THE SEXUAL AND REPRODUCTIVE RIGHTS OF ADOLESCENTS: THE IMPLEMENTATION AND EXPANSION OF THE REPRODUCTIVE RIGHTS OF ADOLESCENTS THROUGH THE CONVENTION ON THE RIGHTS OF THE CHILD

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INTRODUCTION

Children and adolescents' rights to contraceptive information and services are grounded in basic human rights protections. The United Nations Convention on the Rights of the Child, as well as other international and regional human rights treaties, explicitly recognize reproductive and sexual rights. Specifically, the Convention on the Rights of the Child ("CRC") broadly protects adolescents' right to access sexual and reproductive health

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services, and implicitly recognizes that adolescents should have access to a wide range of contraceptive methods, including emergency contraception and "safe abortion and post-abortion services, irrespective of whether abortion itself is legal."[1] State parties to the CRC are obligated to take affirmative steps to ensure access "in both law and practice, to the full range of contraceptive methods by removing legal, financial, informational, and other barriers."[2]

Adolescents have reproductive and sexual rights under international human rights law, just as adults do. However, as a more vulnerable population, adolescents and children face significant barriers in accessing contraceptive services and information. An "adolescent" is defined by the United Nations ("UN") as those between the ages of 10 and 19.[3] According to the United Nations International Children's Fund ("UNICEF"), there are 1.2 billion adolescents in the world today, totaling around 16 percent of the world's population.[4] Adolescents, although rights-holders, often lack the autonomy necessary for decision-making, and are often in a socioeconomic situation of vulnerability that makes exercising their rights difficult.[5] Such intersectional discrimination hinders access to sexual and reproductive rights, which is crucial for the health and safety of adolescents and children, and increases the risk of violence and discriminatory practices.[6]

Despite the CRC's recognition of reproductive and sexual rights as fundamental human rights, the CRC Committee has not appropriately utilized its mechanisms to enforce and strongly condemn and call for the eradication of state parties' harmful practices and policies that jeopardize adolescents' reproductive rights, as it consistently has for other rights violations by state parties under the Convention. This paper argues that the CRC Committee has under invested and under prioritized reproductive rights, and has not effectively used its mechanisms to condemn state parties for violations of sexual and reproductive rights. The Committee must be

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[1] Comm. on the Rights of the Child (CRC Comm.), *General Comment No. 15 On the right of the child to the enjoyment of the highest attainable standard of health* (art. 24), (62nd Sess., 2013), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶¶ 56, 70, U.N. Doc. CRC/C/GC/15 (2013).

[2] Ximena Andión Ibañez et al., *Briefing Paper: The Right to Contraceptive Information and Services for Women and Adolescents*, UNFPA AND CENTER FOR REPRODUCTIVE RIGHTS 6 (2010), https://www.unfpa.org/sites/default/files/resource-pdf/Contraception.pdf.

[3] *UNICEF Data: Adolescents: Overview*, UNICEF DATA: MONITORING THE SITUATION OF WOMEN AND CHILDREN, (Updated Jun 2016), https://data.unicef.org/topic/adolescents/overview/.

[4] *Id.*

[5] *The Reproductive Rights of Adolescents: A Tool for Health and Empowerment*, CENTER FOR REPRODUCTIVE RIGHTS 4 (2008).

[6] *Id.*

explicit in its recommendations and require that all state parties adopt a minimum standard regarding contraception that includes emergency contraception and abortion. In requiring a minimum standard through its periodic review processes and general comments, the CRC Committee can ensure proper state implementation and compliance, as states strengthen and expand their understanding of the right to reproductive health and autonomy—a right that underpins all other essential rights.

Part II of this paper discusses the global context in which sexual and reproductive rights are accessed, and the difficulties adolescents face in receiving contraceptive information and services. Part III reviews articles contained in the CRC that implicitly recognize children and adolescents' rights to sexual and reproductive rights, as well as corresponding protections enshrined in the other core human rights law treaties and instruments. Part IV analyzes the explicit obligations the CRC Committee must adopt in order to ensure state parties effectively respect, protect, and fulfill adolescents' reproductive and sexual rights. Finally, Part V provides recommendations for the CRC Committee to implement to hold state parties to a minimum standard for protecting sexual and reproductive rights.

I. CONTEXTUALIZING ADOLESCENTS' ACCESS TO SEXUAL AND REPRODUCTIVE HEALTHCARE

As children enter adolescence, access to sexual and reproductive health care services and information becomes crucial to the full realization and enjoyment of their human rights. However, in most countries, adolescents' sexual and reproductive rights are largely unmet.

A. Overview of Reproductive and Sexual Rights

Sexual and reproductive rights include the right to attain the highest standard of sexual and reproductive health, which requires the ability to have a satisfying and safe sex life as well as the capability and freedom to reproduce, and requires the ability to be free from sexual violence and discrimination.[7] Sexual and reproductive rights—

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[7] *See* Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, *Beijing Declaration and the Platform for Action*, U.N. Doc. A/CONF.177/20 (1996), http://www.un.org/esa/gopher-data/conf/fwcw/off/a-20en [hereinafter *Beijing Declaration and Platform for Action*]; *see also, Sexual and Reproductive Health: Defining Sexual Health*, WORLD HEALTH ORGANIZATION (WHO) (2006), http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/. ("[Sexual health is] a state of physical, emotional, mental and social well-being related to sexuality . . . [that] requires a positive and respectful approach to sexuality and sexual relationships . . . free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.").

> are a constellation of freedoms and entitlements that are already recognized in national laws, international human rights instruments and other consensus documents. Reproductive rights refer to a diversity of civil, political, economic, social and cultural rights affecting the sexual and reproductive life of individuals and couples.[8]

Underpinning sexual and reproductive rights are basic guarantees of life, health, equality, and non-discrimination. Broadening access to such rights requires state governments to enact policies aimed at reducing maternal mortality rates and rates of sexual and domestic violence, increasing education and the economic status of women, girls, and marginalized persons, and ensuring widespread access to health information and family-planning services, including contraception and abortion.[9]

Sexual and reproductive rights were first explicitly defined and endorsed internationally in the Cairo Consensus that emerged from the 1994 International Conference on Population and Development ("ICPD").[10] This wide array of rights was reaffirmed at the Beijing Conference on Women and various international agreements and conferences since then.[11] According to the 1994 ICPD Programme of Action, the rights of individuals to exercise control over their sexual and reproductive health and rights includes the right to decide the number, timing and spacing of children; the right to voluntarily marry and establish a family; and the right to the highest attainable standard of health.[12] In practice, this means that every person, regardless of age, sex, gender, race, or socioeconomic status, should have access to contraceptive and family planning services, as well as information on sexual and reproductive health and rights.[13] Yet, in practice, adolescents often face significant barriers in accessing sexual and reproductive health needs and rights, which often manifest in national laws and policies that define age restrictions and parental consent requirements on access to contraceptive services and information, as well as pervading social stigma

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[8] United Nations Population Fund, DANISH INSTITUTE FOR HUMAN RIGHTS, AND UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS: A HANDBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS, 21 (2014)[hereinafter NHRI HANDBOOK].

[9] *See generally*, International Conference on Population and Development, Sept. 5-13, 1994, *Cairo Programme of Action*, U.N. Doc. A/ CONF.171/13 (1995), http://www.un.org/popin/icpd/conference/offeng/poa.html [hereinafter *Cairo Programme of Action*].

[10] *Id.*

[11] *Beijing Declaration and Platform for Action*, *supra* note 7.

[12] *Cairo Programme of Action*, *supra* note 9.

[13] NHRI HANDBOOK, *supra* note 8.

surrounding adolescent sexuality.[14]

B. Barriers for Adolescent Access to Sexual and Reproductive Healthcare

Adolescents are at a decisive age characterized by biological and social changes.[15] The CRC Committee has defined adolescence as a "period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation, gradually building up capacity to assume adult behaviors and roles, which involves new responsibilities requiring knowledge and skills."[16] Adolescence is a critical developmental stage when young women's capacities are evolving,[17] and girls experience biological, psychological, and emotional transformations, which profoundly influences the individual person.[18] What happens during adolescence "shapes the direction of [a girl's] life and that of her family."[19] The onset of adolescence, which includes the onset of puberty, heighten girls' vulnerabilities, as they are faced with new emotionally mature challenges and begin to require services for distinctive needs.[20] Moreover, adolescents generally lack control over income and the ability to make independent decisions about their life and health,[21] and, correspondingly, are less likely than adult women to access sexual and reproductive health care.[22]

In many developing countries, the onset of adolescence brings issues of

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[14] *Id.*

[15] Rebecca J. Cook & Bernard Dickens, *Recognizing Adolescents' Evolving Capacities to Exercise Choice in Reproductive Health Care*, 70 INT'L J. OF GYNECOL. & OBSTETRICS 13-21 (2000).

[16] Committee on the Rights of the Child (CRC Committee), *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child* (art. 6 and 24), (33rd Sess., 2003), ¶ 2, U.N. Doc. CRC/GC/2003/4 (2003).

[17] Cook & Dickens *supra* note 15; *see also* Aliya Haider, *Adolescents Under International Law: Autonomy As the Key to Reproductive Health*, 14 WM. & MARY J. WOMEN & L. 605, 608 (2008)(outlining how the international community must ensure adolescents' access to reproductive health rights).

[18] Cook & Dickens, *supra* note 15; *see also* Rossina Guerrero, *The Criminalization of Sexual Relations Between Adolescents and Their Effect on the Exercise of Sexual and Reproductive Rights*, 30 REV. PERU MED. EXP. SAULD PUBLICA 3, (2013) [translated](analyzing the impact of a Peruvian law that criminalizes adolescent sexuality, and discussing how an adolescent's psychological, physical, and sexual development in relation to such restrictive laws).

[19] *From Childhood to Womanhood: Meeting the Sexual and Reproductive Health Needs of Adolescent Girls*, UNFPA 1-2 (2012), http://www.unfpa.org/resources/adolescent-girls-sexual-and-reproductive-health-needs.

[20] *Id.*

[21] *Id.*

[22] *Id.*

child marriage,[23] the inability to continue school, and early pregnancy, often times coupled with coercion or violence.[24] Early marriage often leads to early pregnancy and the resulting complications of bearing children before a girl's body is prepared to do so.[25] The resulting health complications, along with unsafe and clandestine abortion, make pregnancy a leading cause of death for adolescents' aged 15 to 19 in developing countries.[26] Approximately 16 million adolescent girls, and two million girls under the age of 15, give birth every year.[27] Some three million adolescent girls undergo clandestine or unsafe abortions each year,[28] and complications linked to pregnancy and childbirth are the second cause of death for adolescent girls globally.[29]

Child marriage and early pregnancy have a serious effect on girls' ability to realize their rights to education and health, and this consequently increases their vulnerability to poverty and inequality.[30] Rarely is a marriage or pregnancy the choice of an adolescent girl, but actually "reflects the failure of those around her to protect her rights."[31] National policies that restrict adolescents' access to sexual and reproductive health services, like contraception and sex education, are an underlying cause of such rights

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[23] Child marriage is a human rights violation that infringes on girls' rights to life, health, and education. UNITED NATIONS POPULATION FUND (UNFPA), *Child Marriage: Overview*, http://www.unfpa.org/child-marriage ("In developing countries, one in every three girls is married before reaching age 18. One of nine is married under age 15); ("Every day, 39,000 girls become child brides . . .") UNITED NATIONS POPULATION FUND (UNFPA), *The Power of 1.8 Billion: Adolescents, Youth and the Transformation of the Future* 9, (2014), https://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf.

[24] Around 89 percent of adolescents live in developing countries, where risks associated with childbirth and pregnancy is highest. *The Power of 1.8 Billion Adolescents: Youth and the Transformation of the Future*, *supra* note 23.

[25] Robert W. Blum et al., *Girlhood, Not Motherhood: Preventing Adolescent Pregnancy*, UNITED NATIONS POPULATION FUND (UNFPA) 7 (2015), http://www.unfpa.org/sites/default/files/pub-pdf/Girlhood_not_motherhood_final_web.pdf.

[26] UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, *Information Series on Sexual and Reproductive Health and Rights: Adolescents*, http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Adolescents_WEB.pdf ("Girls 15 -19 years old account for 11 percent of all births and around 14 percent of all maternal deaths, with some 50,000 girls dying from maternal causes annually"); *see also* Ruth Levine et al., THE CENTER FOR GLOBAL DEV., GIRLS COUNT: A GLOBAL INVESTMENT & ACTION AGENDA 49 (2009).

[27] Blum, *supra* note 25.

[28] *Id.*

[29] *Adolescents: health risks and solutions fact sheet*, WORLD HEALTH ORGANIZATION (WHO) (2016), http://www.who.int/mediacentre/factsheets/fs345/en/.

[30] Blum, *supra* note 25; *see also* Janine Kossen, *Rights, Respect Responsibility: Advancing the Sexual and Reproductive Health and Rights of Young People Through International Human Rights Law*, 15 U. PA. J. L. & SOC. CHANGE 143, 145 (2012).

[31] Blum et al., *supra* note 25.

violations.

Harmful national laws and policies that directly affect adolescents' access to sexual and reproductive healthcare services and information are widespread and can be found across the globe. Peru and Kenya are two general examples that illustrate how State policies can violate adolescents' human rights and fail to protect this vulnerable population.

The state of Peru has not achieved significant progress in providing access to reproductive healthcare. Current regressive policies that violate individuals' reproductive health rights include the prohibition of the distribution of emergency contraception in the public health system, the inaccessibility of the wide range of modern contraceptives, and the deficient implementation and limitations of lawful therapeutic abortion.[32] Emergency contraception is especially necessary in Peru where there are high rates of sexual violence against women and adolescents.[33] Approximately 12 percent of Peruvian women have been forced to have nonconsensual sexual relations at least once in their lives, revealing widespread, systematic, and longstanding use of sexual violence.[34] Victims under the age of 18 filed 78 percent of criminal complaints for rape.[35] Comparative studies found that approximately 5 percent of rape victims become pregnant as a result of the sexual violence; or, rather, there are 35,000 unwanted pregnancies annually as a result of rape.[36] The CRC Committee has expressed its concerns over

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[32] *See* Guía Técnica Nacional para la Estandarización del Procedimiento de la Atención Integral de la Gestante en la Interrupción Voluntaria por Indicación Terapéutica del Embarazo Menor de 22 Semanas con Consentimiento Informado en el Marco de lo Dispuesto en el Artículo 119o del Código Penal [National Technical Guide for Procedure Standardization of Comprehensive Care for Pregnant [Women] in Voluntary Termination of Pregnancy, Therapeutic Indication for Less Than 22 Weeks with Informed Consent Under the Provisions in Article 119 of the Penal Code], ¶ 6.1 (2014) (Peru); *see also Keys to Understanding Peru's New Therapeutic Abortion Guidelines*, PERU THIS WEEK (Jul. 1, 2014), http://www.peruthisweek.com/news-keys-to-understanding-perus-new-therapeuticabortion-guidelines-103385; *see also* Decreto Legislativo No. 635, Codigo Penal, art. 119 (1991) (Peru), http://www.cajpe.org.pe/rij/bases/legisla/peru/pecodpen.htm.

[33] Peru has the highest rate of rape reports (22.4) for every 100,000 inhabitants in countries in South America. Jaris Mujica, *Violaciones Sexuales en Perú 2000-2009: Un Informe Sobre el Estado de la Situación* PROMSEX 53, 66 (2011); A study found that Peru has the highest rate of rape complaints in South America, which totaled 63,545 criminal complaints of sexual violence annually. This is particularly striking when considering that underreporting for rape is common. *Encuesta Demográfica y de Salud Familiar 2014*, INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA (INEI) DE PERÚ 369 (2015), http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1211/pdf/Libro.pdf.

[34] *Encuesta Demográfica y de Salud Familiar 2014*, *supra* note 33 at 369.

[35] Mujica, *supra* note 33, at 78.

[36] *Encuesta Demográfica y de Salud Familiar 2014*, *supra* note 33 at 369; *see also* Luis Távara Orozco et al., *Apuntes para la acción: El derechos de las mujeres a un aborto legal*,

these issues, and has recommended that Peru address the high number of unwanted adolescent pregnancies and provide access to safe abortion for victims of rape.[37]

Similarly, high rates of sexual violence, limited access to family planning services and information, poverty, and discrimination against adolescents in Kenya are factors leading to unwanted adolescent pregnancies, and, accordingly, unsafe and clandestine abortion.[38] The lack of youth friendly services in Kenya and harsh judgment and discrimination from medical professionals towards girls seeking contraceptive information or services prevent adolescents from accessing essential healthcare.[39] The social stigma stemming from cultural attitudes about sexuality and the rights of children and adolescents create serious barriers to contraception.[40] The CRC Committee has noted its concern about the criminalization of abortion in cases of rape and incest, and its contribution to "the elevated incidence of maternal mortality among adolescent girls."[41] Additionally, the CRC Committee expressed concern over the high rates of adolescent pregnancy, due to a lack of sexuality education in schools and access to information about sexual and reproductive health in general.[42]

As highlighted in the case of Peru and Kenya, regressive policies and pervading social stigma have harmful effects on an adolescent's reproductive health rights. Adolescents globally are a vulnerable group and are more susceptible to state violations of reproductive rights. When governments impose restrictions or fail to implement laws that protect adolescents, they violate international human rights law standards. State parties, however, have a duty under the CRC and international human rights law to empower adolescents with the resources to make informed choices about their health and sexuality.

II. ADOLESCENTS' REPRODUCTIVE RIGHTS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD

Adolescents' rights to contraceptive information and services are grounded in basic human rights protections. All human rights under

PROMSEX 55 (2009).

[37] Committee on the Rights of the Child (CRC Committee), *Concluding Observations, Peru*, ¶¶ 55-56, U.N. Doc. CRC/C/PER/CO/4-5 (2016).

[38] Center for Reproductive Rights, *In Harm's Way: The Impact of Kenya's Restrictive Abortion Law*, 42-45 (2010).

[39] *Id.* at 46.

[40] *Id.*

[41] Committee on the Rights of the Child (CRC Committee), *Concluding Observations, Kenya*, ¶ 49, U.N. Doc. CRC/C/KEN/CO/2 (2007).

[42] *Id.*

international human rights law are indivisible, interdependent, and interrelated: "the improvement of one right facilitates advancement of the others."[43] As such, the UN treaty monitoring body committees are interrelated and interdependent on one another. Although each treaty is a separate instrument and each committee is an independent set of experts, treaty body committees function together as a holistic system and coordinate their operations to present a consistent and systematic approach to upholding international human rights.[44] Chief among these are the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the Convention on the Rights of the Child.[45] CEDAW and the CRC are the most widely ratified human rights treaties and are essentially universally accepted and implemented.[46] Thus, since the majority of countries have ratified and implemented both, there is substantial overlap in recommendations, comments, and observations between the two monitoring bodies. While there is overlap between all UN treaty monitoring bodies and their recommendations, albeit this overlap is dependent on a state's acceptance and ratification of each separate treaty. Several UN treaties, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Cultural and Social Rights, and the Convention Against Torture, advance reproductive and sexual rights. Furthermore, because human rights are interdependent and interrelated, reproductive and sexual rights comprise various other rights that rely and build on one another. Such rights include the right to non-discrimination, right to health, right to information, and the right to be free from torture and cruel and inhumane treatment.[47]

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[43] *What Are Human Rights?*, UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

[44] *The United Nations Human Rights Treaty System: Fact Sheet No 30/Rev. 1*, UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, 1 (2012), http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf.

[45] Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 1, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 2, G.A. Res. 44/25, annex, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

[46] Although virtually universal treaties, eight countries have not ratified CEDAW, including Sudan, Somalia, Iran and the United States, and only one country has not ratified the CRC: the United States. Thus, the majority of countries have accepted both treaties, which obligations often overlap.

Status of Ratification: Interactive Dashboard, UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, (last updated 14 Nov 2016), http://indicators.ohchr.org/.

[47] *What Are Human Rights?*, *supra* note 43; *See also* Fabiola Carrión, *How Women's Organizations Are Changing the Legal Landscape of Reproductive Rights in Latin America*, 19 CUNY L. REV. 37, 39-42 (2016).

A. Right to Non-Discrimination

Adolescents' rights to substantive equality and non-discrimination underlie the right to access contraceptive information and services. Laws and policies that deny women and girls access to contraception, specifically contraceptive methods such as emergency contraception, or require parental or third party consent to access contraception, constitute discrimination.[48] Moreover, states parties' failure to realize adolescents' sexual and reproductive rights disproportionately impacts girls, violating their rights to equality and nondiscrimination.[49]

The CRC prohibits discrimination of any kind, and obligates states to take all necessary measures to protect children against forms of discrimination.[50] Specifically, article 2 requires all state parties to "respect and ensure" the rights enshrined in the Convention without "discrimination of any kind, irrespective of . . . race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."[51] Article 2 stipulates that all rights to all children apply without exception and that it is the state party's obligation to protect children from any form of discrimination and to take positive action to promote their rights.[52] The CRC recognizes that the right to non-discrimination does not mean that all children are the same and should be treated identically.[53] Rather, states must take "special measures" to eliminate harmful policies and practices that cause discrimination.[54] The CRC Committee has explicitly extended the right to nondiscrimination to include both *de jure* and *de facto*

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[48] *See Briefing Paper: Safe and Legal Abortion is a Woman's Human Right*, CENTER FOR REPRODUCTIVE RIGHTS 3 (2011), http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_fac_safeab_10.11.pdf.

[49] *Id.*

[50] *See generally*, *Reproductive Rights Under the Convention on the Rights of the Child*, CENTER FOR REPRODUCTIVE RIGHTS (2014), http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Wright_Glo%20Adv_7.15.14.pdf.

[51] Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 2, G.A. Res. 44/25, annex, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

[52] *Id.*

[53] Committee on the Rights of the Child (CRC Committee), *General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health* (art. 24), (62nd Sess., 2013), at ¶ 12, *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, paras. 53-54, U.N. Doc. CRC/C/GC/15 (2013).

[54] Committee on the Rights of the Child (CRC Committee), *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, ¶ 6), (34th Sess., 2003), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶ 12, U.N. Doc. CRC/GC/2003/5 (2003) (citing Human Rights Committee, General Comment No. 18 (1989)).

discrimination, and has thus urged the elimination of conditions and practices that either have the "effect" or "purpose" of discriminating against adolescents and girls.[55]

Additionally, the Committee on the Elimination of All Forms of Discrimination Against Women ("CEDAW Committee") encourages its state parties to "address the issue of a woman's health throughout the women's lifespan," understanding that "women includes girls and adolescents."[56] CEDAW also affirms that discrimination includes laws and policies that have either the "effect" or "purpose" of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men.[57] The CEDAW Committee has expressed that "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures" are a barrier to women and girls' access to necessary healthcare,[58] and thus discriminates against women and girls, and precludes substantive equality.

The rights to non-discrimination and equality prohibit discriminatory laws and policies and require measures that challenge socially embedded discrimination in order to achieve equality.[59] The CRC has called on states to address "harmful gender-based practices and norms of behavior that are ingrained in traditions and customs and undermine the right to health."[60] Discrimination based in harmful gender norms and stereotypes can result in

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[55] *See* CRC Committee, *Concluding Observations: Norway*, ¶ 19, U.N. Doc. CRC/C/15/Add.263 (2005) ("In the light of article 2 of the Convention, the Committee recommends that the State party continue to intensify its efforts to prevent and eliminate all forms of de facto discrimination against children."); *Singapore*, ¶ 30(d), U.N. Doc. CRC/C/SGP/CO/2-3 (2011) ("Collect data disaggregated by gender, race, ethnic origin or social background, and disability so as to enable effective monitoring of de facto discrimination").

[56] *The Reproductive Rights of Adolescents: A Tool for Health and Empowerment*, *supra* note 5, at 5.

[57] Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 1, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981); *See Briefing Paper: Safe and Legal Abortion is a Woman's Human Right*, CENTER FOR REPRODUCTIVE RIGHTS 3 (2011), http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_fac_safeab_10.11.pdf.

[58] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 358, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).

[59] Ibañez et al., *supra* note 2.

[60] Committee on the Rights of the Child (CRC Committee), *General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health* (art. 24), (62nd Sess., 2013), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶¶ 53-54, U.N. Doc. CRC/C/GC/15 (2013), at ¶ 9.

girls being denied access to essential reproductive health information and services, such as family planning information or sexual education, and contraceptive services or obstetric care. Laws that restrict access to all methods of contraception, including abortion, have the effect and purpose of preventing an adolescent from exercising any of his or her human rights on a basis of equality.[61] Only female adolescents and girls live with the physical consequences of an unwanted pregnancy or maternity related injuries, such as hemorrhage or obstructed labor. Stigma and discriminatory practices and policies that restrict access to methods of contraception has the effect of denying adolescents access to services or information that may be necessary for their equal enjoyment of the right to health.[62] Laws that deny access to contraception also have the discriminatory purpose, regardless of their stated objectives, of both depreciating and undermining an adolescent's capacity to make responsible decisions' about their bodies and lives.

The CRC has urged states to eliminate all forms of discrimination against girls. In particular, state parties must review laws and regulations and take "proactive and comprehensive efforts to eliminate de facto discrimination on any ground and against all vulnerable groups of children, including through public education campaigns to prevent discrimination and combat negative attitudes in society."[63] Further, state parties must identify children who may require special measures for the recognition and protection of their rights, such as legislative changes, resource allocations, and educational measures.[64]

In addition to the CRC condemning and calling for the elimination of discriminatory practices and policies that obstruct children and adolescents' reproductive and sexual rights, the CEDAW Committee, a quasi-judicial body,[65] has adjudicated issues that specifically address children's rights to nondiscrimination in receiving reproductive healthcare. In the emblematic

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[61] Ibañez et al., *supra* note 2.

[62] *Id.*

[63] Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Saudi Arabia*, ¶ 28, U.N. Doc. CRC/C/SAU/CO/2 (2006).

[64] Committee on the Rights of the Child (CRC Committee), *General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health* (art. 24), (62nd Sess., 2013), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, paras. 53-54, U.N. Doc. CRC/C/GC/15 (2013), at para. 12.

[65] The CEDAW Committee is a quasi-judicial body, in that it is not a court, but does have the capacity to decide individual complaints through its Optional Protocol. *See* Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. A/RES/54/4 (1999), 2131 U.N.T.S. 83, (*entered into force* Dec. 22, 2000); *see also*, *Composition: Individual Complaints*, INTERNATIONAL JUSTICE RESOURCE CENTER (last visited, April 18, 2017), http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-discrimination-against-women/#Individual_Complaints.

case *L.C. v. Peru*, the CEDAW Committee held that denying a child emergency spinal surgery in fear that it would harm her pregnancy violated her right to nondiscrimination, as well as her right to privacy, health, and remedy.[66]

L.C. v. Peru is one of the most significant cases in reproductive health rights law.[67] At the age of thirteen, an older man repeatedly sexually abused L.C.[68] She became pregnant and attempted suicide by jumping off a building, the trauma of which caused paralysis.[69] L.C. was refused emergency spinal surgery after doctors learned she was pregnant.[70] L.C. and her mother requested a therapeutic abortion in order to move forward with the necessary surgery, but hospital administrators denied their request.[71] After several weeks, L.C. miscarried spontaneously. Thereafter, almost four months after her surgery was postponed, L.C. underwent her operation.[72] She required intensive physical therapy and rehabilitation, but soon had to abandon treatment due to lack of financial means.[73] The CEDAW Committee found that the 13 year-old rape victim was entitled to a lawful therapeutic abortion due to both the physical and mental distress she suffered.[74] The CEDAW Committee found that Peru violated L.C.'s right to health and right to be free from discrimination by failing to provide her with an abortion. The opinion urged Peru to establish a mechanism to ensure the availability of abortion services and thus guarantee access to abortion when the woman's life or health is in danger, which is the current legal framework for abortion in Peru.[75] The CEDAW Committee also called on the state to

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[66] *See generally* Committee on the Elimination of Discrimination against Women, *Views of the Committee on the Elimination of Discrimination Against Women Under Article 7, Paragraph 3, of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women Concerning Communication No. 22/2009*, CEDAW/C/50/D/22/2009 (2011), *available at*, http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_en.pdf [hereinafter *L.C. v. Peru*].

[67] *See generally, id.*

[68] *Id.* at ¶ 2.1.

[69] *Id.*

[70] *Id.*

[71] *Id.* at ¶ 2.2-2.5.

[72] *Id.* at ¶. 2.9-2.10.

[73] *L.C. v. Peru*, *supra* note 66, at ¶ 2.11.

[74] *Id.* at ¶ 8.18.

[75] *Id.* at ¶ 9(b)(i); *and L.C. v. Peru, supra* note 66, at ¶ 8.17 (emphasizing that, "since the State party has legalized therapeutic abortion, it must establish an appropriate legal framework that allows women to exercise their right to it under conditions that guarantee the necessary legal security, both for those who have recourse to abortion and for the health professional that must perform it. It is essential for the legal framework to include a mechanism for rapid decision-making, with a view to limiting the extent possible risks to the health of the pregnant mother, that her opinion be taken into account, that the decision be well-founded and that there

address the systemic failures in its legal and health infrastructure. Finally, in its recommendations, CEDAW called on Peru to "review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse."[76] This marked the first time the CEDAW Committee recommended a state party change its legislation on abortion.[77]

In this way, the CEDAW Committee specifically interprets its Convention to require states parties to protect women's reproductive rights in a manner that guarantees equality and non-discrimination. *L.C.* recognizes that states have a legal obligation to implement domestic abortion laws that can be meaningfully accessed by women and adolescents and that any guaranteed abortion rights must be tangible rather than merely a perfunctory commitment by the state.[78] Domestic laws that permit abortion but are not implemented or unclear do not provide women equal protection under the law and constitute discrimination because they deny access to services only women need.[79] Notably, the *L.C.* decision effectively set the trend of the various treaty monitoring bodies' characterization of laws that generally criminalized abortion as discriminatory and an obstruction to women's access to healthcare.

B. The Right to Health

When states fail to provide girls and adolescents with substantive equality and freedom from discrimination, it infringes on their right to access sexual and reproductive health services. The right to health undeniably includes the right to sexual and reproductive health. International human rights law guarantees individuals the right to "the highest attainable standard of physical and mental health,"[80] and treaty monitoring bodies commonly agree that access to sexual and reproductive healthcare services and information is critical.[81] The Committee on Economic, Social and

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is a right to appeal."); *L.C. v. Peru*, *supra* note 66, at ¶¶ 8.13, 8.16; *see also* Charles Ngwena, *A Commentary on L.C. v. Peru: The CEDAW Committee's First Decision on Abortion*, 57 JOURNAL OF AFRICAN LAW 310, 314 (2013) (discussing the human rights significance of *L.C.*, particularly in relation to the development of abortion jurisprudence in the African region).

[76] *Id.* at ¶ 9(b)(iii).

[77] *See* Charles Ngwena, *A Commentary on L.C. v. Peru: The CEDAW Committee's First Decision on Abortion*, 57 J. AFRICAN L. 310 (2013) (discussing the human rights significance of *L.C.*, particularly in relation to the development of abortion jurisprudence in the African region).

[78] *Id.*

[79] *Id.*

[80] International Covenant on Economic, Social and Cultural Rights (ICESCR), *adopted* Dec. 16, 1966, art. 12 G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (*entered into force* Jan. 3, 1976).

[81] CEDAW Committee, *Concluding Observations: Chile*, para. 227, U.N. Doc. A/54/38

Cultural Rights (hereinafter "CESCR") has recognized that the right to health includes "the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference," and, furthermore, "requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."[82] Additionally, according to the CESCR, state parties have an obligation to ensure that adolescents can participate in decisions affecting their health, receive appropriate information, counseling, and healthcare, including appropriate sexual and reproductive health services.[83]

Article 24 of the CRC protects a child's right to the "highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."[84] The CRC stipulates that the child has the right to the highest standard of health and medical care, and states should place special emphasis on the provision of primary and preventive health care.[85] General Comment No. 4 of the CRC Committee is dedicated to adolescent health and development.[86] Through its General Comment, the CRC Committee calls on states to ensure that "health facilities, goods and services, including counseling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns are available to adolescents"[87]

(1999); CEDAW Committee, *Concluding Observations: Greece*, paras. 207-8, U.N. Doc. A/54/38 (1999); CEDAW Committee, *Concluding Observations: Zimbabwe*, para. 148, U.N. Doc. A/53/38 (1998); Committee on the Rights of the Child, *Concluding Observations: Djibouti*, para. 46, U.N. Doc. CRC/C/15/Add.131 (2000); CEDAW Committee, *General Recommendation 24: Women and Health*, para. 14. *See, e.g.*, Human Rights Committee, *Concluding Observations: Chile*, para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999); *See, e.g., Human Rights Committee, Concluding Observations: Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998).

[82] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The right to the highest attainable standard of health, (22nd Sess., 2000), ¶ 21, U.N. Doc. E/C.12/2000/4 (2000).

[83] *Id.* at ¶ 23.

[84] Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 24, G.A. Res. 44/25, annex, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

[85] Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The right to the highest attainable standard of health*, (22nd Sess., 2000), ¶ 22, U.N. Doc. E/C.12/2000/4 (2000).

[86] Committee 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., 2003), ¶¶ 6, 9, 24 and 30-31 U.N. Doc. CRC/GC/2003/4, http://www2.ohchr.org/cnglishibodics/crc/comments.htm [hereinafter *General Comment 4*].

[87] *Id.* at ¶ 35(c).

and also calls for the creation of programs that provide adolescents with comprehensive sexual and reproductive health services.[88] The CRC Committee consistently asserts that adolescents must have access to comprehensive reproductive healthcare. It has repeatedly addressed the "lack of sufficient health information and services for adolescents"[89] in its concluding observations to states parties and has frequently criticized state governments for failing to promote education about family planning services for adolescents.[90]

Adolescent health must be a focus in state legislation and policies in order to promote reproductive rights. The stigmas surrounding their sexuality often cause adolescents to face social, cultural, and legal barriers in accessing contraceptive and family planning services and information. Healthcare policies must consider the unique needs of adolescents, including access to all forms of contraceptive methods, information, counseling and services, confidential sexual and reproductive health services, and low cost care and treatment. Special care should be taken to provide health services to all adolescents, including those more vulnerable, such as adolescents with disabilities, indigenous adolescents, minority adolsecents, and adolescents living in rural areas or in extreme poverty.[91] The CESCR has emphasized in its General Comment No. 14 that, although the right to health is among the rights to be realized progressively, states still have a "specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of [this right]".[92] In order to fulfill obligations under the relevant international human rights law treaties, states must continue to implement policies that eliminate harmful practices that interfere with adolescents' reproductive rights and take effective measures to protect their rights. In order to do so, state parties have to ensure access to services and information for adolescents on a non-discriminatory basis and the

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[88] *Id.* at ¶¶ 27, 31(a).

[89] Committee on the Rights of the Child, *Concluding Observations: Paraguay*, paras. 23, 33, 45, U.N. Doc. CRC/C/15/Add.75 (1997); *see also* Committee on the Rights of the Child, *Concluding Observations: Hungary*, para. 36, U.N. Doc. CRC/C/15/Add.87 (1998).

[90] Committee on the Rights of the Child, *Concluding Observations: Belarus*, para. 14, U.N. Doc. CRC/C/15/Add.17 (1994); Committee on the Rights of the Child, *Concluding Observations: Cuba*, para. 37, U.N. Doc. CRC/C/15/Add.72 (1997); Committee on the Rights of the Child, *Concluding Observations: Holy See*, para. 9, U.N. Doc. CRC/C/15/Add.46 (1995); Committee on the Rights of the Child, *Concluding Observations: Pakistan*, para. 29, U.N. Doc. CRC/C/15/Add.18 (1994); Committee on the Rights of the Child, *Concluding Observations: Ukraine*, para. 23, U.N. Doc. CRC/C/15/Add.42 (1995).

[91] NHRI HANDBOOK, *supra* note 8.

[92] Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The right to the highest attainable standard of health*, (22nd Sess., 2000), para. 31, U.N. Doc. E/C.12/2000/4 (2000).

equitable distribution of such information and services.[93]

Part of this obligation is to provide essential drugs as defined under the World Health Organization (hereinafter "WHO") Program on Essential Drugs. Among the drugs listed on the WHO Model List of Essential Medicines[94] are anti-viral drugs, medicine for neonatal care, and contraceptives, including oral contraception pills, contraceptive injections, intrauterine devices, condoms, diaphragms, implantable contraceptives, and emergency contraception.[95] Additionally, "open engagement with health care providers fosters an adolescent girl's self-determination regarding her reproductive life and health armed with information, counseled within a secure, confidential environment, she can determine for herself the course of action that best serves her."[96] Failure to ensure confidentiality constitutes a barrier to comprehensive reproductive health. The CRC General Comment 4 interprets Article 16 of the CRC, the right to privacy, to encompass confidentiality with respect to "advice and counseling on health matters," and states that "[h]ealth care providers have an obligation to keep confidential medical information concerning adolescents."[97]

C. Right to Information and Education

The right to seek, receive, and impart information are protected by various international human rights law treaties and instruments. The right can be found in Article 19 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), which stresses the right to "seek, receive and impart information and ideas of all kinds."[98] The CRC guarantees children's right to information in Article 17 and CEDAW sets out the right to "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."[99] The right to receive information on sexual and

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[93] *Id.*

[94] World Health Organization (WHO) Model List of Essential Medicines, 19th Edition (2015), http://www.who.int/medicines/publications/essentialmedicines/EML_2015_FINAL_amended_NOV2015.pdf?ua=1.

[95] *Id.*

[96] *The Reproductive Rights of Adolescents: A Tool for Health and Empowerment*, *supra* note 5.

[97] *General Comment 4*, *supra* note 86, at para. 7; *see also* NHRI HANDBOOK, *supra* note 8, at 109-110.

[98] International Covenant on Civil and Political Rights, art. 19, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

[99] Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 17, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981); Convention on the Rights of

reproductive health services and issues has been addressed by multiple treaty monitoring bodies. The CESCR, in General Comment No. 14 on the right to health, underlines the need to remove barriers to women's access to information and education, affirms that adolescents must receive appropriate information and counseling, and refers to information campaigns with respect to HIV/AIDS and sexual and reproductive health and rights.[100]

This is further emphasized by the CRC, which states that all adolescents, irrespective of marital status and parental or guardian consent should be provided with sufficient information on sexual and reproductive health, including contraceptives.[101] Such information is to be developed with active involvement of adolescents, and indigenous adolescents and adolescents with disabilities should also have access to sexual and reproductive health and rights information.

These rights are all essential to the recognition and protection of sexual and reproductive rights.[102] The CRC Committee recommends to all state parties that—

> [a]dolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of the States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours.[103]

Complementary to the right to information, the right to education also serves to help achieve realization of reproductive rights. Adolescents and girls have greater access to contraception when they can read and understand the risks to their health. Moreover, guaranteeing reproductive rights promotes the right to education when adolescents are able to determine if, when, and how, to have children, then their opportunities to advance towards higher education is improved.[104] A comprehensive understanding of safe

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the Child, *adopted* Nov. 20, 1989, art. 17, G.A. Res. 44/25, annex, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

[100] Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The right to the highest attainable standard of health*, (22nd Sess., 2000), para. 21, 23, 16, U.N. Doc. E/C.12/2000/4 (2000).

[101] *General Comment 4*, *supra* note 86.

[102] *General Comment 4*, *supra* note 86, at para. 28; Committee on the Rights of the Child, *General Comment No. 11 on indigenous children* (2009), at para. 54; Committee on the Rights of the Child, *General Comment No. 9* (2006), at para. 59.

[103] *General Comment 4*, *supra* note 86, at para. 26.

[104] According to UNFPA, fewer children mean that families and governments can spend more per child. This is especially important for adolescents and girls, whose education is often disregarded if resources are lacking. Moreover, avoiding early pregnancies and early marriages

and effective contraceptive methods is essential for girls and adolescents to protect their health and make informed decisions about sexuality and reproduction.[105]

D. Right to be Free of Torture and Deprivation of Liberty

Serious violations of sexual and reproductive rights occur when adolescents and girls encounter low quality, negligent, or abusive care and treatment.[106] The CRC protects a child's right to be free from torture and deprivation of liberty.[107] Other international human rights treaties have indicated that laws and policies that prohibit reproductive health services for the improper purpose of discouraging women from accessing reproductive healthcare and medical services can cause immense pain and suffering and have long lasting consequences for a woman's health and life.[108] The UN solidified its views on the issue in the 2013 report of the UN Special Rapporteur on Torture, which specifically cites the lack of access to reproductive healthcare services, specifically abortion.[109] The UN Rapporteur contends that denial of reproductive rights is discrimination on the basis of gender and the denial of that right can cause "tremendous and lasting physical and emotional suffering" to women.[110] This crucial report bases its conclusions on treaty monitoring bodies' jurisprudence, and specifically cites the landmark case *K.L. v. Peru* to illustrate the ill treatment and torture that rape victims face in attempting to procure an abortion.[111]

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encourages girls to stay in school. Guaranteeing the right to information regarding family planning and the use of contraceptives is also important to avoid early pregnancies. *Sexual and Reproductive Health for All: Reducing Poverty, Advancing Development and Protecting Human Rights* UNFPA 8, 20-21(2010); *see also* NHRI HANDBOOK, *supra* note 8, at 109-110.

105 NHRI HANDBOOK, *supra* note 8, at 111.

106 *See* Center for Reproductive Rights, *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis* (2011).

107 Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 37, G.A. Res. 44/25, annex, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

108 *See* CAT/C/PER/CO/4, para. 23; *see also Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis*, CENTER FOR REPRODUCTIVE RIGHTS (2011) (explaining that the most blatant violation is harmful laws that prohibit an abortion for the improper purpose of discouraging women from terminating a pregnancy).

109 Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment of punishment, Juan E. Méndez, Human Rights Council A/HRC/22/53, paras. 45-50 (2013), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

110 *Id.*

111 *Id.* at para. 49.

In the emblematic decision of *K.L. v. Peru*, the Human Rights Committee (hereinafter "HRC") defined the important intersections between fetal malformation and women's psychological and mental health when determining whether a 17 year-old girl was entitled to a lawful therapeutic abortion.[112] K.L. was denied an abortion for an anencephalic fetus,[113] which posed risks to her life and mental health if the pregnancy continued. The HRC applied a holistic definition of health, as supported by the WHO,[114] and recognized that the preventable and foreseeable psychological distress in which K.L. suffered was caused by the "omission on the part of the state in not enabling [K.L.] to benefit from a therapeutic abortion."[115] Furthermore, the Committee stated that K.L.'s forced pregnancy amounted to a violation under article 7 of the ICCPR,[116] finding that the denial of a lawful abortion violated her right to privacy and right to be free from cruel, inhumane and degrading treatment.[117]

The Committee Against Torture and Cruel, Inhuman, and Degrading Treatment (hereinafter, "CAT" or "CAT Committee") has since consistently issued concluding observations and recommendations to state parties to remove all punitive measures for women who have undergone abortion, especially in cases of rape, incest, and severe fetal malformation, and to create unambiguous technical guidelines for lawful abortion services for medical professionals in order to decriminalize medical practices and ensure medical services for women.[118] In viewing women's experiences as a form of torture or cruel, inhumane, or degrading treatment ("CIDT"), advocates reorient the concept of torture to also encompass those forms of violations of

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[112] *See* K.L. v. Peru, Communication No. 1153/2003, Human Rights Committee, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) [hereinafter *K.L. v. Peru*].

[113] In cases of anencephaly, either the fetus does not survive to term or the baby dies shortly after being born. *Birth Defects: Facts About Anencephaly*, CENTER FOR DISEASE CONTROL AND PROTECTION, https://www.cdc.gov/ncbddd/birthdefects/anencephaly.html.

[114] Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948 [hereinafter WHO] (finding that "[h]ealth is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.").

[115] *K.L. v. Peru*, para. 6.3.

[116] International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171, art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

[117] *K.L. v. Peru*, para. 6.3.

[118] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, arts. 2(1), 12, 14, G.A. Res. 39/46, UN GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987); *see* Peru, para. 2.3, U.N. Doc. CAT/C/PERU/CO/4 (2006).

dignity and physical integrity that are more relevant to women's experiences involving reproductive health and sexual autonomy.[119] Given that the prohibition of CIDT is a non-derogable right and essentially a *jus cogens* norm under international law,[120] framing women's experiences of pain and suffering as a result of reproductive and sexual rights violations as CIDT "addresses women's suffering as a human rights issue and demands higher accountability from States in their role of such suffering."[121] Examining the specific risks and conditions experienced by women to analyze torture and CIDT is critical to ensure that states recognize and address violations of women's reproductive and sexual rights to the same degree as other forms of torture and CIDT.[122]

III. EXPLICIT OBLIGATIONS FOR STATE PARTIES' TO ENSURE REPRODUCTIVE RIGHTS

In order to effectively protect and fulfill the fundamental rights provided in the CRC that underpin sexual and reproductive rights, the CRC Committee must be explicit in its concluding observations during periodic review sessions as well as in its General Comments to states. In order to ensure state parties' compliance with the implicit sexual and reproductive rights encompassed in the Convention, the CRC Committee must make specific recommendations to states parties on how to overcome barriers to access, such as a lack of availability to certain methods, legal restrictions, excessive regulation, harmful cultural practices, and pervading social stigmas. One way to achieve compliance is to have a minimum standard of access that all states must follow. In making specific recommendations for these particular obligations, greater compliance across state parties can be achieved and reproductive rights can more effectively be realized at a global level.

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[119] *See generally,* Alyson Zureick, *(En)Gendering Suffering: Denial of Abortion as a Form of Cruel, Inhuman, or Degrading Treatment*, 38 FORDHAM INT'L L.J. 99 (2015). (examining the trend among human rights bodies to consider the denial of abortion access to amount to cruel, inhuman, or degrading treatment under multiple human rights treaties).

[120] *Id.; See, e.g.*, *Core Human Rights in the Two Covenants*, OFFICE OF THE HIGH COMM'R OF HUMAN RIGHTS (OHCHR) (2013), *available at*, http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf. Even in exceptional situations, certain core human rights must apply at all times. Art. 7 of the ICCPR is a non-derogable right; *see also* Comm. Against Torture, *General Comment No. 2 Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007) ("Since the adoption of the Convention against Torture, the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law.").

[121] *See generally,* Zureick, *supra* note 119.

[122] *Id.*

A. Eliminate Third Party, Parental, or Legal Guardian Consent Policies

In the context of reproduction and healthcare, laws denying adolescents and girls decision-making capacity or requiring that they obtain parental consent undermines adolescent's autonomy. The CRC acknowledges the role of parents and other caregivers to provide direction and guidance to a child, consistent with the child's "evolving capacity."[123] Children and adolescents who understand that they need to protect their reproductive health, and who request reproductive health services to that end, can be considered capable of receiving reproductive healthcare information and services without parental oversight.[124] A child who is capable of expressing a view has a right to do so and that view must be taken into account, according to her age and maturity.[125] As a child's capacity evolves, her rights and responsibilities gradually supersede those of her parents or guardians.[126] A child's rights and responsibilities may supersede those of her parents or guardians at "no fixed age, and may occur at different times for different areas" of such choices and determinations.[127]

Despite the CRC's recognition of the "evolving capacities" of adolescents to make decisions in matters affecting their lives,[128] many states require parental or guardian consent in order for adolescents to access any reproductive health information and services. Such requirements can deter adolescents from seeking necessary care because adolescents are afraid that their parents could discover that they are, or are considering becoming, sexually active.[129] Because adolescents are unlikely to independently challenge laws depriving them of their decision-making capability, due to social stigma and lack of access to information and representation, such

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[123] Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 5, G.A. Res. 44/25, annex, U.N. GAOR, 4th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

[124] Patty Skuster, *Young Women and Abortion: Avoiding Legal and Policy Barriers*, IPAS, 2 (2013); Rebecca J. Cook & Bernard Dickens, *Recognizing Adolescents' Evolving Capacities to Exercise Choice in Reproductive Health Care*, 70 INT'L J. OF GYNECOL. & OBSTETRICS 22-23 (2000); Gerison Lansdown, *The evolving capacities of the child*, UNITED NATIONS CHILDREN'S FUND (UNICEF) AND SAVE THE CHILDREN (2005), https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf.

[125] Skuster, *supra* note 124; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, U.N.GAOR, 44th Sess., Supp. No. 49, at 166, art. 12, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990).

[126] Skuster, *supra* note 124.

[127] *Id.* at 8.

[128] *See* Cook & Dickens, *supra,* note 15 at 22-23.

[129] *See State of Denial: Adolescent Reproductive Rights in Zimbabwe*, CENTER FOR REPRODUCTIVE LAW AND POLICY, 58 (2002).

parental consent laws greatly limit access to reproductive healthcare information and services.

In addition to parental authorization, other third-party authorizations for reproductive health services, such as spousal or judicial authorizations, prevent adolescents from making autonomous decisions about their bodies. Such authorization requirements perpetuate stereotypes about girls and adolescents, which prevents them from exercising their right to health. The CRC Committee has strongly advocated that adolescent reproductive health services be available without parental consent.[130] The CEDAW Committee has made clear that states should not require third party authorizations for women to access to reproductive health services, such as that of husbands, parents, and health authorities[131] and has asked state parties to eliminate parental consent for contraception.[132] To prevent violations of adolescent's human rights, including their rights to health and an effective remedy, it is critical that states enshrine adolescents' rights to make decision about their reproductive health in their domestic laws and remove third-party authorization requirements for reproductive health services.

The right to freely access contraceptive information and services directly effects the enjoyment of the rights to life and health. Both the CESCR and the CEDAW Committee recognize that the right to health includes sexual and reproductive health and that contraceptive information and services are critical to uphold this right.[133] Yet requiring that adolescents have parental or legal guardian consent before accessing information and services prohibits many adolescents from receiving these services entirely. Many state parties require parental consent in order for adolescents to access contraceptive information and the stigma surrounding adolescent sexuality likewise deters adolescents from seeking reproductive health services.[134] Certain "legal and practical barriers to contraceptive information and services," such as parental or third party consent can "lead to higher rates of

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[130] *See, e.g.*, Committee on the Rights of the Child, *Concluding Observations: Barbados*, para. 25, U.N. Doc. CRC/C/15/Add.103 (1999); Committee on the Rights of the Child, *Concluding Observations: Benin*, para. 25, U.N. Doc. CRC/C/15/Add.106 (1999).

[131] CEDAW Committee, *General Recommendation 24 (Article 12, women and health*), (20th Sess., 1999), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies (Vol. II), paras. 14, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).

[132] *See, e.g.*, CEDAW Committee, *Concluding Observations: Seychelles*, para. 47(b), U.N. Doc. CRC/C/15/ADD.189 (2002).

[133] CEDAW Committee, *General Recommendations No. 24*, *supra* note 89, at para. 1; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The right to the highest attainable standard of health*, (22nd Sess., 2000), para. 8, U.N. Doc. E/C.12/2000/4 (2000).

[134] *See The Reproductive Rights of Adolescents: A Tool for Health and Empowerment*, *supra* note 5.

unwanted pregnancies—with the attendant risks of unsafe abortion or maternal mortality and morbidity—violating [adolescents'] rights to life and health."[135] There is a direct relation between clandestine and unsafe abortions and elevated maternal mortality rates.[136]

Prohibiting adolescents' access to necessary sexual and reproductive health education and information by requiring parental consent violates adolescents' right to education and information. Comprehensive sexual education and information increases the use of contraception among adolescents and has a direct effect on adolescence pregnancy as it delays the onset of sexual activity and educates adolescents on the attendant risks of pregnancy.[137] The inability of adolescents to access information on sexual and reproductive rights can have severe consequences for their overall health including inhibited access to contraception information and services effects rates of adolescence pregnancy, maternal mortality, and unsafe and clandestine abortions.

B. Decriminalize Sexual Relations Between Adolescents

During the developmental stage of adolescence, an individual ceases to be a child, no longer a person devoid of physical and mental maturity, and emerges as an autonomous person that defines his or her own emotions, values and identity.[138] The minimum age of sexual consent is the age from which someone is deemed capable of consenting to sexual activity.[139]

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[135] Ximena Andión Ibañez et al., *supra* note 2 at 13; *Domestic Sexual and Reproductive Health Strategy, Strategic National Plan for the Reduction of Maternal and Perinatal Mortality 2009-2015*, GENERAL DEP'T OF HEALTH, MINISTRY OF HEALTH, PERU 27 (2009) *available at*, http://www.minsa.gob.pe/servicios/serums/2009/normas/1_penrmm.pdf.

[136] CESCR, *Concluding Observations: Benin*, U.N. Doc. CESCR E/C.12/1/Add.78 (2002); CESCR, *Concluding Observations: Brazil*, U.N. Doc. E/C.12/1/Add.87 (2003); CESCR Committee, *Concluding Observations: Cameroon*, U.N. Doc. E/C.12/1/Add.40 (1999); CESCR Committee, *Concluding Observations: Republic of Mauritius*, U.N. Doc. E/C.12/1994/8 (1994); CESCR Committee, *Concluding Observations: Mexico*, U.N. Doc. E/C.12/1/Add.41 (1999); CESCR Committee, *Concluding Observations: Mexico* U.N. Doc. E/C.12/MEX/CO/4 (2006); CESCR Committee, *Concluding Observations: Nepal*, U.N. Doc. E/C.12/1/Add.66 (2001); CESCR Committee, *Concluding Observations*: *Panama*, U.N. Doc. E/C.12/1/Add.64 (2001); CESCR Committee, *Final Observations: Paraguay*, U.N. Doc. E/C.12/PRY/CO/3 (2008); CESCR Committee, *Concluding Observations: Poland*, U.N. Doc. E/C.12/1/Add.26 (1998); CESCR Committee, *Concluding Observations*: *Russian Federation*, U.N. Doc. E/C.12/1/Add.94 (2003); CESCR Committee, *Concluding Observations: Senegal*, U.N. Doc. E/C.12/1/Add.62 (2001).

[137] Ximena Andión Ibañez et al., *supra* note 2 at 13.

[138] Rossina Guerrero, *The Criminalization of Sexual Relations Between Adolescents and Their Effect on the Exercise of Sexual and Reproductive Rights*, 30 REV. PERU MED. EXP. SAULD PUBLICA 3, (2013) [translated].

[139] *Id.*

Through this lens various countries have established age minimums for adolescents, often at or around 14 and 15 years of age.[140]

A critical issue that arises in establishing minimum ages of sexual consent relates to the criminalization of sexual activity between adolescents who are both under the age of sexual consent. In this regard, consent is the principal standard. The CRC Committee, in its elaboration on child sexual abuse, refers to the "notion of equal power as a proxy to define genuine consent" in the case of sexual relations between persons under the age of sexual consent.[141] The CRC Committee emphasized that any form of pressure from one adolescent on another characterizes abuse and is considered abuse if the "child offender is significantly older than the child victim or uses power, threat or other means of pressure."[142] The CRC Committee also states that "sexual activities between children are not considered sexual abuse if the children are older than the age limit defined by the State party for consensual sexual activities."[143] However, if the state party's legislation surrounding sexual relations between two adolescents under the age of consent sets the minimum age too high, or is too strict, this often leads to the criminalization of attitudes rather than the protection of adolescents. If a state party makes sexual activity illegal under an age where most adolescents are already in practice sexually active, the state prevents adolescents from accessing contraceptive services and information. In protecting adolescents from sexual abuse and exploitation, the state should not criminalize adolescents' behaviors, which in turn has a negative impact on access to sexual and reproductive health and reinforces harmful stereotypes and stigma about adolescent sexuality.

Consensual sexual relations between adolescents should not be penalized under states parties' criminal codes and adolescents should have their right of sexual freedom recognized. Criminalizing sexual relations between adolescents reinforces the harmful stigma that surrounds consensual sexual relations. This decreases adolescents' access to sexual and reproductive health services and information because many adolescents are afraid of the social and criminal repercussions they may face if they seek services and information. States parties must decriminalize sexual relations between adolescents to ensure full, uninhibited access to sexual and reproductive health.

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[140] *Id.*; *see also*, Vanessa Sedletzki et al., *Legal minimum ages and the realization of adolescents' rights*, UNITED NATIONS INTERNATIONAL CHILDREN'S FUND (UNICEF) 24 (2015).

[141] Vanessa Sedletzki et al., *supra* note 140 at 24.

[142] Committee on the Rights of the Child (CRC Committee), *General Comment No. 13: The right of the child to freedom from all forms of violence*, (2011), para. 25, U.N. Doc. CRC/C/GC/13, http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf.

[143] *Id.*

C. Provide Access to All Methods of Contraception, Specifically Emergency Contraception

An effective way for adolescents to prevent pregnancy and avoid certain reproductive health risks is to use modern contraceptive methods.[144] The use of modern contraceptives by adolescents helps prevent unintended and unwanted pregnancies, which thereby improves the overall reproductive health of the adolescent.[145] Comprehensive contraceptive services and information should be equally provided to everyone, and every adolescent should be ensured the opportunity to make an informed choice about their preferred method and use of modern contraception.[146] Globally, there is a high unmet need for contraception,[147] and this can result in unwanted pregnancies and unsafe abortions. Approximately 222 million women have an unmet need for modern contraception.[148] Through laws, policies, and practices, state parties sometimes limit availability of certain contraceptive methods, such as emergency contraception, often due to misconceptions about the method's effects and use.[149]

Emergency contraception is a safe and effective means of preventing unwanted pregnancies.[150] Its intended use is for unique situations where contraception is required in the event of unprotected sexual intercourse or other contraceptive failure.[151] Emergency contraception is a hormonal contraceptive method considered to be an essential medicine by the WHO.[152] Emergency contraception is "particularly valuable for victims of

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[144] *See generally*, Jacqueline E. Darroch, et al., *Adding it Up: Costs and Benefits of Meeting Contraceptive Needs of Adolescents*, GUTTMACHER INSTITUTE (2016), https://www.guttmacher.org/report/adding-it-meeting-contraceptive-needs-of-adolescents.

[145] *Id.* at 10. ("If all 23 million adolescent women with an unmet need for modern contraception were to receive improved contraceptive services, unintended pregnancies would drop by 59% from current levels, or by an estimated 6.0 million per year.")

[146] WORLD HEALTH ORGANIZATION, *Ensuring human rights in the provision of contraceptive information and services: Guidance and recommendations*, 4 (2014), http://apps.who.int/iris/bitstream/10665/102539/1/9789241506748_eng.pdf.

[147] *Id.*

[148] *Id.*

[149] *See generally*, *Governments Worldwide Put Emergency Contraception into Women's Hands: A Global Review of Laws and Policies*, CENTER FOR REPRODUCTIVE RIGHTS (2004), http://reproductiverights.org/sites/default/files/documents/pub_bp_govtswwec.pdf; *and Emergency Contraception: Fact Sheet*, WORLD HEALTH ORGANIZATION (WHO) (2016), http://who.int/mediacentre/factsheets/fs244/en/.

[150] *Id.*

[151] *Id.*

[152] As part of this core obligation, states should ensure that the commodities listed in national formularies are based on the WHO model list of essential medicines, which guides the procurement and supply of medicines in the public sector. A wide range of contraceptive methods, including emergency contraception, is included in the core list of essential

sexual violence, adolescents, and other marginalized groups who may have greater difficulty in accessing other contraceptive methods."[153] However, emergency contraception is one of the most restricted forms of modern contraceptives, partially due to misinformation about its safety and misconception that it acts as an abortifacient.[154] Unfortunately, state parties' denial of access to emergency contraception can force adolescents to carry unwanted pregnancies to term, placing their health and life at risk, or may force the adolescent to resort to clandestine and unsafe options for abortion.[155] The barriers adolescents face in accessing emergency contraception include "legislative or policy restrictions or the absence of a clear government policy on the provision of such contraceptives; requirements for doctor's prescription; parental consent and minimum age requirements; and physician unwillingness to provide adolescents with emergency contraception."[156] The right to contraceptive information and services, however, requires that states remove barriers and ensure access to emergency contraception to adolescents.

Victims of sexual assault are disproportionately affected by prohibiting access to emergency contraception.[157] Such contraception is an effective and safe way in preventing pregnancy and preventing a pregnancy caused by rape can decrease the occurrence of unsafe and clandestine abortion, especially in a state where abortion is criminalized or restricted and the right to health is narrowly interpreted.[158]

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medicines. *WHO model list of essential medicines, 17th list*, WORLD HEALTH ORGANIZATION (2011), http://whqlibdoc.who.int/ hq/2011/a95053_eng.pdf; *see also* CESCR General Comment No. 14, *supra* note 1.

[153] Ximena Andión Ibañez et al., *supra* note 2 at 16; *see also, Emergency Contraception: Fact Sheet*, *supra* note 149.

[154] *EC and Medical Abortion*, INTERNATIONAL CONSORTIUM FOR EMERGENCY CONTRACEPTION (2013), http://www.cecinfo.org/custom-content/uploads/2014/01/ICEC_ Medical-Abortion-Fact-Sheet_Feb-2013.pdf ("[c]onfusion about the two methods [emergency contraception and abortion] has often led to barriers to accessing ECPs. Significant opposition to ECP access has emerged based on the assertion that ECPs cause abortion and therefore cannot be provided in settings where abortion is restricted."); *see also* Elizabeth Wesley & Anna Glasier, *Emergency Contraception: Dispelling Myths and Misperceptions*, 88 BULLETIN OF THE WORLD HEALTH ORGANIZATION 4 (2010), *available at*, http://who.int/bulletin/volumes/88/4/10-077446/en/.

[155] Gilda Sedgh et al., *Abortion Incidence Between 1990 and 2014: Global, Regional and Subregional Levels And Trends*, THE LANCET (2016), http://www.thelancet.com/journals/ lancet/article/PIIS0140-6736(16)30380-4/fulltext.

[156] Ximena Andión Ibañez et al., *supra* note 2 at 16.

[157] *Governments Worldwide Put Emergency Contraception into Women's Hands: A Global Review of Laws and Policies*, *supra* note 149 at 9.

[158] Under the Convention on the Rights of the Child, states are obligated to adopt measures to protect the physical and mental integrity of victims of rape. Preventing pregnancy after rape through the use of emergency contraception improves victim's chances of

D. Decriminalize Abortion

State laws that criminalize abortion for both women and adolescents assume that threats of imprisonment will prevent women from having an abortion. Criminalizing abortion, however, does little to reduce the number of abortions.[159] Criminalization merely makes abortions unsafe and further stigmatizes the healthcare procedure. State parties should ensure that their laws and policies are not used to shame or imprison women of adolescents for ending a pregnancy. The CEDAW Committee has maintained that restrictive laws violate women and adolescent's human rights.[160] Furthermore, treaty body committees have affirmed that in cases where abortion is legal, it needs to be accessible.[161] The CRC Committee has consistently expressed concerns over punitive abortion legislation,[162] and has suggested state parties review legislation on therapeutic abortion so as to prevent illegal and unsafe abortion.[163]

Adolescents who are forced to carry their pregnancies to term that are the product of rape are subjected to cruel and unusual treatment. Rape is one of the most serious traumas that a person can endure and the consequences can be devastating, carrying both damaging mental and physical consequences.[164] When physical or mental disorders that manifest as a result of rape are not addressed, or are increased in stressful environments, the quality of life of the victim is diminished and the individual has difficulty functioning in normal familial or social situations.[165] A circumstance that increases stress is the existence of a pregnancy, which is a permanent reminder of the assault and the victim's trauma.[166] If the woman is forced to continue the pregnancy against her will, neurochemical and hormonal

recovering her physical and psychological health. G.A. Res. 44/25, U.N. Doc. A/44/49, Convention on the Rights of the Child, arts. 19, 34, 37, 39 (Nov. 20, 1989).

159 *See* CENTER FOR REPRODUCTIVE RIGHTS, *Bringing Rights to Bear: Abortion and Human Rights* 8 (2008), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/BRB_abortion_hr_revised_3.09_WEB.PDF.

160 *See L.C. v. Peru*, *supra* note 66.

161 *Bringing Rights to Bear: Abortion and Human Rights*, *supra* note 157; *L.C. v. Peru*, *supra* note 66.

162 *See, e.g.*, Chad, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); Chile, para. 55, U.N. Doc. CRC/C/CHL/CO/3 (2007); Palau, para. 46, U.N. Doc. CRC/C/15/Add.149 (2001); Uruguay, para. 51, U.N. Doc. CRC/C/URY/CO/2 (2007).

163 *See, e.g.*, Chad, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); Chile, para. 56, U.N. Doc. CRC/C/CHL/CO/3 (2007); Palau, para. 47, U.N. Doc. CRC/C/15/Add.149 (2001).

164 Marta B. Rondón, *Impacto del Embarazo Luego de una Violación: Argumentos para Proteger la Salud Mental*, PROMSEX 17, 20 (2015) [translated].

165 *Id.* at 22.

166 *Id.* at 25.

response of the brain are prolonged and become harmful to the woman.[167] The woman's suffering is then extended and the risk of suffering a severe pathological disorder increases because the most common manifestation of altered brain function occurs postpartum and there is a risk of abuse for the newborn.[168] The psychological effect on victims of rape who are forced to carry their pregnancy to term is cruel, unusual, and degrading treatment. Abortion should be legalized and permitted in all cases of rape, which is not uncommon in many states.[169]

The perennial reminder of the sexual assault is avoidable through appropriate distribution of contraception, including uninhibited access to emergency contraception for victims of sexual violence, as well as access to abortive services in these cases. The Human Rights Committee in *K.L. v. Peru* held that the denial of a therapeutic abortion constitutes a violation of the right to life and security and can amount to torture or cruel, inhuman or degrading treatment.[170] Additionally, the CEDAW Committee has maintained that unsafe abortion is a major cause of maternal morbidity and mortality and has recommended that states parties ensure the availability of safe abortion and access to quality post-abortion care, and, specifically, to review legislation on abortion and provide additional exceptions in cases where the pregnancy is result of rape or incest.[171]

The right to be free from torture and cruel, inhumane and degrading treatment prohibits actions that cause physical or mental suffering or lasting physical or psychological effects. Policies and practices that violate adolescents' rights to make informed voluntary decisions regarding their sexuality and reproduction violate these prohibitions.[172]

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[167] *Id.* at 25-26.

[168] *Id.* at 31.

[169] For example, in the case of the State of Peru, the concern over the criminalization of abortion in cases of rape is augmented by the prevalence of sexual violence: approximately 12% of Peruvian women report that they have been forced to have sexual intercourse at least once in their life. *Family Demographic and Health Survey 2014*, INSTITUTO NACIONAL DE ESTADISTICA E INFORMATICA (INEI) 370 (2014), http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1211/pdf/Libro.pdf. In 2010, 20% of adolescent girls treated at Women's Emergency Centers in Peru were pregnant as a result of rape. *Data Sheet No. 3*, UNITED NATIONS POPULATION FUND (UNFPA) & THE MINISTRY OF HEALTH (2012), *available at*, http://www.unfpa.org.pe/publicaciones/publicacionesperu/UNFPA-AECID- Hoja-de-Datos-3.pdf.

[170] *K.L. v. Peru*, *supra* note 112.

[171] *L.C. v. Peru*, *supra* note 66, at ¶ 9(b)(iii).

[172] *K.L. v. Peru*, *supra* note 112; *Alyne da Silva Pimental Teixeria v. Brazil*, CEDAW Communication No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011); *see* CESCR Committee, General Recommendation no. 22 on the right to sexual and reproductive health (art. 12 of the International Covenant on Civil and Political Rights) para. 10 (2016) ("lack of emergency obstetric care services or denial of abortion often leads to maternal mortality and

E. Strengthening the CRC Committee

Although the CRC recognizes the reproductive and sexual rights of adolescents and continues to uphold these rights protections through its concluding observations and general comments, the CRC Committee can still do more to appropriately utilize its mechanisms to enforce or condemn state parties for their failure to eradicate harmful practices and policies that jeopardize adolescents' reproductive rights, as the Committee has done for other rights violations under the Convention.

The Committee must be explicit in its recommendations and require that all state parties adopt a minimum standard regarding contraception, one which includes emergency contraception and abortion, as addressed in detail above in Part IV. In requiring a minimum standard through its periodic review processes and general comments, the CRC Committee can ensure proper state implementation and compliance. Specific recommendations for such rights guarantees under the Convention makes clear to states their obligations in upholding rights and fulfilling protections. The CRC Committee can create a standard for adolescents' sexual and reproductive rights for all state parties by issuing consistent and explicit recommendations. Concrete recommendations during a state's periodic review increases chances of that state party's action in implementing the recommendation. Providing an explicit, concrete solution on how to address the rights violation or deficiency makes it more likely the state party will comply.

Additionally, the best course of action in expanding and defining the implicit sexual and reproductive rights in the CRC, and thus setting minimum standards,[173] is for the CRC Committee to approve and draft a general comment or recommendation on the right to sexual and reproductive health. Treaty body committees publish interpretations of the provisions of their respective treaties in the form of general comments or general

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morbidity, which in turn constitutes a violation of the right to life or security, or can amount to torture or cruel, inhuman or degrading treatment."). The Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued recommendations to the state of Peru to modify the general prohibition of abortion, authorize therapeutic abortion and abortion in cases where the pregnancy is the result of rape or incest, and provide free medical services to victims of rape; additionally, the Committee recommended that Peru legalize the widespread distribution of emergency contraception, specifically in the case of victims of rape. Peru's current policies on abortion and emergency contraception in the cases of rape infringed upon the rights held within the Convention. Committee Against Torture, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Peru,* U.N. Doc. CAT/C/PER/CO/5-6 (2013).

[173] Referring to the minimum standard suggestions, this is addressed in Part IV of this paper. *See* discussion *infra* Part IV.

recommendations.[174] These general comments serve as clarifications and often provide further obligations on state parties to guarantee full compliance with the Convention. In March 2016, the CESCR published General Comment No. 22, the first General Comment from any treaty body to explicitly address and clarify the right to sexual and reproductive health.[175] The general comment codifies the CESCR views on reproductive rights, in the hopes to provide a clear understanding of state party obligations and to point to where the state government and civil society may be failing in their efforts to implement the provisions and comply with the Covenant.[176] While this is certainly a positive development in reproductive and sexual rights advancement, the general comment broadly pointed to state obligations when it came to adolescent rights and simply echoes treaty body committees' unsubstantial language in concluding observations. While consistency through reiteration is necessary when attempting to codify minimum standards, this does little to clarify or define state obligations under the Covenant. Thus, it is my view that the CRC Committee should approve a general comment on sexual and reproductive health for adolescents specifically. A general comment devoted to this narrow issue will better serve state parties in their attempts to implement and comply with the CRC and will codify minimum standards of sexual and reproductive rights.

The CRC Committee is currently working towards publishing a general comment on realizing the rights of children during adolescence.[177] This is encouraging because the Committee will formally address the unique needs of adolescents in an independent document devoted to the issue. The CRC Committee should, however, employ this opportunity to expand on and advance the unique sexual and reproductive health rights and needs of adolescents, and, again, include concrete minimum standards that all state parties can effectively comply and implement at their national level.

CONCLUSION

The CRC recognizes that adolescents have reproductive and sexual

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[174] UNITED NATIONS OFFICE OF THE HIGH COMM'R, *Human Rights Treaty Bodies – General Comments*, (last accessed Dec 6, 2016) http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx.

[175] *Right to Sexual and Reproductive Health Indivisible from Other Human Rights*, UNITED NATIONS HUMAN RIGHTS (Mar. 8, 2016), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17168&LangID=E.

[176] *Id.*

[177] Committee on the Rights of the Child, Draft General Comment on the implementation of the rights of the child during adolescence: Call for comments, (last accessed Dec 6 2016), http://www.ohchr.org/EN/HRBodies/CRC/Pages/childduringadolescence.aspx.

rights under international human rights law and continues to uphold these rights protections through its concluding observations and general comments. If the CRC Committee is explicit in its recommendations, however, and requires that all state parties adopt a minimum standard regarding contraception, one that includes emergency contraception and abortion, and decriminalizes sexual relations between adolescents and eliminates parental and third-party consent laws, the CRC Committee can better ensure state implementation and compliance. In strengthening its language in concluding observations during state periodic review, and publishing a general comment on adolescents' sexual and reproductive health rights, the CRC is in a better position to strengthen and expand states' understanding of the right to reproductive health and autonomy—a right that underpins all other essential rights.