominican Republic, Mexico, South Africa, and Venezuela.<sup>120</sup>

In 2008, the International Community of Women Living with HIV/AIDS (ICW) conducted a study of 230 HIV-positive women to assess the levels of discrimination they faced in Namibia. They discovered that forty of these women had been sterilized without their consent.<sup>121</sup> One of these women was 30-years-old at the time of her forced sterilization, making her a youth according to the definition set out in the Namibian National Policy for Reproductive Health.<sup>122</sup> Failure to obtain consent among the forty women occurred in a multitude of ways, including: requiring women to sign documents either while in active labor or without providing information as to the content of the documents; failing to provide full and accurate information on the risks and alternatives to sterilization; and providing misleading information which led women to believe that their babies would be born positive or that the only way they could obtain another medical procedure such as a caesarian section or an abortion was if they consented to sterilization.<sup>123</sup> When interviewed, providers expressed the belief that pregnant women living with HIV were irresponsible and could not manage their health needs and those of their families, thereby requiring providers to step in to make decisions on their behalf.<sup>124</sup>

After a governmental investigation found no wrong-doing, ICW and the Legal Assistance Centre filed a total of sixteen lawsuits against the Ministry of Health and Social Services as well as the hospitals in question. Three of these cases are currently pending before the High Court of Namibia.<sup>125</sup> The cases—the first of their kind in the southern African region<sup>126</sup>—allege violations of the women's rights to equality and non-discrimination, health, information,

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<sup>120</sup> See OPEN SOCIETY FOUNDATIONS, *AGAINST HER WILL: FORCED AND COERCED STERILIZATION OF WOMEN WORLDWIDE* 5 (2011).

<sup>121</sup> Pooja Nair, *Litigating against the Forced Sterilization of HIV-Positive Women: Recent Developments in Chile and Namibia*, 23 HARV. HUM. RTS. J. 223, 229 (2010).

<sup>122</sup> REPUBLIC OF NAMIBIA MINISTRY OF HEALTH AND SOCIAL SERVICES, NATIONAL POLICY FOR REPRODUCTIVE HEALTH, at 2.1 (2001).

<sup>123</sup> THE INT'L CMTY. OF WOMEN LIVING WITH HIV/AIDS (ICW), *THE FORCED AND COERCED STERILIZATION OF HIV POSITIVE WOMEN IN NAMIBIA* 10–12 (2009).

<sup>124</sup> *Id.* at 8.

<sup>125</sup> Linda Dumba, *Namibia: Litigating the Cases of Sterilization without Informed Consent of HIV-positive Women*, 15 HIV/AIDS POL'Y & L. REV. 50, 50–51 (2010).

<sup>126</sup> *Namibia: Rights Groups Support Case against Forced Sterilisation*, AFRICA NEWS, Sept. 8, 2010, available at <http://allafrica.com/stories/201009080536.html>.

liberty, individual personal security and freedom from cruel, inhuman, and degrading treatment.<sup>127</sup> In addition, Namibia has incorporated international human rights norms into its Constitution, providing plaintiffs with additional grounds for claiming violations of the right to life, to human dignity, and to found a family.<sup>128</sup> ICW and the Legal Assistance Centre also point to the Namibian National HIV/AIDS Policy of 2007, which explicitly recognizes the inequalities women and girls face, as well as the discrimination and marginalization people living with HIV/AIDS experience in Namibia.<sup>129</sup> Young women and girls living with HIV/AIDS are doubly stigmatized within their communities, schools, health care facilities, and civil and political systems.

Although this litigation is pending in the Namibian court system, the plaintiffs appear to have a strong case against the government. While not every protected class is specifically articulated in the international treaties that protect the right to be free from discrimination,<sup>130</sup> these international human rights instruments have been interpreted to include health status, with specific mention of HIV/AIDS.<sup>131</sup> Furthermore, in order to realize the right to the highest attainable standard of health, CEDAW requires States to ensure that women have equal rights to access information on family planning,<sup>132</sup> health services related to family planning,<sup>133</sup> and the right 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.”<sup>134</sup> The right to determine the number and spacing of one’s children was expanded in the Cairo Programme of Action and subsequent documents to ensure that women had the ability to exercise this right free from coercion, discrimination, or violence.<sup>135</sup> Moreover, CEDAW General Recommendation 19 states that forced or coerced sterilization directly infringes on the right to determine the number and spacing of one’s children, thereby requiring States to take measures “to prevent coercion in regard to fertility and reproduction . . . .”<sup>136</sup> While General Recommendation 19 does not explicitly mention women living with HIV, the right to non-discrimination based on “other status” is widely considered to include HIV status.<sup>137</sup>

In addition to alleging violations of their rights to non-discrimination and health, the Namibian plaintiffs have argued that they were denied access to the information necessary to enable them to give their full and informed consent. While not binding, a 2004 case brought

<sup>127</sup> INT’L CMTY. OF WOMEN LIVING WITH HIV/AIDS, *supra* note 123, at 15–20. As a party to the African Women’s Rights Protocol to the African Charter on Human and People’s Rights, Namibia is also legally obligated to respect, protect, and fulfill the rights included therein.

<sup>128</sup> *Id.* at 13–14.

<sup>129</sup> *Id.* at 13.

<sup>130</sup> *See supra* note 116 and accompanying text.

<sup>131</sup> *See supra* note 117 and accompanying text.

<sup>132</sup> CEDAW, *supra* note 50, at art. 10(h).

<sup>133</sup> *Id.* at art. 12; *see also id.* at art. 14.2(b) (requiring States to ensure that women in rural areas have access to health care information and services).

<sup>134</sup> *Id.* at art. 16(e).

<sup>135</sup> Cairo Programme of Action, *supra* note 35, at ¶ 7.3; Beijing Platform for Action, *supra* note 36, at ¶¶ 96, 223; ICPD +5, *supra* note 57, at ¶ 3; ICPD +15, *supra* note 57, preamble; CPD 2010, *supra* note 57, at ¶¶ 11–12; and CPD 2011, *supra* note 57, at ¶ 8.

<sup>136</sup> Comm. on the Elimination of Discrimination against Women, General Recommendation 19: Violence Against Women, 11th Sess., ¶¶ 22, 24(m), U.N. Doc. A/47/38 (1992) [hereinafter CEDAW General Recommendation 19].

<sup>137</sup> *See Gruskin et al.*, *supra* note 17, at 84.

before the CEDAW Committee found that the forcible sterilization of a 27-year-old Hungarian Roma woman violated the right to information and counseling as well as the right to decide freely and responsibly on the number and spacing of one's children.<sup>138</sup> The resulting judgment required appropriate compensation to be paid to the plaintiff, a review of domestic informed consent laws to ensure conformity with international human rights law, and the provision of information on international human rights obligations to all relevant personnel in public and private health centers, accompanied by State monitoring to ensure that full and informed consent is given in all sterilization procedures.<sup>139</sup>

This ruling came a full ten years after CEDAW issued its General Recommendation 21, underscoring that women who are forcibly sterilized lack the means to provide informed consent if they are denied information about contraceptives and other family planning services.<sup>140</sup> The Committee's General Recommendation 24 further expanded the right to give informed consent, stating that "[a]cceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives."<sup>141</sup> General Recommendation 24 urges States to "not permit forms of coercion, such as non-consensual sterilization . . . that violate women's rights to informed consent and dignity."<sup>142</sup> Forced sterilization is also a denial of the right to be free from cruel, inhuman, and degrading treatment.<sup>143</sup> In fact, in General Comment 14, the CESCR specifically identified non-consensual medical treatment as a violation of the right to be free from torture.<sup>144</sup>

In addition to interpretive guidance, UN committees have also issued at least ten separate Concluding Observations in the last 15 years expressing concern over the use of forced or coerced sterilization. Five of these came in response to reports submitted by Peru during its TMB reviews.<sup>145</sup> Particularly noteworthy is the Torture Committee's Concluding Observation on Peru, which expressed concern about reports of women undergoing involuntary sterilization. The report specifically called on the State to prevent acts that put women's lives at risk by "strengthening family planning programs and by offering better access to information and

<sup>138</sup> Comm. on the Elimination of Discrimination against Women, Communication No. 4/2004, ¶¶ 11.3–11.5, U.N. Doc. CEDAW/C/36/D/4/2004 (2006) (discussing the case of *A.S. v. Hungary*).

<sup>139</sup> *Id.*

<sup>140</sup> Rep. on the Comm. on the Elimination of Discrimination against Women, General Recommendation 21: Equality in Marriage and Family Relations, 13th Sess., Apr. 12, 1994, ¶ 22, U.N. Doc. A/49/38, GAOR, 48th Sess., Supp. No. 38 (1994) [hereinafter CEDAW General Recommendation 21].

<sup>141</sup> CEDAW General Recommendation 24, *supra* note 71, at ¶ 22.

<sup>142</sup> *Id.*

<sup>143</sup> Several treaties and declarations guarantee the right to be free from cruel, inhuman or degrading treatment. *See, e.g.*, UDHR, *supra* note 26, at art. 5; ICCPR, *supra* note 29, at art. 7; CAT, *supra* note 102, at art. 16.1.

<sup>144</sup> CESCR General Comment 14, *supra* note 64, at ¶ 8.

<sup>145</sup> Rep. of the Comm. on the Elimination of Discrimination against Women, 18th & 19th Sess., Apr. 25–May 13, 2005 & Nov. 7–Nov. 25, 2005, ¶ 342, U.N. Doc. A/53/38 part II (2006) (discussing Peru); Rep. of the Comm. on the Elimination of Racial Discrimination, 54th & 55th Sess., Mar. 1–Mar. 19, 1999 & Aug. 2–Aug. 27, 1999, ¶ 155, U.N. Doc. A/54/18 (1999) (discussing Peru); Rep. of the Human Rights Comm. (Vol. I), Oct. 26, 2001, ¶ 76, U.N. Doc. A/56/40 (Vol. I)(2001)(discussing Peru); Rep. of the Comm. on the Elimination of Discrimination against Women, 26th, 27th & Exceptional Sess., Jan. 14–Feb. 1, 2002, Jun. 3–Jun. 21, 2002 & Aug. 5–Aug. 23, 2002, ¶ 484, U.N. Doc. A/57/38 part III (2002) (discussing Peru).

reproductive health services, including for adolescents.”<sup>146</sup> While all the Concluding Observations on Peru expressed concern about reports of forced or coerced sterilizations of indigenous women, Concluding Observations issued on Slovakia and the Czech Republic expressed the same concern for Roma women.<sup>147</sup> Additional Concluding Observations on forced sterilization were issued for Japan and China.<sup>148</sup>

As the Namibian cases work their way through domestic legal channels, the plaintiffs should look to Chile for guidance. In a similar set of circumstances, a 2004 survey of Chilean women living with HIV/AIDS found that 56 percent of the women reported being pressured by health providers to avoid pregnancy because of their HIV status, and half of those who underwent sterilization admitted being forced or coerced to do so.<sup>149</sup> One such woman was a 20-year-old named Francisca. The night before Francisca was scheduled to receive a caesarian section, she went into labor and was rushed to her local hospital. During her caesarian delivery, Francisca was forcibly sterilized without her knowledge or consent simply because she was HIV-positive.<sup>150</sup> She later filed a complaint against the surgeon, and despite a police investigation confirming that she had not given her consent to the sterilization, the prosecutor dismissed her case. The trial court dismissed the case based on the prosecutor’s recommendation, and the appellate court upheld the lower court’s decision.<sup>151</sup> After exhausting all her domestic remedies, the Center for Reproductive Rights and Vivo Positivo brought Francisca’s case to the Inter-American Commission on Human Rights, making this the first international human rights case to address the sexual and reproductive rights of women living with HIV.<sup>152</sup> In her complaint, Francisca alleged violations of her rights to be free from torture or cruel, inhuman, and degrading treatment, to privacy, to be free from discrimination, and to an effective judicial remedy—rights that are guaranteed by the Chilean Constitution and regional and international human rights treaties.<sup>153</sup> Although a resolution to *F.S. v. Chile* is still forthcoming, a decision in Francisca’s favor would create precedent for similar cases in the Latin American region, as well as provide persuasive

<sup>146</sup> Rep. of the Comm. Against Torture, 36th Sess., May 1–May 19, 2006, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (2006) (discussing Peru).

<sup>147</sup> Rep. of the Comm. on the Elimination of Discrimination against Women, 36th Sess., Aug. 7–Aug. 25, 2006, ¶ 23, U.N. Doc. CEDAW/C/CZE/CO/3 (2006) (discussing the Czech Republic and expressing concern particularly for minor women involuntarily sterilized and calling on the State to adopt changes to its informed consent laws, provide mandatory trainings on patients’ rights to health personnel, and provide compensation for victims); Rep. of the Comm. on the Elimination of Racial Discrimination, 64th & 65th Sess., Feb. 23–Mar. 12, 2004, Aug. 2–Aug. 20, 2004, ¶ 389, U.N. Doc. A/59/18 (2004) (requiring just and effective remedies, including compensation and an apology); Rep. of the Human Rights Comm., 76th, 77th & 78th Sess., Oct. 14–Nov. 1, 2002, Mar. 17–Apr. 4, 2003 & July 14–Aug. 8, 2003, ¶ 82, U.N. Doc. A/58/40 (Vol. I) (2003) (discussing Slovakia and requiring an investigation of all allegations of forced or coerced sterilizations, publication of the investigation findings, and effective remedies for victims).

<sup>148</sup> Rep. of the Committee on Economic, Social and Cultural Rights, 34th & 35th Sess., Apr. 25–May 15, 2005, Nov. 7–25, 2005, ¶ 165, U.N. Doc. E/2006/22 (2005) (discussing China); Concluding Observations of the Human Rights Comm., 64th Sess., Oct. 28–Nov. 5, 1998, ¶ 31, U.N. Doc. CCPR/C/79/Add.102 (1998) (discussing Japan and providing a right of compensation to victims).

<sup>149</sup> CENTER FOR REPROD. RIGHTS & VIVO POSITIVO, DIGNITY DENIED: VIOLATIONS OF THE RIGHTS OF HIV-POSITIVE WOMEN IN CHILEAN HEALTH FACILITIES 9 (2010).

<sup>150</sup> See CENTER FOR REPROD. RIGHTS, *F.S. v. Chile*, in LITIGATION BRIEFING SERIES, available at <http://reproductiverights.org/en/lbs-fs-vs-chile> (last visited Jan. 15, 2011).

<sup>151</sup> *Id.* at 1.

<sup>152</sup> *Id.* at 1–2.

<sup>153</sup> See *id.* at 2–3.

authority for the Namibian cases.

### B. Comprehensive Sexuality Education

While the case study on forced sterilization illustrates how domestic court systems can be utilized to bring complaints for rights violations, this case study will focus on how two other international venues, the regional committee system and the UN Treaty Monitoring Bodies, have advanced the right to comprehensive sexuality education. The UNESCO International Guidelines on Sexuality Education define comprehensive sexuality education as “an age-appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, non-judgmental information [that] provides opportunities to explore one’s own values and attitudes and to build decision-making, communication and risk reduction skills about many aspects of sexuality.”<sup>154</sup>

Although no international treaty specifically guarantees the right to comprehensive sexuality education, they do protect the right to information and education as well as the right to health, both of which are foundational components of comprehensive sexuality education.<sup>155</sup> Moreover, six separate guiding documents issued by UN committees have concluded that these rights do encompass the right to sexuality education in some form or another.<sup>156</sup> While none of these documents uses the term “comprehensive sexuality education” explicitly, they all describe the basic tenets of a comprehensive approach including tailored programs using trained personnel<sup>157</sup> and offering family planning information and services<sup>158</sup> without censorship or intentional misrepresentation,<sup>159</sup> which enables young people to develop important life skills such as the ability to make healthy and responsible decisions, to resolve conflicts, to think critically, and to develop positive social relationships.<sup>160</sup> The Committee on the Rights of the Child specifically enumerated the topics that all adolescents, regardless of marital status or parental consent, should receive in their sexual and reproductive health education, including information on family planning and contraceptives, early pregnancy, and STI and HIV prevention and treatment.<sup>161</sup> Additionally, General Comment 4 requests that States take action to remove all barriers to adolescents accessing sexual and reproductive health information and condoms.<sup>162</sup>

With these tools in hand, the International Centre for the Legal Protection of Human Rights (INTERIGHTS) filed one of the first-ever international legal challenges to a sex education

<sup>154</sup> UNITED NATIONS EDUC., SCIENTIFIC AND CULTURAL ORG., INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE INFORMED APPROACH FOR SCHOOLS, EDUCATORS AND TEACHERS 2 n.1 (2009).

<sup>155</sup> See *supra* Section III.A–B (background on the rights to health, information, and education).

<sup>156</sup> See generally CEDAW, General Recommendation 24, *supra* note 71, at ¶¶ 18, 23; CEDAW, General Recommendation 28, *supra* note 73, at ¶ 21; Comm. on the Rights of the Child, General Comment 1: The Aims of Education, ¶ 9, U.N. Doc. CRC/GC/2001/1 (Apr. 17, 2001) (calling for education that provides youth skills to make well-balanced decisions and develop a healthy lifestyle) [hereinafter CRC, General Comment 1]; CRC, General Comment 3, *supra* note 76, at ¶¶ 6, 16; CRC, General Comment 4, *supra* note 56, at ¶ 28; CESCR, General Comment 14, *supra* note 64, at ¶¶ 11, 34.

<sup>157</sup> CEDAW, General Recommendation 24, *supra* note 71, at ¶ 18.

<sup>158</sup> *Id.* at ¶ 23.

<sup>159</sup> CRC, General Comment 3, *supra* note 76, at ¶ 16; CESCR, General Comment 14, *supra* note 64, at ¶ 34.

<sup>160</sup> CRC, General Comment 1, *supra* note 156, at ¶ 9.

<sup>161</sup> CRC, General Comment 4, *supra* note 65, at ¶¶ 24, 28.

<sup>162</sup> *Id.* at ¶ 30.

program when it submitted a formal complaint against Croatia to the European Committee on Social Rights in 2007. The complaint alleged that Croatia violated its obligations under the European Social Charter, a regional human rights agreement that included a right to protection of health and a right to be free from discrimination.<sup>163</sup>

Plaintiffs argued that because Croatia's sex education program is delivered in a time-limited, piecemeal fashion, spread across multiple school subjects and elective programs, and taught by general subject teachers lacking specific training, it amounted to an incoherent and inadequate program. Furthermore, they alleged that the content of the program was not comprehensive or evidence-based and it was inaccurate, outdated, and rife with gender stereotypes. The curriculum not only portrayed women as mothers or engaged in traditional female occupations such as maids and teachers, it also presented a hetero-normative approach to families and relationships. In fact, plaintiffs argued that LGBTQ individuals were stigmatized as promiscuous and the main culprits for increasing rates of STIs.<sup>164</sup>

In a landmark decision, the Committee ruled that States must ensure that sexual and reproductive health education a) forms part of the ordinary school curriculum, b) is adequate in terms of hours and resources, c) includes content and teaching methods that are relevant, culturally appropriate, of sufficient quality, based on evidence, and do not censor, withhold, or intentionally misrepresent information, and d) are monitored and evaluated.<sup>165</sup> Using this as the criteria for judging Croatia's program, the Committee found that the program was not inadequate, in either hours or content, because wide discretion is given to local officials to determine the cultural appropriateness of the material.<sup>166</sup> It did, however, determine that certain elements of the curriculum were biased, discriminatory, and demeaning of LGBTQ individuals—particularly language in the curriculum, which stated:

Many individuals are prone to sexual relations with persons of the same sex (homosexuals –men, and lesbians –women). It is believed that parents are to blame because they impede their children's correct sexual development with their irregularities in family relations. Nowadays it has become evident that homosexuals are the main culprit for increased spreading of sexually transmitted diseases (e.g. AIDS).<sup>167</sup>

As a result, the Committee ruled that Croatia had failed in its duty to “ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education . . . .”<sup>168</sup>

In addition to using *INTERIGHTS v. Croatia* as precedent for claims against governments, advocates can also point to decisions of the UN Treaty Monitoring Bodies (TMBs) as persuasive authority. In just the last 17 years, TMBs have issued over 136 Concluding Observations, which have expressed concern for either the complete lack or poor quality of sex

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<sup>163</sup> Decision on the Merits, Int'l Ctr. for the Legal Prot. of Human Rights v. Croatia (INTERIGHTS), Eur. Comm. of Soc. Rights, No. 45/2007, at ¶ 13 (2009).

<sup>164</sup> *Id.* at ¶¶ 25–31.

<sup>165</sup> *Id.* at ¶ 47.

<sup>166</sup> *Id.* at ¶¶ 49–59.

<sup>167</sup> *Id.* at ¶¶ 60–61.

<sup>168</sup> *Id.* at ¶ 61.



education available in 91 different UN Member States.<sup>169</sup> In most of these cases, the TMBs

<sup>169</sup> Comm. on Econ., Soc. and Cultural Rights, Rep. on the 34th & 35th Sess., Apr. 25–May 13, 2005, Nov. 7–Nov. 25, 2005, ¶ 189, U.N. Doc. E/2006/22; ESCOR, Supp. No. 2 (2006) (discussing China); *id.* at ¶¶ 217, 229 (discussing China’s Hong Kong Special Administrative Region); Comm. on Econ., Soc. and Cultural Rights, Rep. on the 32d & 33d Sess., Apr. 26–May 14, 2004, Nov. 8–Nov. 26, 2004, ¶¶ 553, 580, U.N. Doc. E/2005/22; ESCOR, Supp. No. 2 (2005) (discussing Chile); *id.* at ¶ 116 (discussing Lithuania); *id.* at ¶ 371 (discussing Malta); *id.* at ¶ 263 (discussing Spain); Comm. on Econ., Soc. and Cultural Rights, Rep. on the 30th & 31st Sess., May 5–May 23, 2003, Nov. 10–Nov. 28, 2003, ¶ 435, U.N. Doc. E/2004/22; ESCOR, Supp. 2 (2004) (discussing Guatemala); *id.* at ¶¶ 316, 338 (discussing Moldova); *id.* at ¶ 504 (discussing the Russian Federation); Comm. on Econ., Soc. and Cultural Rights, Rep. on the 28th & 29th Sess., Apr. 29–May 17, 2002, Nov. 11–Nov. 29, 2002, ¶¶ 369, 391, U.N. Doc. E/2003/22; ESCOR, Supp. No. 2 (2003) (discussing Poland); *id.* at ¶ 295 (discussing Trinidad and Tobago); Comm. on Econ., Soc. and Cultural Rights, Rep. on the 25th, 26th & 27th Sess., Apr. 23–May 11, 2001, Aug. 13–Aug. 31, 2001 & Nov. 12–Nov. 20, 2001, ¶ 298, U.N. Doc. E/2002/22; ESCOR, Supp. No. 2 (2002) (discussing Bolivia); *id.* at ¶¶ 940, 953 (discussing Jamaica); *id.* at ¶ 373 (discussing Senegal); *id.* at ¶ 512 (discussing Ukraine); Comm. on Econ., Soc. and Cultural Rights, Rep. on 20th & 21st Sess., Apr. 26–May 14, 1999, Nov. 15–Dec. 3, 1999, ¶ 405, U.N. Doc. E/2000/22; ESCOR, Supp. No. 2 (2000) (discussing Mexico); Comm. on Econ., Soc. and Cultural Rights, Rep. on the 18th & 19th Sess., Apr. 27–May 15, 1998, Nov. 16–Dec. 4, 1998, ¶ 158, U.N. Doc. E/1999/22; ESCOR, Supp. No. 2 (1999) (discussing Poland); Rep. of the Comm. on the Elimination of Discrimination against Women, 32d & 33d Sess., Jan. 10–Jan. 28, 2005, July 5–July 22, 2005, ¶¶ 96–97, U.N. Doc. A/60/38 part I; GAOR, 60th Sess., Supp. No. 38 (2005) (discussing Laos); *id.* at ¶¶ 56–57 (discussing Samoa); Rep. of the Comm. on the Elimination of Discrimination against Women, 32d & 33d Sess., Jan. 10–Jan. 28, 2005 & July 5–July 22, 2005, ¶¶ 157–58, U.N. Doc. A/60/38 part II; GAOR, 60th Sess., Supp. No. 38 (2005) (discussing Benin); *id.* at ¶ 350 (discussing Burkina Faso); *id.* at ¶ 206 (discussing the Gambia); *id.* at ¶¶ 305–06 (discussing Guyana); Rep. of the Comm. on the Elimination of Discrimination against Women, 30th & 31st Sess., Jan. 12–Jan. 30, 2004 & July 6–July 23, 2004, ¶¶ 355–56, U.N. Doc. A/59/38 part I; GAOR, 59th Sess., Supp. No. 38 (2004) (discussing Belarus); *id.* at ¶ 258 (discussing Ethiopia); *id.* at ¶ 158 (discussing Kyrgyzstan); *id.* at ¶ 213 (discussing Nepal); Rep. of the Comm. on the Elimination of Discrimination against Women, 30th & 31st Sess., Jan. 12–Jan. 30, 2004 & July 6–July 23, 2004, ¶¶ 162–63, U.N. Doc. A/59/38 part II; GAOR, 59th Sess., Supp. No. 38 (2004) (discussing Angola); *id.* at ¶¶ 380–81 (discussing Argentina); *id.* at ¶ 309 (discussing the Dominican Republic); *id.* at ¶¶ 205–06 (discussing Equatorial Guinea); *id.* at ¶ 72 (discussing Latvia); Rep. of the Comm. on the Elimination of Discrimination against Women, 28th & 29th Sess., Jan. 13–Jan. 31, 2003 & June 30–July 18, 2003, ¶¶ 259–60, U.N. Doc. A/58/38 part I; GAOR, 58th Sess., Supp. No. 38 (2003) (discussing El Salvador); Rep. of the Comm. on the Elimination of Discrimination against Women, 28th & 29th Sess., Jan. 13–Jan. 31, 2003 & June 30–July 18, 2003, ¶ 127, U.N. Doc. A/58/38 part II; GAOR, 58th Sess., Supp. No. 38 (2003) (discussing Brazil); *id.* at ¶¶ 68–69 (discussing Costa Rica); *id.* at ¶¶ 317–18 (discussing Ecuador); Rep. of the Comm. on the Elimination of Discrimination against Women, 26th, 27th & Exceptional Sess., Jan. 14–Feb. 1, 2002, June 3–June 21, 2002 & Aug. 5–Aug. 23, 2002, ¶ 112, U.N. Doc. A/57/38 part I; GAOR, 57th Sess., Supp. No. 38 (2002) (discussing Estonia); *id.* at ¶ 399 (discussing the Russian Federation); *id.* at ¶ 158 (discussing Trinidad and Tobago); *id.* at ¶¶ 202–03 (discussing Uruguay); Rep. of the Comm. on the Elimination of Discrimination against Women, 26th, 27th & Exceptional Sess., Jan. 14–Feb. 1, 2002, June 3–June 21, 2002 & Aug. 5–Aug. 23, 2002, ¶¶ 157–58, U.N. Doc. A/57/38 part II; GAOR, 57th Sess., Supp. No. 38 (2002) (discussing Belgium); ¶¶ 101–02 (discussing St. Kitts and Nevis); *id.* at ¶¶ 58, 61–62 (discussing Suriname); *id.* at ¶ 290 (discussing Ukraine); Rep. of the Comm. on the Elimination of Discrimination against Women, 26th, 27th & Exceptional Sess., Jan. 14–Feb. 1, 2002, June 3–June 21, 2002 & Aug. 5–Aug. 23, 2002, ¶ 53, U.N. Doc. A/57/38 part III; GAOR, 57th Sess., Supp. No. 38 (2002) (discussing Armenia); *id.* at ¶ 102 (discussing the Czech Republic); *id.* at ¶ 292 (discussing Greece); *id.* at ¶¶ 194–95 (discussing Guatemala); *id.* at ¶¶ 445–46 (discussing Mexico); *id.* at ¶¶ 482–83 (discussing Peru); *id.* at ¶¶ 147–48 (discussing Uganda); Rep. of the Comm. on the Elimination of Discrimination against Women, 24th & 25th Sess., Jan. 15–Feb. 2, 2001 & July 2–July 20, 2001, ¶ 62, U.N. Doc. A/56/38 part I; GAOR, 56th Sess., Supp. No. 38 (2001) (discussing Burundi); *id.* at ¶¶ 223–24 (discussing Jamaica); *id.* at ¶ 106 (discussing Kazakhstan); *id.* at ¶ 274 (discussing Mongolia); *id.* at ¶ 186 (discussing Uzbekistan); Rep. of the Committee on the Elimination of Discrimination against Women, 24th & 25th Sess., Jan. 15–Feb. 2, 2001, July 2–July 20, 2001, ¶ 303, U.N. Doc. A/56/38 part II; GAOR, 56th Sess., Supp. No. 38 (2001) (discussing Nicaragua); *id.* at ¶ 267 (discussing Viet Nam); Rep. of the Comm. on the Elimination of Discrimination against Women, 22d & 23d Sess., Jan. 17–Feb. 4, 2000 & June 12–June 30, 2000, ¶ 228, U.N. Doc. A/55/38 part I; GAOR, 55th Sess., Supp. No. 38 (2000) (Democratic

Republic of the Congo); Rep. of the Comm. on the Elimination of Discrimination against Women, 22d & 23d Sess., Jan. 17–Feb. 4, 2000, June 12–June 30, 2000, ¶ 159, U.N. Doc. A/55/38 part II; GAOR, 55th Sess., Supp. No. 38 (2000) (discussing Lithuania); *id.* at ¶ 110 (discussing Moldova); *id.* at ¶ 315 (discussing Romania); Rep. of the Comm. on the Elimination of Discrimination against Women, 20th & 21st Sess., Jan. 19–Feb. 5, 1999 & June 7–25, 1999, ¶ 208, U.N. Doc. A/54/38/Rev.1 part I; GAOR, 54th Sess., Supp. No. 38 (1999) (discussing Greece); Rep. of the Comm. on the Elimination of Discrimination against Women, 20th & 21st Sess., Jan. 19–Feb. 5, 1999 & June 7–June 25, 1999, ¶ 57, U.N. Doc. A/54/38/Rev.1 part II; GAOR, 54th Sess., Supp. No. 38 (1999) (discussing Belize); *id.* at ¶ 227 (discussing Chile); *id.* at ¶ 148 (discussing Nepal); *id.* at ¶ 266 (discussing Spain); *id.* at ¶ 310 (discussing the United Kingdom); Rep. of the Comm. on the Elimination of Discrimination against Women, 18th & 19th Sess., ¶¶ 148, 160–61, U.N. Doc. A/53/38 Rev.1 part I; GAOR, 53d Sess., Supp. No. 38 (1998) (discussing Zimbabwe); Rep. of the Comm. on the Elimination of Discrimination against Women, 15th Sess., ¶ 260, U.N. Doc. A/51/38; GAOR, 51st Sess., Supp. No. 38 (1996) (discussing Hungary); Comm. on the Rights of the Child, Rep. on the 39th Sess., May 17–June 3, 2005, ¶¶ 712–13, U.N. Doc. CRC/C/150 (Dec. 21, 2005) (discussing Costa Rica); *id.* at ¶¶ 441–42 (discussing Ecuador); *id.* at ¶¶ 560–61 (discussing Mongolia); *id.* at ¶¶ 642–43 (discussing Nicaragua); *id.* at ¶¶ 165–66 (discussing the Philippines); *id.* at ¶¶ 82–83 (discussing St. Lucia); Comm. on the Rights of the Child, Rep. on the 38th Sess., Jan. 10–Jan. 28, 2005, ¶ 132, U.N. Doc. CRC/C/146 (July 19, 2005) (discussing Albania); *id.* at ¶¶ 642–43 (discussing Bolivia); *id.* at ¶ 728(b) (discussing Nigeria); *id.* at ¶¶ 57–58 (discussing Sweden); *id.* at ¶¶ 567–68 (discussing Togo); Comm. on the Rights of the Child, Rep. on the 37th Sess., Sept. 13–Oct. 1, 2004, ¶¶ 421–22, U.N. Doc. CRC/C/143 (Jan. 12, 2005) (discussing Angola); *id.* at ¶¶ 505–06 (discussing Antigua and Barbuda); Comm. on the Rights of the Child, Rep. on the 36th Sess., May 17–June 4, 2004, ¶ 624, U.N. Doc. CRC/C/140 (Sept. 27, 2004) (discussing France); *id.* at ¶¶ 285–86 (discussing Sao Tome and Principe); Comm. on the Rights of the Child, Rep. on the 35th Sess., Jan. 12–Jan. 30, 2004, ¶¶ 224–25, U.N. Doc. CRC/C/137 (May 11, 2004) (discussing Armenia); *id.* at ¶¶ 438–39 (discussing India); *id.* at ¶¶ 78–79 (discussing Indonesia); *id.* at ¶¶ 364–65 (discussing the Netherlands and Aruba); *id.* at ¶ 513 (discussing Papua New Guinea); Comm. on the Rights of the Child, Rep. on the 33d Sess., May 19–June 6, 2003, ¶¶ 436–37, U.N. Doc. CRC/C/132 (Oct. 23, 2003) (discussing Jamaica); *id.* at ¶¶ 382–83 (discussing Libya); *id.* at ¶¶ 267–68 (discussing Sri Lanka); Comm. on the Rights of the Child, Rep. on the 33d Sess., Jan. 13–Jan. 31, 2003, ¶ 372, U.N. Doc. CRC/C/124 (June 23, 2003) (discussing the Czech Republic); *id.* at ¶¶ 62–63 (discussing Estonia); *id.* at ¶¶ 182–83 (discussing Italy); Comm. on the Rights of the Child, Rep. on the 31st Sess., Sept. 16–Oct. 4, 2002, ¶ 76, U.N. Doc. CRC/C/121 (Dec. 11, 2002) (discussing Argentina); *id.* at ¶ 468(b) (discussing Burkina Faso); *id.* at ¶¶ 406–07 (discussing Moldova); *id.* at ¶ 536 (discussing Poland); *id.* at ¶ 206 (discussing the Seychelles); *id.* at ¶ 350 (discussing Ukraine); *id.* at ¶¶ 135–36 (discussing the United Kingdom); Comm. on the Rights of the Child, Rep. on the 30th Sess., May 21–June 7, 2002, ¶¶ 571–72, U.N. Doc. CRC/C/118 (Sept. 3, 2002) (discussing the Netherlands (Antilles)); *id.* at ¶ 506 (discussing Spain); *id.* at ¶¶ 451–52 (discussing St. Vincent and the Grenadines); Comm. on the Rights of the Child, Rep. on the 29th Sess., Jan. 14–Feb. 1, 2002, ¶ 542, U.N. Doc. CRC/C/114 (May 14, 2002) (discussing Andorra); *id.* at ¶¶ 489–90 (discussing Bahrain); *id.* at ¶¶ 152–53 (discussing Greece); *id.* at ¶¶ 424–25 (discussing Malawi); Comm. on the Rights of the Child, Rep. on the 28th Sess., Sept. 24–Oct. 12, 2001, ¶¶ 646–47, U.N. Doc. CRC/C/111 (Nov. 28, 2001) (discussing Cape Verde); *id.* at ¶¶ 187–88 (discussing Oman); *id.* at ¶¶ 242–43, 245 (discussing Portugal); Comm. on the Rights of the Child, Rep. on the 26th Sess., Jan. 8–Jan. 26, 2001, ¶ 67, U.N. Doc. CRC/C/103 (Mar. 22, 2001) (discussing Latvia); Comm. on the Rights of the Child, Rep. on the 25th Sess., Sept. 18–Oct. 6, 2000, ¶¶ 457–58, U.N. Doc. CRC/C/100 (Nov. 14, 2000) (discussing Central African Republic); *id.* at ¶ 308 (discussing Tajikistan); Comm. on the Rights of the Child, Rep. on the 24th Sess., May 15–June 2, 2000, ¶ 383, U.N. Doc. CRC/C/97 (July 17, 2000) (discussing Cambodia); *id.* at ¶ 555 (discussing Djibouti); *id.* at ¶ 313 (discussing Kyrgyzstan); Comm. on the Rights of the Child, Rep. on the 22d Sess., Jan. 10–Jan. 28, 2000, ¶ 279, U.N. Doc. CRC/C/94 (Mar. 3, 2000) (discussing Macedonia); Comm. on the Rights of the Child, Rep. on the 22d Sess., Sept. 20–Oct. 8, 1999, ¶ 110, U.N. Doc. CRC/C/90 (Dec. 7, 1999) (discussing the Russian Federation); *id.* at ¶ 54 (discussing Venezuela); Comm. on the Rights of the Child, Rep. on the 21st Sess., May 17–June 4, 1999, ¶ 156, U.N. Doc. CRC/C/87 (July 30, 1999) (discussing Benin); *id.* at ¶ 195 (discussing Chad); *id.* at ¶ 87 (discussing St. Kitts and Nevis); Comm. on the Rights of the Child, Rep. on the 15th Sess., May 20–June 6, 1997, ¶ 67, U.N. Doc. CRC/C/66 (June 6, 1997) (discussing Cuba); Comm. on the Rights of the Child, Rep. on the 10th Sess., Oct. 30–Nov. 17, 1995, ¶ 69, U.N. Doc. CRC/C/46 (Dec. 18, 1995) (discussing Ukraine); Comm. on the Rights of the Child, Rep. on the 8th Sess., Jan. 9–Jan. 27, 1995, ¶ 162, U.N. Doc. CRC/C/38 (Feb. 20, 1995) (discussing Jamaica); Comm. on the Rights of the Child, Rep. on the 6th (Special) Sess., Apr. 5–Apr. 22, 1994, ¶ 54, U.N. Doc. CRC/C/29 (May 16, 1994) (discussing Pakistan); Comm. on

recommended creating or strengthening programs in an effort to ensure accurate and objective information to reduce poor health outcomes among young people.

Given the interrelated rights of education and health, many of the TMBs specifically called for sexuality education to be taught in schools. For example, in its 2004 Concluding Observation for Antigua and Barbuda, the Committee on the Rights of the Child expressed concern for the insufficient attention the State paid to adolescent health issues and the fact that reproductive health education was not part of the official curriculum of primary and secondary schools. The Committee recommended that Antigua and Barbuda conduct a comprehensive study to assess adolescent health issues with the active engagement of young people and use this study as the basis for designing and implementing adolescent health policies. It also recommended that the State strengthen reproductive health counseling services for adolescents as well as incorporate reproductive health education into the school curriculum.<sup>170</sup> These same recommendations were also made in Concluding Observations for Benin,<sup>171</sup> Cambodia,<sup>172</sup> Chad,<sup>173</sup> Kyrgyzstan,<sup>174</sup> Latvia,<sup>175</sup> Malawi,<sup>176</sup> and Venezuela.<sup>177</sup> Several Concluding Observations also called for improved adolescent access to various reproductive health resources without parental consent, including contraception.<sup>178</sup>

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the Rights of the Child, Rep. on the 5th Sess., Jan. 10–Jan. 28, 1994, ¶ 119, U.N. Doc. CRC/C/24 (Mar. 8, 1994) (discussing Belarus); *id.* at ¶ 97 (discussing Romania); Comm. on the Rights of the Child, Rep. on the 3d Sess., Jan. 11–Jan. 29, 1993, ¶ 88, U.N. Doc. CRC/C/16 (Mar. 5, 1993) (discussing the Russian Federation); Rep. of the Human Rights Comm., 79th, 80th & 81st Sess., Oct. 20–Nov. 7, 2003, Mar. 15–Apr. 2, 2004 & July 5–July 30, 2004, ¶ 71(12), U.N. Doc. A/59/40; GAOR, 58th Sess., Supp. No. 40 (2004) (discussing Lithuania); Rep. of the Human Rights Comm., 82d, 83d & 84th Sess., Oct. 18–Nov. 5, 2004, Mar. 14–Apr. 1, 2005 & July 11–July 29, 2005, ¶ 85(9), U.N. Doc. A/60/40 vol. I; GAOR, 60th Sess., Supp. No. 40 (2005) (discussing Poland); Rep. of the Human Rights Comm., 67th, 68th & 69th Sess., Oct. 14–Nov. 1, 2002, Mar. 17–Apr. 4, 2003 & July 14–Aug. 8, 2003, ¶ 81(14), U.N. Doc. A/58/40 vol. I; GAOR, 58th Sess., Supp. No. 40 (2003) (discussing Mali); Rep. of the Human Rights Comm., 82d, 83d & 84th Sess., Oct. 18–Nov. 5, 2004, Mar. 14–Apr. 1, 2005 & July 11–July 29, 2005, ¶ 344, U.N. Doc. A/54/40 vol. I; GAOR, 54th Sess., Supp. No. 40 (1999) (discussing Poland).

<sup>170</sup> Comm. on the Rights of the Child, Rep. on the 37th Sess., Sep. 13–Oct 1, 2004, ¶¶ 505–06, U.N. Doc. CRC/C/143 (Jan. 12, 2005) (discussing Antigua and Barbuda).

<sup>171</sup> Comm. on the Rights of the Child, Rep. on the 21st Sess., May 17–June 4, 1999, ¶ 156, U.N. Doc. CRC/C/87 (July 30, 1999) (discussing Benin).

<sup>172</sup> Comm. on the Rights of the Child, Rep. on the 24th Sess., May 15–June 2, 2000, ¶ 383, U.N. Doc. CRC/C/97 (July 17, 2000) (discussing Cambodia).

<sup>173</sup> Comm. on the Rights of the Child, Rep. on the 21st Sess., May 17–June 4, 1999, ¶ 195, U.N. Doc. CRC/C/87 (July 30, 1999) (discussing Chad).

<sup>174</sup> Comm. on the Rights of the Child, Rep. on the 24th Sess., May 15–June 2, 2000, ¶ 313, U.N. Doc. CRC/C/97 (July 17, 2000) (discussing Kyrgyzstan).

<sup>175</sup> Comm. on the Rights of the Child, Rep. on the 26th Sess., Jan. 8–Jan. 26, 2001, ¶ 67, U.N. Doc. CRC/C/103 (Mar. 22, 2001) (discussing Latvia).

<sup>176</sup> Comm. on the Rights of the Child, Rep. on the 29th Sess., Jan. 14–Feb. 1, 2002, ¶¶ 424–25, U.N. Doc. CRC/C/114 (May 14, 2002) (discussing Malawi).

<sup>177</sup> Comm. on the Rights of the Child, Rep. on the 22d Sess., Sep. 20–Oct. 8, 1999, ¶ 54, U.N. Doc. CRC/C/90 (Dec. 7, 1999) (discussing Venezuela).

<sup>178</sup> Comm. on the Rights of the Child, Rep. on the 38th Sess., Jan. 10–Jan. 28, 2005, ¶ 132, U.N. Doc. CRC/C/146 (July 19, 2005) (discussing Albania and calling for youth access to confidential counseling and care without parental consent when in the best interest of the child); *id.* at ¶ 58 (discussing Sweden and calling for youth access to confidential counseling and care without parental consent when in the best interest of the child); Comm. on the Rights of

While Concluding Observations are not binding per se, if countries have not implemented TMB recommendations by the time of their next review, they must explain their lack of action and articulate the steps they intend to take to ameliorate the situation. Moreover, during these reviews, civil society groups can submit their own comments for consideration, as well as offer shadow reports that document rights violations committed by the State in question. The reviews, therefore, provide a crucial tool for holding governments accountable under international human rights law.

In addition, UN-appointed Special Rapporteurs conduct independent expert reviews of specific issue areas and publish reports of their findings to their respective TMBs, as well as to the UN General Assembly. In July of 2010, the Special Rapporteur on the Right to Education issued a report on the right to comprehensive sexuality education, which reviewed international human rights law, examined regional trends in the provision of sexuality education, and offered recommendations for States and the international community.<sup>179</sup> The report was groundbreaking in that it not only hailed the *INTERIGHTS v. Croatia* decision,<sup>180</sup> but also clearly defined sexuality education as a human right in and of itself.<sup>181</sup> As a result, the Special Rapporteur indicated that there is no valid excuse for denying young people comprehensive sexuality education.<sup>182</sup> In fact, the report specifically noted the harms of abstinence-only education, including the denial of accurate information, the promotion of gendered stereotypes, and the discrimination and marginalization of LGBTQ individuals.<sup>183</sup> Furthermore, the report noted that reducing sex education to the issue of sexually transmitted infections “create[s] an erroneous association between sexuality and disease, which is as harmful as associating it with sin . . . . [P]leasure in and enjoyment of sexuality, in the context of respect for others, should be one of the goals of comprehensive sexual education, abolishing guilt[y] feelings about eroticism that restrict sexuality to the mere reproductive function.”<sup>184</sup> The report concludes with the recommendation that States remove all legislative and constitutional barriers that infringe on the right to comprehensive sex education; design and implement policies that respect rights, gender, and diversity; include comprehensive sexual and reproductive health education in curricula beginning

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the Child, Rep. on the 36th Sess., May 17–June 4, 2004, ¶ 624, U.N. Doc. CRC/C/140 (Sept. 27, 2004) (discussing France and calling for youth access to confidential counseling and care without parental consent when in the best interest of the child); Comm. on the Rights of the Child, Rep. on the 32d Sess., Jan 13–Jan. 31, 2002, ¶ 372, U.N. Doc. CRC/C/124 (June 23, 2003) (discussing Czech Republic and calling for youth access to confidential counseling and care without parental consent when in the best interest of the child); Comm. on the Rights of the Child, Rep. on the 31st Sess., Sep. 16–Oct. 4, 2002, ¶ 76, U.N. Doc. CRC/C/121 (Dec. 11, 2002) (discussing Argentina and calling for youth access to confidential counseling and care without parental consent when in the best interest of the child); *id.* at ¶ 407 (discussing Moldova and calling for youth access to confidential counseling and care without parental consent when in the best interest of the child); *id.* at ¶ 206 (discussing Seychelles, calling for adolescent access to contraception without parental consent); *id.* at ¶ 350 (discussing Ukraine and expressing concern about the lack of access to counseling without parental consent).

<sup>179</sup> See Special Rapporteur on the Right to Education, *Rep. of the United Nations Special Rapporteur on the Right to Education*, U.N. Doc. A/65/162 (July 23, 2010) [hereinafter Special Rapporteur Report on Education].

<sup>180</sup> See *id.* at ¶ 39.

<sup>181</sup> See *id.* at ¶¶ 61, 75.

<sup>182</sup> See *id.* at ¶ 15.

<sup>183</sup> *Id.* at ¶¶ 68-69. The report also stated that “[i]n order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity. Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations.” *Id.* at ¶ 23.

<sup>184</sup> *Id.* at ¶¶ 15-16.

in primary school; and ensure that such education is taught by highly qualified and trained teachers.<sup>185</sup>

A year later, the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health echoed many of these statements in a report reviewing the intersection between criminal laws and other legal restrictions on the right to health. The report noted that laws and policies restricting information about sexual and reproductive health, like those that promote abstinence-only education, “perpetuate false and negative stereotypes concerning sexuality, alienate students of different sexual orientations and prevent students from making fully informed decisions regarding their sexual and reproductive health.”<sup>186</sup> The report also specifically called attention to the fact that women and girls are disproportionately impacted by such legal and policy restrictions, exacerbating their vulnerability to coercion, abuse, and exploitation and, thereby increasing their risk of poor health outcomes.<sup>187</sup> The report concluded by recommending the decriminalization of evidence-based sexual and reproductive health education; the development of standardized, comprehensive, and evidence-based national sexual and reproductive health education; the removal of spousal and parental consent laws prohibiting access to all forms of contraception; and the wide availability and accessibility of the full range of contraceptive options.<sup>188</sup>

### C. Sexual Orientation and Gender Identity

The discrimination and marginalization LGBTQ young people face goes beyond infringement of their right to comprehensive sexuality education. This case study examines efforts to achieve full recognition of the rights of LGBTQ persons through the UN resolution process. Given the fact that 76 nations around the world criminalize same-sex relationships and five impose the death penalty,<sup>189</sup> seeking UN recognition of gay rights as human rights has been a difficult and slow process.

As previously stated, no treaty explicitly recognizes sexual orientation, gender identity, or sexual rights as rights in and of themselves. However, other rights are inextricably linked to these rights. For instance, while not every protected class is specifically enumerated in treaties that protect the right to be free from discrimination,<sup>190</sup> these classes have been interpreted to include sexual orientation (and in some cases, gender identity), either under the class of “sex” or the generic class of “other status.”<sup>191</sup> Moreover, CEDAW General Recommendation 28 explicitly notes that the discrimination women face based on their sex and gender is tied to a host of other factors, including sexual orientation and gender identity (SOGI).<sup>192</sup> When calling on States to amend laws, policies, and practices that discriminate against women, this recommendation

<sup>185</sup> *Id.* at ¶¶ 87(a)-(e).

<sup>186</sup> Special Rapporteur of the Human Rights Council, *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 59, U.N. Doc. A/66/254, (Aug. 3, 2011) (by Anand Grover).

<sup>187</sup> *Id.* at ¶ 61.

<sup>188</sup> *Id.* at ¶ 65(c)-(e), (g).

<sup>189</sup> See *supra* notes 21–22 and accompanying text.

<sup>190</sup> UDHR, *supra* note 26, at art. 2; ICESCR, *supra* note 30, at art. 2; ICCPR, *supra* note 29, at arts. 2, 26; CEDAW, *supra* note 50, at arts. 1, 12(1); CRC, *supra* note 31, at art. 2.

<sup>191</sup> CRC, General Comment 4, *supra* note 65, at ¶ 6; CRC, General Comment 3, *supra* note 76, at ¶ 8; CESCR General Comment 14, *supra* note 64, at ¶ 18.

<sup>192</sup> CEDAW General Recommendation 28, *supra* note 73, at ¶ 18.

specifically cited the particular vulnerability of lesbian women who endure discrimination based on sex, gender, and SOGI.<sup>193</sup>

The lack of explicit treaty obligations to protect SOGI is compounded by the dearth of case law addressing sexual rights within UN committees. Where cases have been filed either within UN Member States' national court systems or at the UN itself, decisions that have been favorable for LGBTQ plaintiffs have not been decided based on their SOGI rights, but rather on their rights to privacy, liberty, dignity, or protection from inhumane treatment.<sup>194</sup> One notable exception is a case brought by the Blue Diamond Society in Nepal, alleging rights violations committed by the government against transgender women, known as *metis*.<sup>195</sup> Citing international human rights law and the Yogyakarta Principles,<sup>196</sup> the Supreme Court of Nepal ruled in favor of the Blue Diamond Society and ordered the government to provide all necessary documents to allow the legal recognition of "third gender" Nepalis, establishing the most comprehensive ruling on gender identity that exists anywhere in the world.<sup>197</sup>

In spite of the relatively limited case law on SOGI, there have been several TMB Concluding Observations issued which express concern over hate crimes based on SOGI, the criminalization of same-sex relationships, and the absence of anti-discrimination laws that are inclusive of SOGI.<sup>198</sup> Two countries, in particular, are noted for their treatment of transgender

<sup>193</sup> *Id.* at ¶ 31.

<sup>194</sup> See e.g. *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A) (1981); *Norris v. Ireland*, 142 Eur. Ct. H.R. (ser. A) (1988); U.N. HUMAN RIGHTS COMM., *Toonen v. Australia*, Communication No. 488/1992 (1994); *Mukasa & Another v. Attorney General*, AHRLR 248, High Court of Uganda (2008); see also Jamil D. Mujuzi, *Even Lesbian Youths or Those Presumed to be Lesbians are Protected by the Constitution of Uganda—But to a Limited Extent: Rules the High Court*, 6 J. LGBT YOUTH 441 (2009). In a first-of-its-kind lawsuit in the Caribbean, LGBTQ activists in Belize are claiming that laws criminalizing same-sex relations ("buggery laws") violate the rights of privacy, human dignity, non-discrimination, and constitutional protections against arbitrary searches and seizures. If successful, the case—*Caleb Orozco & UNIBAM v. Attorney-General of Belize*—would have implications throughout the Caribbean region where same-sex relations are routinely criminalized. See *Buggery Law Tested in Belize*, DOMINICA CENTRAL NEWSPAPER, Aug. 18, 2011, available at <http://www.dominicacentral.com/general/community/buggery-law-tested-in-belize.html>; see also *Caleb Orozco and UNIBAM Take Gay Rights to the Courts*, CHANNEL5BELIZE.COM, Feb. 4, 2011, <http://edition.channel5belize.com/archives/48258>.

<sup>195</sup> ARC INT'L, AN ACTIVIST'S GUIDE TO THE YOGYAKARTA PRINCIPLES 89-91 (2010), available at [http://www.ypinaction.org/files/02/85/Activists\\_Guide\\_English\\_nov\\_14\\_2010.pdf](http://www.ypinaction.org/files/02/85/Activists_Guide_English_nov_14_2010.pdf).

<sup>196</sup> See generally YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY (2007), available at <http://www.yogartaprinciples.org>.

<sup>197</sup> *Supreme Court Decision*, BLUE DIAMOND SOCIETY, <http://www.bds.org.np/decision.html> (last visited Jan. 9, 2012).

<sup>198</sup> See e.g. Rep. of Comm. Against Torture, 33d & 34th Sess., Nov. 16–Nov. 26, 2004, May 2–May 20, 2005, ¶¶ 34-35, U.N. Doc. A/60/44; GAOR, 60th Sess., Supp. No. 44 (2005) (discussing Argentina); Rep. of the Comm. Against Torture, 29th & 30th Sess., Nov. 11–Nov. 22, 2002, Apr. 28–May 16, 2003, ¶¶ 41(e), 42(k), U.N. Doc. A/58/44; GAOR, 58th Sess., Supp. No. 44 (2003) (discussing Egypt); Comm. on Econ., Social & Cultural Rights, Rep. on the 34th & 35th Sess., Apr. 25–May 13, 2005, Nov. 7–Nov. 25, 2005, ¶ 207, U.N. Doc. E/2006/22; ESCOR (2006) (discussing China and Hong Kong SAR); Comm. on Econ. Social & Cultural Rights, Rep. on 28th & 29th Sess., Apr. 29–May 17, 2002, Nov. 11–Nov. 29, 2002, ¶ 285, U.N. Doc. E/2003/22; ESCOR, Supp. No. 2 (2002) (discussing Trinidad & Tobago); Comm. on Econ., Social & Cultural Rights, Rep. on the 25th, 26th, & 27th Sess., Apr. 23–May 11, 2001, Aug. 13–Aug. 31, 2011, & Nov. 12–Nov. 30, 2001, ¶ 715, U.N. Doc. E/2002/22; ESCOR, Supp. No. 2 (2002) (discussing Sweden); Rep. of the Human Rights Comm., 82d, 83d, & 84th Sess., Oct. 18–Nov. 5, 2004, Mar. 14–Apr. 1, 2005, & July 11–July 29, 2005, ¶ 90(19), U.N. Doc. A/60/40 (Vol. I); GAOR, 60th Sess., Supp. No. 40 (2005) (discussing Greece); *id.* at ¶ 86(27)

and transsexual individuals: Venezuela and the United Kingdom. In its response to Venezuela, the Committee against Torture expressed concern at reports of threats or attacks against sexual minorities and transgender activists,<sup>199</sup> while the Committee on the Rights of the Child noted concern that in the United Kingdom “homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation.”<sup>200</sup> As previously mentioned, these reviews provide an important advocacy platform for non-governmental organizations (NGOs) to issue their own reports documenting rights violations by the countries under review. For example, Jamaica recently underwent its third periodic review before the UN Human Rights Committee to monitor its compliance with the ICCPR. A group of local and national NGOs seized this opportunity to issue a shadow report on the human rights of LGBTQ Jamaicans, providing a critical outside view of the situation from organizations on the ground.<sup>201</sup>

Outside of treaties and the interpretative statements and reports from the TMBs, much of the work of the UN occurs by consensus, meaning it is fairly easy for any one nation or group of nations to block language deemed as “anti-family” or culturally imperialistic. Negotiations become drawn out and painstaking processes where the insertion of one word or one comma, even, can disrupt talks and eventually lead to watered-down consensus agreements. In an attempt to get SOGI recognized on the same footing as other rights, more progressive UN Member States have attempted to pass resolutions at various levels within the UN. The first such attempt occurred in 2003 when Brazil introduced a resolution on human rights and sexual orientation. However, the draft resolution met with much opposition by the Organization of the Islamic Conference, resulting in a delay of the vote and the eventual withdrawal of the resolution.<sup>202</sup> In response, a more powerful statement condemning discrimination, violence, killings, torture, and arbitrary detentions and deprivation of rights on the basis of SOGI was supported by sixty-six Member States and read at the UN General Assembly.<sup>203</sup> At the same time, however, fifty-seven other Member States issued their own statement opposing sexual rights.<sup>204</sup>

Most recently, the UN Human Rights Council narrowly adopted a SOGI resolution on a vote of twenty-three to nineteen.<sup>205</sup> The resolution, offered by South Africa in June of 2011, did

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(discussing Kenya); *id.* at ¶ 85(18) (discussing Poland); Rep. of the Human Rights Comm., 79th, 80th, & 81st Sess., Oct. 20–Nov. 7, 2003, Mar. 15–Apr. 2, 2004, & July 5–July 30, 2004, ¶ 74(22), U.N. Doc. A/59/40 (Vol. I); GAOR, 59th Sess., Supp. No. 40 (2004) (discussing Namibia); *id.* at ¶ 63(18) (discussing the Phillipines); Rep. of the Human Rights Comm., 76th, 77th, & 78th Sess., Oct. 14–Nov. 1, 2002, Mar. 17–Apr. 4, 2003, & July 14–Aug. 8, 2003, ¶ 16, U.N. Doc. A/58/40 (Vol. I); GAOR, 58th Sess., Supp. No. 40 (2003) (discussing El Salvador).

<sup>199</sup> Rep. of the Comm. Against Torture, 29th Sess. & 30th Sess., Nov. 11–Nov. 22, 2002, Apr. 28–May 16, 2003, U.N. Doc. A/58/44; GAOR, 58th Sess., Supp. No. 44, ¶ 80(d)(2003) (discussing Venezuela).

<sup>200</sup> Comm. on the Rights of the Child, Rep. on the 31st Sess., Sept. 16–Oct. 4, 2002, ¶¶ 135, 136(d), U.N. Doc. CRC/C/121 (2002) (discussing United Kingdom of Great Britain and Northern Ireland).

<sup>201</sup> See generally JAMAICA FORUM FOR LESBIANS, ALL-SEXUALS, & GAYS (J-FLAG) ET AL., HUMAN RIGHTS VIOLATIONS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PEOPLE IN JAMAICA: A SHADOW REPORT (2011), available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT\\_Jamaica103.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT_Jamaica103.pdf).

<sup>202</sup> See ARC INT’L, *supra* note 195, at 34.

<sup>203</sup> *Id.* at 34–35.

<sup>204</sup> Mindy J. Roseman & Alice M. Miller, *Normalizing Sex and its Discontents: Establishing Sexual Rights in International Law*, 34 HARV. J. L. & GENDER 313, 362–63 (2011).

<sup>205</sup> Human Rights Council Res. 17/19, Human Rights, Sexual Orientation and Gender Identity, 17th Sess., May 30–June 17, 2011, A/HRC/RES/17/19 (July 14, 2011).

three things: (1) it expressed grave concern at acts of violence and discrimination perpetrated against individuals based on SOGI; (2) it called for a study on violence and discrimination on the grounds of SOGI; and (3) it committed to convening a panel to discuss the study and the issue of discriminatory laws and practices as well as violence against LGBTQ individuals.<sup>206</sup> Although this is not a full General Assembly resolution, it is progress in the quest for equal recognition and it sets an important precedent for further action.

While recognition of SOGI rights is really only just beginning to take hold at the UN, the body of work in this area—from treaty interpretations and Concluding Observations to case law and UN resolutions—lays the groundwork for building this field of law. At a time when more and more countries, including most recently Uganda and Nigeria, seek to criminalize same-sex relations and/or marriage, it is likely that more jurisprudence in this area will be forthcoming.

## V. RECOMMENDATIONS

While international human rights law has provided a useful framework for advancing sexual and reproductive health and rights generally, actual litigation specific to the sexual and reproductive health and rights of youth has been limited. Much of this is due to an overarching failure among many international and national actors to recognize youth sexual and reproductive health as a human right as well as inadequate enforcement mechanisms within the UN to hold governments accountable for commitments they do make. The following recommendations provide concrete and meaningful ways for a broad array of actors—from the UN and national governments to legal professionals, to young people and civil society—to help advance and support youth sexual and reproductive health as a fundamental and guaranteed human right.

### *United Nations*

- Apply pressure on UN Member States that have not yet signed or ratified treaties, which respect, protect, and fulfill the human rights of young people, particularly those that relate to adolescent and youth sexual and reproductive health and rights.
- Require reporting on Member States' compliance with youth sexual and reproductive health and rights in Universal Periodic Reviews as well as all reviews conducted by UN Treaty Monitoring Bodies.
- Approve a General Comment or Recommendation on the right to sexual and reproductive health.
- Explicitly incorporate the sexual and reproductive health and rights of young people in the drafting of other General Comments and General Recommendations.
- Approve a General Assembly resolution recognizing the human rights of LGBTQ individuals, including LGBTQ youth, and explicitly incorporate sexual orientation and gender identity in all UN documents that enumerate non-discrimination classes/statuses.
- Approve a General Assembly resolution recognizing the human rights of young people, and explicitly incorporate youth language in all UN documents that

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<sup>206</sup> *Id.*



address the human rights of women and other marginalized populations.

- Collect and analyze age- and gender-disaggregated data on young people's access to sexual and reproductive health information and services across countries, and publish this information in a report along with recommended best practices for achieving positive youth sexual and reproductive health outcomes.
- Include young people in policy and programming decisions of UN bodies, particularly on advisory groups that monitor the human rights of young people.
- Facilitate greater NGO participation in the work of UN Treaty Monitoring Bodies.
- Sponsor young people to attend UN conferences and events.
- Support youth leaders through year-long fellowships and scholarships at UN agencies such as UNAIDS, UNFPA, UNICEF, and WHO.
- Appoint young people to serve as UN ambassadors to highlight the challenges and successes of young people in advancing their human rights.

#### *National Governments*

- Ratify treaties and Optional Protocols that protect the rights of young people, including the ICCPR, ICESCR, CRC, and CEDAW.
- Withdraw any reservations to existing treaties that are inconsistent with the purpose and intent of those treaties, particularly reservations to provisions that protect and promote the sexual and reproductive health and rights of young people.
- Review and amend all existing national legislation to ensure that it conforms with human rights standards and obligations, particularly as it relates to youth sexual and reproductive health and rights.
- Enact and enforce national and local laws and policies that incorporate human rights principles into domestic legislation, including laws that prohibit harmful traditional practices like child marriage and female genital mutilation, as well as laws that criminalize gender-based violence and human trafficking.
- Repeal discriminatory laws, regulations, and social barriers that inhibit young people's exercise of their sexual and reproductive health and rights, including laws that require consent to access information and services, laws that criminalize sex outside of marriage and same-sex relations and marriages, as well as other laws that discriminate based on sexual orientation and gender identity.
- Investigate all complaints of potential rights violations in a timely manner and take all necessary steps to immediately refer substantiated cases to the proper legal authorities for further action.
- Develop a national youth strategy, along with the requisite policies and implementation plans, that explicitly recognizes and supports the sexual and reproductive health and rights of young people, including LGBTQ young people.
- Mainstream a youth perspective into all national strategies, policies, plans, and programs.
- Include youth and civil society members in the preparation of country reports

for Universal Periodic Reviews and reviews conducted by UN Treaty Monitoring Bodies.

- Ensure health care facilities are adequately staffed and supplied, that services are youth-friendly, confidential, affordable, accessible and acceptable to young people, and that family planning/reproductive health information and services are integrated into HIV/AIDS information and services and vice versa.
- Adequately fund family planning/reproductive health services to ensure that a variety of family planning commodities are available in sufficient supply to meet the needs of all women, men, and young people who want them.
- Consider allocating specific funds from the national budget to youth sexual and reproductive health and rights programs.
- Require that Ministries of Health, Education, and Youth mandate and fund the provision of evidence-based and rights-based comprehensive sexuality education to all in-school and out-of-school youth.
- Require Ministries of Health, Education, and Youth to collect age- and sex-disaggregated data in order to fully understand the breadth and depth of policies and programs reaching young people.
- Encourage the political participation of women and young people in order to freely and fully exercise the full range of their human rights.
- Meaningfully engage young people in all aspects of policy and program design, implementation, and evaluation, while recognizing the diversity of youth and paying particular attention to the intersectionality of youth sexual and reproductive health and education, economic opportunity, housing, and political participation.
- Partner with youth and civil society groups to create public awareness campaigns on the rights of young people as well as how to access youth-friendly services and information to achieve healthy outcomes.

#### *Legal Professionals*

- Review the applicability of international human rights law to domestic litigation in an effort to build a case against governments that fail to respect, protect, and fulfill the human rights of young people.
- Apply legal pressure on governments that have not yet signed or ratified treaties, which respect, protect, and fulfill the human rights of young people, particularly those that relate to adolescent and youth sexual and reproductive health and rights.
- Draft legislation that incorporates human rights principles into national, state, and local laws, including laws that prohibit harmful traditional practices like child marriage and female genital mutilation as well as laws that criminalize gender-based violence and human trafficking.
- Advocate for the repeal of discriminatory laws, regulations, and social barriers inhibiting young people's exercise of their sexual and reproductive health and rights, including laws that require consent to access information and services, laws that criminalize sex outside of marriage and same-sex relations and marriages, as well as other laws that discriminate based on sexual orientation

and gender identity.

- Help draft shadow reports, along with youth-led organizations and civil society members that expose rights violations against young people.
- Train health care providers, other legal professionals, judges, military personnel, law enforcement officers, teachers, and students on the laws and policies that recognize and protect the sexual and reproductive health and rights of young people.
- Publish scholarly research on the application of international human rights law for the advancement of sexual and reproductive health and rights of young people.

#### *Young People*

- Apply pressure on national governments that have not yet signed or ratified treaties, which respect, protect, and fulfill the human rights of young people, particularly those that relate to adolescent and youth sexual and reproductive health and rights.
- Advocate for the repeal of discriminatory laws, regulations, and social barriers inhibiting young people's exercise of their sexual and reproductive health and rights, including laws that require consent to access information and services, laws that criminalize sex outside of marriage and same-sex relations and marriages, as well as other laws that discriminate based on sexual orientation and gender identity.
- Help draft legislation that incorporates human rights principles into national, state, and local laws, including laws that prohibit harmful traditional practices like child marriage and female genital mutilation, as well as laws that criminalize gender-based violence and human trafficking.
- Document rights violations against young people's sexual and reproductive health and rights to build cases against governments and advocate for reforms.
- Submit comments to UN Treaty Monitoring Bodies calling for the recognition and support of youth sexual and reproductive health and rights in General Comments and General Recommendations.
- Produce shadow reports during Universal Periodic Reviews to expose governments who have violated the rights of young people.
- Observe Universal Periodic Review sessions and UN Treaty Monitoring Body sessions and lobby members to ask specific questions on youth sexual and reproductive health and rights during their consideration of country reports.
- Apply for NGO consultative status with the UN Economic and Social Council (ECOSOC) so that youth organizations can be recognized before the UN and deliver oral and written statements for the record.
- Attend UN-level conferences and meetings to raise the profile of youth sexual and reproductive health and rights, demand language protecting and advancing those rights, and use social media to disseminate live analysis of such meetings.
- Demand a seat at decision-making tables, both within national, state, and local governments as well as at UN tables, to help shape youth policies.
- Hold public awareness campaigns to educate other youth, the media,

government officials, teachers, community leaders, and parents about the rights guaranteed to young people in international treaties and case law.

- Mobilize other young people to increase the demand for youth-friendly, integrated sexual and reproductive health and rights information and services.
- Apply pressure on Ministries and parliamentarians to mandate and fund evidence-based and rights-based comprehensive sexuality education for in-school and out-of-school youth.
- Work with teachers, families, community leaders, youth groups, and civil society to ensure that comprehensive sexuality education is reflective of the diversity of youth and recognizes and supports the unique needs of LGBTQ youth.
- Utilize traditional media as well as social media to publish opinion editorials, shadow reports, and build campaigns to hold the government and its leaders accountable for commitments made to youth.
- Hold public rallies and conduct letter-writing and petition campaigns to amplify the voices of those demanding the recognition and promotion of youth sexual and reproductive health and rights.
- Demand and co-facilitate trainings in youth-adult partnerships for health care providers and community leaders.

#### *Civil Society*

- Apply pressure on national governments that have not yet signed or ratified treaties that respect, protect, and fulfill the human rights of all people, particularly those that relate to sexual and reproductive health and rights.
- Advocate for the repeal of discriminatory laws, regulations, and social barriers inhibiting the exercise of sexual and reproductive health and rights, including laws that require consent to access information and services, laws that criminalize sex outside of marriage and same-sex relations and marriages, as well as other laws that discriminate based on sexual orientation and gender identity.
- Help draft legislation that incorporates human rights principles into national, state, and local laws, including laws that prohibit harmful traditional practices like child marriage and female genital mutilation as well as laws that criminalize gender-based violence and human trafficking.
- Document sexual and reproductive health rights violations to build cases against governments and advocate for reforms.
- Pursue legal claims for violations of rights, with the help of legal professionals.
- Submit comments to UN Treaty Monitoring Bodies for consideration during the drafting of General Comments and General Recommendations.
- Produce shadow reports during Universal Periodic Reviews to expose governments that have violated the rights of its peoples.
- Observe Universal Periodic Review sessions and UN Treaty Monitoring Body sessions and lobby members to ask specific questions on sexual and reproductive health and rights during their consideration of country reports.
- Apply for NGO consultative status with the UN Economic and Social Council

(ECOSOC) and attend UN-level conferences and meetings to raise the profile of sexual and reproductive health and rights, demand language protecting and advancing those rights, and use social media to disseminate live analysis of such meetings.

- Demand a seat at decision-making tables, both within national, state, and local governments, as well as at UN tables, in order to advance sexual and reproductive health and rights.
- Serve on task forces whose mandate includes monitoring the implementation of laws and policies protecting sexual and reproductive health and rights.
- Support progressive candidates for local, state, and national offices to change policies and laws that infringe on sexual and reproductive health and rights.
- Hold public awareness campaigns to educate the media, government officials, teachers, community leaders, parents, students, and private sector corporate actors about sexual and reproductive health rights guaranteed in international treaties and case law.
- Mobilize other members of civil society to increase the demand for and delivery of integrated sexual and reproductive health and rights information and services.
- Develop and implement evidence-based and rights-based comprehensive sexuality education programs for in-school and out-of-school youth.
- Work with teachers, families, community leaders, youth groups, and other civil society groups to ensure that comprehensive sexuality education programs are reflective of the diversity of youth and recognize and support the unique needs of LGBTQ youth.
- Utilize traditional media, as well as social media, to publish opinion editorials, shadow reports, and build campaigns to hold governments and leaders accountable for sexual and reproductive health and rights commitments.

## VI. CONCLUSION

Despite its relative infancy, international human rights law has proven to be a promising framework for advancing the sexual and reproductive health and rights of young people around the world. Obstacles will always exist, but the foundational principles of this body of law are clear: human rights are not just the rights of some, but the rights of *all*. When governments refuse to recognize these rights, it is incumbent upon the UN, other governments, legal professionals, young people, and civil society to come forward and demand accountability. Young people, in particular, have a unique role to play in exposing violations of sexual and reproductive health rights and pushing for reforms from the outside as well as from the inside. As such, youth advocacy itself is a critical strategy for achieving the vision of rights, respect, and responsibility. In a world of seven billion, ignoring the sexual and reproductive health and rights of nearly half the planet is unacceptable.