IPPF

From choice, a world of possibilities

Understanding young people's right to decide

03

Are protection and autonomy opposing concepts?

About the Right to Decide series

The International Planned Parenthood Federation (IPPF) works towards a world where women, men and young people everywhere have control over their own bodies, and therefore their destinies. We defend the right of all young people to enjoy their sexuality free from ill-health, unwanted pregnancy, violence and discrimination.

IPPF believes that all young people have the right to make autonomous decisions about their sexual and reproductive health in line with their evolving capacities. We also recognize that the estimated 1.7 billion young people in the world are sexual beings with diverse needs, desires, hopes, dreams, problems, concerns, preferences and priorities. Amongst the 1.7 billion, there are young people living with HIV; young women facing unwanted pregnancy and seeking abortion services; young people with an unmet need for contraception; people with sexually transmitted infections and lesbian, gay, transgender and bisexual young people. IPPF advocates for the eradication of barriers that inhibit access to comprehensive sexuality education, information and sexual and reproductive health services that respond to all young people's needs and realities.

One such barrier that impedes young people's access to education and services is the widely-held and historically-rooted belief that young people are incapable of making positive decisions about their own sexual and reproductive health. IPPF's experience providing education, information and services around the world for the past 60 years tells us that this is untrue. Thus, in 2010 IPPF initiated a year-long project to learn more about young people, autonomy and sexual rights from experts working on these topics in various fields. We wanted to understand the theory behind the laws, policies and practices that both facilitate and restrict young people's autonomy as well as the key factors contributing to the development of young people as autonomous decision-makers.

IPPF commissioned five experts to answer the following questions that form the basis of the papers you find in the Right to Decide series:

1. What is childhood? What do we mean when we say 'young person'?
2. Why is it important to develop young people's capacities for autonomous decision making?
3. Are protection and autonomy opposing concepts?
4. How can parents support young people's autonomous decision making?
5. How do we assess young people's capacity to make autonomous decisions?

With an enhanced understanding of young people, autonomy and sexual rights, we hope to be better placed to promote and fulfill our vision of a world where young people are recognized as rights-holders, decision-makers and sexual beings whose contributions, opinions and thoughts are valued equally, particularly in relation to their own sexual and reproductive health and well-being.

About the authors

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01 Introduction[i]

Terminology

The term 'young people' refers to 10 to 24-year-olds, in line with IPPF policy. Unless otherwise specified, the term 'adolescent(s)' refers to 10 to 19-year-olds (WHO definition). However, the terms 'child' and 'children' and references to the UN Convention on the Rights of the Child (CRC) apply only to under-18s.

Conceptual framework

Balancing young people's rights to protection and autonomy is highly context-specific. IPPF has recognised that: "Translating evolving capacities into practice involves a dynamic process of striking a balance between protecting young people, while respecting their autonomy. Health care providers, teachers and others must tailor their services and guidance to the particular capacities of the individual at a given point in time."[ii] This paper therefore proposes a conceptual basis for programming, policy-making and case by case decision-making. The paper sets out the framework and introduces a series of case studies to provoke discussion.

What are the rights involved?

This paper recognises the range of 'protection' and 'autonomy' rights relevant to young people's sexual and reproductive health and rights (SRHR), as identified in the IPPF Youth Manifesto, the IPPF Charter on Sexual and Reproductive Rights (SRR) and the IPPF Declaration on sexual rights. However, the paper also draws on the *UN Convention on the Rights of the Child* which is the framework for many of the debates and thinking around autonomy as it relates to protection. It should also be noted that the *Ibero-American Convention on Rights of Youth* (age 15–24)[iii] and the *African Youth Charter* (age 15–35)[iv] contain references to specific sexual and reproductive rights.

What are the key issues involved?

The concepts of autonomy and protection are relevant to nearly all sexual and reproductive health and rights issues for young people, but in particular: decisions about reproductive healthcare; decisions about sexuality, including sexual behaviour and activity; access to information; access to services, including provision of contraceptives and abortion; age of sexual consent; age of marriage; adolescent patient's confidentiality; consensual versus non-consensual sexual activity (with and without violence); and protection from all forms of violence including harmful traditional practices.

02 Are protection and autonomy opposing concepts?

Protection and autonomy are mutually reinforcing

It is important to distinguish between universal protective rights of childhood that apply irrespective of individual children's capacities, and participatory or emancipatory rights that gradually transfer to the child. However, protection and autonomy are not opposing concepts. They are mutually reinforcing. Protection is necessary in order to develop autonomy and autonomy is necessary to ensure protection.

Children need to grow up in a safe environment which nurtures and promotes their optimal physical, cognitive, emotional, social and moral development. This includes the development of life skills integral to autonomy such as critical thinking and informed decision-making which are so important in relation to SRHR. Furthermore, creating a protective environment facilitates the development of autonomy by opening up opportunities for decision-making which young people may not otherwise have. Take, for example the provision in some countries of a protective framework which regulates the conditions in which young people can learn to drive – i.e. a series of lessons facilitating the controlled development of increasingly complex skills, monitoring by a qualified or experienced instructor, signalling the young person's inexperience to others through the displaying of learner 'L-plates', and the eventual passing of a test of competence. This framework helps to keep the young person, and others, physically safe whilst gradually building their competence to make independent decisions in situations of high risk. Without the existence of the protective framework, these young people would not be allowed to drive at all, thus causing them to miss out on an opportunity to learn an important skill which can greatly contribute to their autonomy. In relation specifically to SRHR, internet legal and industry safeguards and filtering software can provide a protective environment which enables young people to safely access helpful online information and advice regarding SRHR. The absence of this protective framework might lead to concerned caregivers blocking young people's access to the internet altogether, thus stifling an important means of strengthening their autonomy and self-protection. Conversely, all the externally imposed protective measures in the world, such as legislation, policies and professional codes of conduct, are not sufficient to keep young people safe if they themselves are not able to recognise potentially dangerous or abusive situations or take appropriate action to minimise risks. Likewise, the provision of youth-friendly SRH services is of limited use if young people are not aware of their existence, purpose or how to access them.

The mutually reinforcing nature of protection and autonomy is also highlighted by a rights-based and holistic approach to protection. This is an approach which goes beyond a limited conceptualisation of protection as simply a list of 'protection rights' (i.e. the right to be protected from harm) and which embraces, instead, a broader vision of protection as the positive promotion of optimal development and well-being. It is an approach which promotes respect for the young person as a rights-bearing individual rather than as a passive recipient 'beneficiary' of services or as a 'victim'. It also situates concepts such as 'evolving capacities' and 'best interests' in the context of all rights to which children and young people are entitled. It is well illustrated in, for example, the South African Constitution:

> "In South Africa, health rights are directly connected to the constitutional right to dignity. Furthermore, the right to dignity is central to the right to physical integrity. [..] If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents."[v]

This broader definition of protection is supported by the work of the UN Committee on the Rights of the Child[vi]. It constitutes a paradigm shift which can help transform traditional views of protection and autonomy as opposing concepts leading to conflicts of interest, into a more sophisticated conceptualisation of protection and autonomy as being inextricably inter-twined and mutually reinforcing.

Within this mutually reinforcing framework, two principles are frequently invoked to guide decision-making regarding policy and interventions: *'evolving capacities'* and *'best interests'*. These principles are integral to the CRC: Article 3 requires that the best interests of the child must be 'a primary consideration' in all actions affecting them; Article 5 states that while parents and other caregivers have rights and responsibilities to provide direction and guidance to children, it must be done so in *accordance with their evolving capacities*, and to enable the child to exercise their rights; Article 18 emphasises that the best interests of the child should be parents' basic concern.

A clear implication of Article 5 is that not only should caregivers respect the capacities of children to exercise rights on their own behalf, but that, equally, they should not impose excessive demands on them beyond their capacities. Furthermore, the State has an explicit role to play in introducing the necessary legislative, policy, educational and administrative measures to ensure that children are not exposed to experiences beyond their developmental capacities. Adults' perceptions and expectations of children's developmental capacities are strongly linked to their cultural context. For example, pre-pubescent children in one culture may be expected to take responsibility for contributing to income generation and managing the household, whereas in another culture these responsibilities are deferred until late adolescence or adulthood. These widely differing approaches to childhood reveal that a prescriptive and deterministic conception of children's development is inadequate to inform our understanding of children's capacities. Childhood is a social as well as a biological construct, and children's development is influenced by a wide range of social, economic and cultural factors.[vii] It is important to bear this understanding in mind when developing legislation and policy designed to create an appropriately protective environment relating to SRHR, also acknowledging and respecting children's evolving capacities.

In summary, duty-bearers – such as caregivers, professionals and the State – are obliged to maintain a balance between protection and autonomy, guided by the 'evolving capacities' and 'best interests' principles. Different cultures may err on the side of either *over*-protection (based on under-estimating young people's capacities, and/or over-emphasising risks in the external environment) or *under*-protection (based on over-estimating young people's capacities and/or under-emphasising risks in the external environment, in the face of which even empowered young people find it difficult to protect themselves). See Appendix 2 for a diagrammatic representation of how the concepts are mutually reinforcing and the need to maintain the protection-autonomy balance.

The challenges in maintaining the protection-autonomy balance specifically in relation to SRHR

Decision-making in respect of SRHR can be extremely complex and ethically challenging. The concepts of evolving capacities and best interests provide an important principled lens through which to approach the issues, but they do not provide simple solutions. Indeed, the judgment between children as dependents requiring protection and as independent individuals seeking autonomy is "perhaps the most difficult and controversial issue in children's rights."[viii]

It is particularly complex in the field of SRHR in light of the extreme sensitivity of the issues involved, the very broad range of cultural contexts in which they must be applied and the greatly varying levels of developmental maturity amongst the young people involved. Children are entitled to have their moral, cognitive, and social capacities respected while simultaneously recognising their entitlement to protection from environments and experiences that will damage their immediate and long-term well-being and that are disproportionately likely to cause them harm as a consequence of their youth. However, whilst it is easy to identify, for example, hazardous child labour, participation in armed conflict, female genital mutilation, sexual abuse and exploitation as 'harmful', the issues of participation in non-hazardous child labour and consensual sexual activity are more complex. In the latter case, even if measures are taken to protect against harmful physical consequences of sexual activity (such as STIs and unwanted pregnancy), early initiation into a sexual relationship can still expose a child to intense emotional harm, for example as a result of stigma and discrimination against them from within a peer group or community, or the experience of 'heartbreak' within a relationship. The potential negative impact of such emotional harm on adolescents' mental health should not be underestimated and can include self-harm, suicide ideation, attempted and actual suicide.[ix]

The concept of harm in this context is far from being static. Not only do cultural factors strongly impact on interpretations of harm, but they also can serve to mitigate or intensify potential harm. Clearly there are widely differing understandings of the harm or benefits associated with particular behaviours in certain cultural contexts. For example, participation in religious practices such as fasting or visibly displaying religious symbols through jewellery or clothing is expected of young people in some cultures and can serve to protect them from stigma, discrimination and even violence, whereas in other cultures these same behaviours are prohibited and their practice can, conversely, *lead* to stigma, discrimination and violence. Likewise, attitudes towards participation in romantic or sexual relationships during adolescence are highly context-specific. In most Western societies, there is fairly broad acceptance that they constitute an important stage of 'normal' social development.[x] In some other cultures, any such involvement is strongly discouraged or condemned. These prevailing cultural norms will inevitably influence the emotional impact of young people's behaviour, including adolescent relationships. Behaviours which are socially accepted and not stigmatised within a given society are far less likely to lead to negative emotional outcomes. Adolescent 'binge drinking' of alcohol or a teenage pregnancy outside marriage in the UK, while maybe not desirable, will almost certainly have less detrimental outcomes than their equivalents in

Yemen, for example. Conversely, while early marriage is now widely recognised as a child protection issue, it is likely that teenage marriage at 16 or 17, when accompanied by social endorsement and approval, may be less emotionally harmful than where it is condemned and associated with stigma and social exclusion.

In addition, individual children within a given society can and do vary significantly in their capacities to make informed or wise judgements at a particular age, making it difficult to introduce generalised policy in this field.[xi] For example, some 14-year-olds may be capable of making informed choices about starting paid employment or getting involved in a sexual relationship with someone of their own or similar age. They may well be capable of understanding the risks involved, taking the necessary precautions and making informed judgements about the nature of the work or relationship they are embarking on. However, others of similar age will not be ready for such encounters. And the situation is potentially different when the relationship is with an older employer or sexual partner who is more experienced, and more capable of manipulating or bullying the child into making decisions or giving consent. Furthermore, in practice, much of the vulnerability of children derives not from their lack of capacity, but rather, from their lack of power and status with which to exercise their rights and challenge abuses.

In summary, faced with the same behaviours or activities, children's likelihood of risk of harm will be mediated by:

- The degree of social and cultural acceptance of the behaviour or expectation
- The level of support afforded by key adults in the child's life
- The degree of agency experienced by the child in coping with the activity or situation
- The child's individual personality and strengths.[xii]

03 What is protection and who needs it?

Everyone needs protection, regardless of age, but, as indicated above, the degree to which an individual is able and/or expected to contribute towards and take responsibility for their own protection may vary according to individual capacities and circumstances.

These capacities and circumstances are strongly related to age, stages of development, personality, ability and disability, gender dynamics, socio-economic and other power dynamics, and other cultural constraints, such as discrimination, faith-based opposition to certain SRR, and lack of access to information. Although everybody needs protection – and is entitled to it as a human right – where it comes from and the forms it takes may vary considerably.

If protection is defined narrowly in terms of 'prevention of harm' then it includes the following key issues in relation to SRHR: protection from violence, abuse, exploitation, coercion, attacks on bodily integrity, harmful traditional practices such as female genital mutilation, 'honour crimes', early marriage, forced marriage and virginity testing, STIs including HIV, lack of information or misinformation, unwanted pregnancy, forced pregnancy, forced abortion, forced sterilisation, protection of privacy and confidentiality. However, a broader, rights-based definition of protection addresses the importance of respecting and promoting the human dignity and physical and psychological integrity of children and young people as rights-bearing individuals rather than perceiving them primarily as 'vulnerable', as 'victims', or as passive 'beneficiaries' of services. As outlined in Section 02, this broader definiton strongly supports the interdependence of protection and autonomy.

There are essentially three approaches to protection:

1 Creation of a legal and policy framework which defines standard parameters in order to create a safe environment, for example, minimum legal ages for sexual consent, marriage and consent to medical treatment; content regulation of the media, Internet and entertainment industries etc.

2 Controls and limitations on young people's behaviour imposed from outside or removing young people from access to harm, for example by caregivers enforcing behavioural rules regarding relationships, sexual activity and access to potentially inappropriate media content etc.

3 Empowerment or capacity building of children and young people to protect themselves and their peers, for example, through developmentally appropriate comprehensive sexuality education from an early age; life skills on critical thinking, decision-making and confidence to negotiate consensual and safe sex; technical skills such as use of condoms and contraceptives etc.

Traditionally, more emphasis has been placed approaches 1 and 2, which establish and enforce external parameters and controls on young people's behaviour. However, ideally, a balance between all three approaches is needed. A commitment to respecting the human rights of children and young people requires a move towards a much greater emphasis on approach 3: empowerment, capacity building and autonomy need to become the foundation stones of protection systems and approaches, building on the resiliencies, strengths and contributions of children and young people themselves.

Of course, children's entitlement to protection from harm necessitates the introduction of legal age limits and provisions for protective care and services. And children and young people need consistent rules and boundaries to guide their behaviours as they are growing up. However, unless initiatives designed to provide protection also recognise and respect children and young people's participation and agency, they can result in negative and unintended consequences. For example, overly rigid parental sanctions designed to prevent teenagers taking certain risks in relation to alcohol, drugs, criminal activity and sexual behaviour often means that they continue to participate in prohibited behaviours, but lie to their parents to avoid punishment. In so doing, if a problem does arise, they no longer have the advice, support and guidance of their parents to help them resolve the issue. Furthermore, reliance on external controls on children and young people's behaviour means that children grow up expecting adults to make judgements on their behalf and denies them the opportunity to learn to measure risk for themselves, and to build capacity to make informed judgements as to how to keep themselves safe. Indeed, given appropriate support, even very young children can be empowered to protect themselves: for example, a recent study of 3–5 year-olds demonstrated that, following carefully designed training sessions on 'body awareness', children as young as 3 years old can learn the inappropriateness of sexual requests, even when coming from 'good' people, although 3-year-olds had more difficulty

recognizing inappropriate-touch requests compared to 4- and 5-year-old children.[xiii]

However, it is also important to note that some risks faced by children and young people derive not from their lack of capacity or competence, but as a consequence of their lack of physical, economic or political power.[xiv] For example, children can be forced against their will to engage in criminal activity, hazardous child labour, armed conflict, or sexual activity with a member of their family, or made to marry early without their consent. Policy and legislation is therefore needed to introduce minimum ages for criminal responsibility, participation in developmentally appropriate child labour and in armed conflict, sexual consent and marriage in order to protect children from exploitation or abusive practices by those who have power over them, rather than as a consequence of their lack of capacity.

04 What does it mean to act in the 'best interests' of a child or young person?

The Committee on the Rights of the Child has emphasised that the principle of the best interests of the child must be applied in determining the implementation of all other rights. However, an assessment of the best interests of a child or young person in any given situation is not straightforward. It can be difficult to predict all possible or probable outcomes and consequences of a particular decision, and in addition, different people will assign different values to these possible outcomes.

> "If decision makers have different views […] then it follows that different decision makers could arrive at different answers to questions of what is in the child's best interests in identical situations".[xv]

For example, taken in isolation, the best interests principle can be used either to condone or to condemn a 13-year-old boy participating in a potentially violent political demonstration. This would depend on the value afforded to, on the one hand, his need to express his political views and act in association with his peers, or on the other, the negative effects of possibly being arrested and abused in detention. Similarly, female genital mutilation can be condoned or condemned depending on the value afforded to, on the one hand, a girl's social integration and being able to marry and found a family, or on the other, the negative physical and mental health effects and to respect for the girl's bodily integrity.[xvi] A rights-based approach, however, requires that the best interests of the child or young person be interpreted holistically in terms of the survival, dignity, well-being, health, development, participation and non-discrimination of the individual. Consideration of the best interests principle must therefore be framed within the context of all rights to which the individual is entitled. Thus, the condoning of the boy's participation in an event known in advance as likely to become violent violates other rights – for example, the right to protection from violence, to life, survival and development and to protection from arbitrary arrest. Likewise, the condoning of female genital mutilation in the cultural best interests of a girl is open to challenge as Female genital mutilation clearly violates other substantive rights – for example, the right to the best possible health, to protection from all forms of violence, and, potentially, to optimum development. Similarly, a decision as to whether to agree to an abortion for a 13-year-old without her parents' knowledge or consent would need to focus on the best interests of the girl. In so doing consideration would need to be given to both her protection and her emerging autonomy. Thus consideration would need to be given to her wishes and feelings (the right to be heard), the health risks associated with refusing or agreeing to the abortion (the right to the best possible health), the potential risks from her family if the pregnancy went ahead (her right to protection from violence, and to respect for privacy), and her level of understanding of the implications of the decision involved (respect for her evolving capacities, and her right to information).

The best interests principle raises additional issues. In relation to policy making, there can be a conflict between the best interests of an individual child and those of children and young people as a whole.[xvii] For example, a general policy requiring mandatory reporting of corporal punishment in residential care or justice institutions might be in the best interests of children in general as a means to deter such practice, but it might also result in further retributory violence by the perpetrator against an individual child who makes such a report. Likewise, a fixed legal age of sexual consent might be necessary to provide an overarching protective framework for all children, but in an individual case might serve to deter a girl from seeking information and guidance on safe sexual practices. There is also the question of who determines what is in the child's best interests, and the extent to which the views of a child him or herself is seen to influence that judgement. "In practice, adolescents whose wishes coincide with health service providers' views of their best interests are more likely to be considered 'mature'."[xviii]

The UN Committee on the Rights of the Child has argued that "An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."[xix] Overall, it can be argued that the Convention, taken as a whole, provides a broad ethical framework which can be applied to give a greater degree of guidance to the application of the best interests principle.[xx] The Committee also stresses that decision-makers must take into account the obligation to listen to and to take seriously children's and young people's own views when making a judgement as to a child's best interests.[xxi] In other words, respect must be afforded to children's emerging autonomy when determining how best to ensure their protection.

05 The 'protection-autonomy framework'[22]

One possible framework to help conceptualise the 'protection'/'autonomy' debate outlines eight interconnected elements which work individually and collectively to strengthen both protection and autonomy:

1. Government commitment to fulfilling young people's SRR (policies, programmes, budgets and rhetoric)
2. Legislation and enforcement
3. Basic and targeted service
4. Attitudes, traditions, customs, behaviour and practices
5. Open discussion, including the engagement of media and civil society
6. Capacity of those in contact with the young person (caregivers and professionals)
7. Young people's life skills, knowledge and participation
8. Oversight, monitoring and evaluation.

The diagram in Appendix 3 shows the possible interaction of these eight elements with IPPF's conceptualisation of SRR, including IPPF's seven principles of sexual rights, and how this can provide a template for programming and policy development. Details on each of the elements, briefly outlining key issues relating to SRHR, are included in Appendix 4.

06 Conclusion

This paper proposes the following key points for consideration regarding protection and autonomy in the context of SRHR:

- Protection and autonomy are mutually reinforcing. Protection is necessary in order to develop autonomy and autonomy is necessary to ensure protection.
- This mutual reinforcement is supported by a broad, rights-based definition of protection: respecting and promoting positively the human dignity and physical and psychological integrity of young people as rights-bearing individuals – in addition to protecting them from harm.
- Duty-bearers are obliged to maintain a balance between protection and autonomy, guided by the 'evolving capacities' and 'best interests' principles, without erring on the side of either *over*-protection or *under*-protection.
- The 'best interests' of the young person must be framed within the context of all the rights to which they are entitled, in particular the right of children to be heard and to have their views taken seriously.
- In models of protection there needs to be much more emphasis placed on empowerment, capacity building and autonomy of young people rather than the greater emphasis which has traditionally been placed on establishing external parameters and controls on young people's behaviour. This applies also to groups in need of special or additional protection.
- Decision-making needs to take into account specific cultural contexts, strengths and risk factors, whilst nonetheless promoting respect for universal human rights.
- In practice, in order to implement SRR in any given context, in a way which maintains the protection-autonomy balance, interventions are needed simultaneously across a range of areas (government commitment, legislation, services, attitudes, open discussion, capacity of duty-bearers, empowerment of young people, and accountability).

Appendix 01

Case studies

Case study 1

Marisa is a mature 13-year-old girl from Latin America with a 15-year-old boyfriend, Daniel, who is also mature for his age. They have been together for seven months and they want to start having sex. However, Marisa is under the age of sexual consent (16). Furthermore, Daniel's parents are devout Catholics and, while he understands the importance of safe sex, he is confused about the morality of sex before marriage and using a condom. Marisa's parents have died and she lives with her 19-year-old brother, who is very caring but who encourages her to be independent.

Case study 2

Fatima is a 16-year-old girl from rural South Asia who was married to her 35-year-old cousin two years ago. She is regularly beaten by her husband, Rashid, and forced to have sex against her will. She has already experienced two miscarriages and is now pregnant again. Her health is not good. Rashid has warned her that if she fails to produce a boy, he will divorce her and send her back to her parents in disgrace. On the one hand she is worried that continuing the pregnancy will damage her health further and she has secretly heard rumours about ways to induce an abortion. However, she is also worried about the likely violent reaction from her husband, her father and brothers who are likely to hurt or possibly even kill her if she brings 'shame' to the family.

Case study 3

Helen is a 17-year-old girl from Western Europe with learning disabilities. She lives at home with her mother but attends a local special education school. She has a 20-year-old boyfriend, Alan, with whom she regularly communicates via the Internet but whom she has never met in person. Alan wants to meet up with her and start a physical relationship, leading eventually to a sexual relationship. Helen's mother, Vicky, is very protective and still considers Helen to be a young child. Vicky knows about Alan but does not take the relationship seriously. When Helen says she wants to meet up with Alan, Vicky laughs at first, but then refuses, telling her "not to be ridiculous".

Case study 4

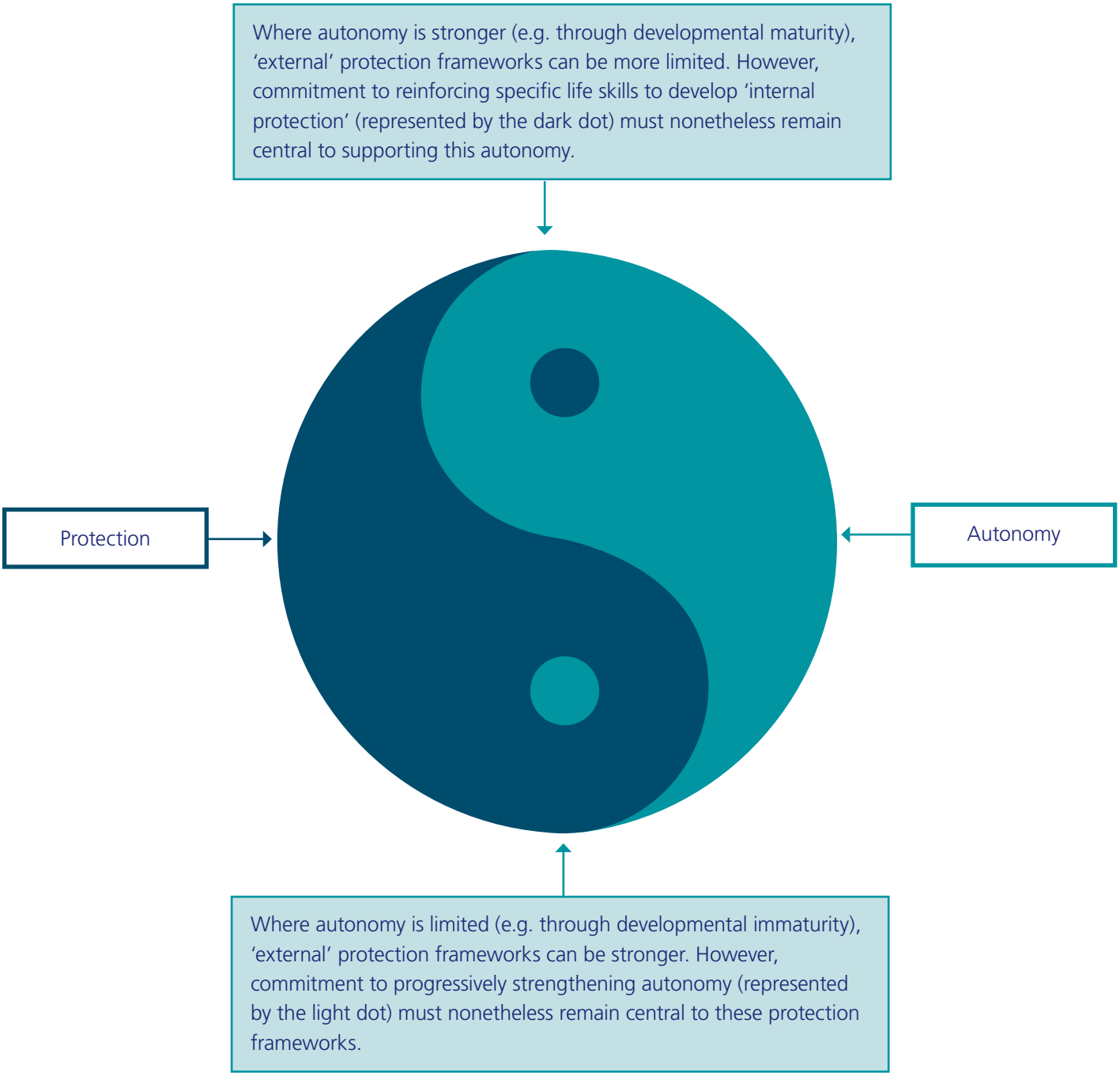
Bolaji is a 21-year-old young man from a city in West Africa. He is very shy and has had very limited sexual experience. His family is pressuring him to get married. However, he is attracted to other men and feels ashamed of this and scared as homosexuality is strongly condemned in his culture – to the extent that it is illegal and there have even been cases in the media of public lynchings in other parts of the country. In spite of this, he is increasingly tempted to visit an area of town where homeless boys are rumoured to have sex with men for money.

Key questions for each case study

- What is the status of the protection-autonomy balance in each situation and is it appropriate? Why/why not?
- Whose rights need to be considered and what are those rights?
- What would be an appropriate intervention at an individual and/or policy level which would promote development of the young people's evolving capacities and which would also be in their 'best interests'?

Appendix 02

Maintaining the protection-autonomy balance



The overall balance of protection and autonomy must be carefully maintained.

Both over-protection and under-protection must be guarded against.

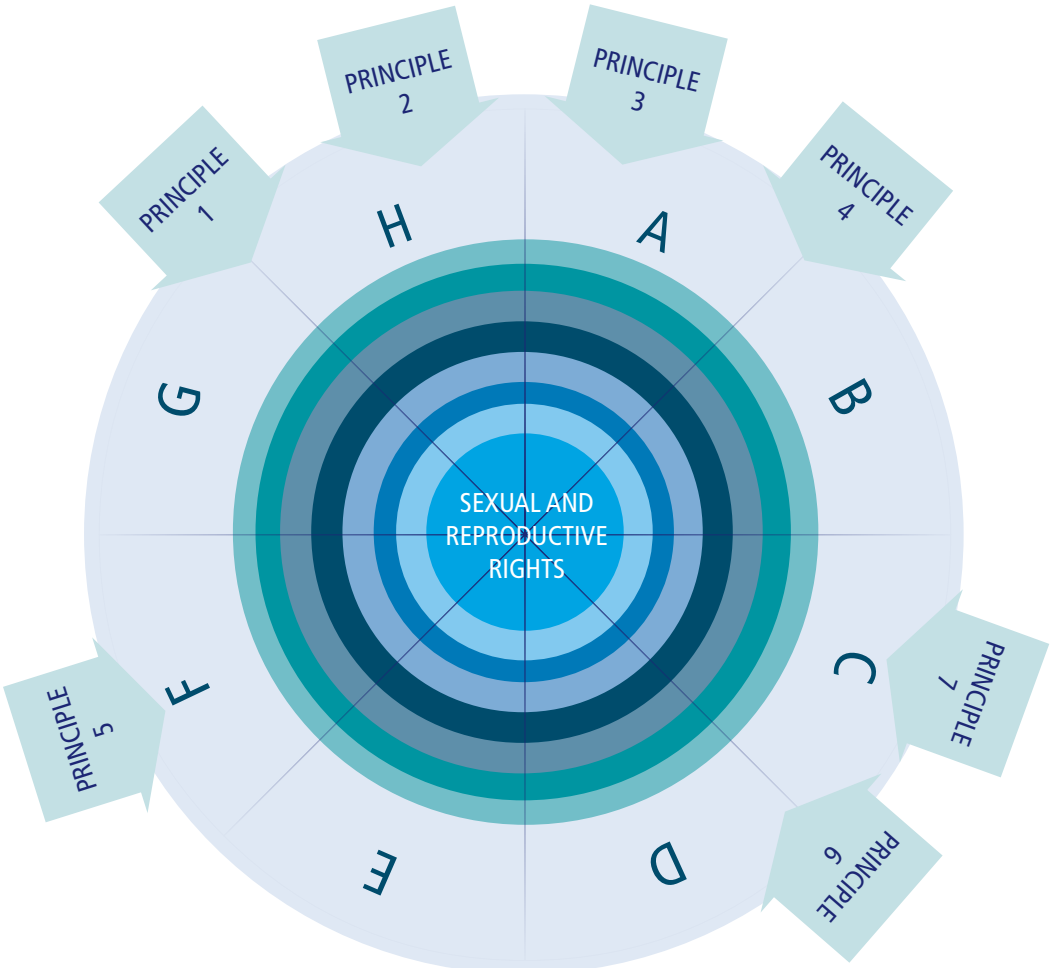
This can be done by:

- assessing levels of developmental maturity and tailoring policy and interventions accordingly
- creating an environment which both supports and actively encourages the progressive development of autonomy.

Appendix 03

The protection-autonomy framework – to promote and support progressively increasing autonomy within a protective environment

Elements of the protection-autonomy framework[1]
A Government commitment to fulfilling young people's SRR (policies, programmes, budgets and rhetoric)
B Legislation and enforcement
C Basic and targeted services
D Attitudes, traditions, customs, behaviour and practices
E Open discussion, including the engagement of media and civil society
F Capacity of those in contact with the young person (caregivers and professionals)
G Young people's life skills, knowledge and participation
H Oversight, monitoring and evaluation
The above eight elements should be implemented simultaneously for each of the sexual and reproductive rights identified by IPPF, supported by IPPF's '7 guiding principles' of sexual rights.[2]



1. Adapted from the UNICEF 'Protective Environment Framework' as outlined in the 'UNICEF Child Protection Strategy', June 2008.

2. Sexual rights: an IPPF declaration, IPPF, October 2008.

Appendix 04

Elements of the protection-autonomy framework in more detail as they relate to SRHR

1. Government commitment to fulfilling young people's SRR (policies, programmes, budgets and rhetoric)

The need for government commitment to financial support and budgeting for SRR is reflected in IPPF Principle 7 of sexual rights. There is also a need for political will to be communicated through positive messages and rhetoric regarding SRR in order to create and champion an environment where young people are not afraid to ask for information and can access youth-friendly services without shame. Ongoing advocacy is needed to challenge negative, anti-choice messages and a situation where "[l]egislators frequently defer to parental demands for reinforcement of their authority, and discount the interests of adolescents too young to vote."[xxiii]

2. Legislation and enforcement

Age of sexual consent and marriage: These are considered to be thresholds of protection rather than of competence in order to protect children from abuse and exploitation. The UN Committee on the Rights of the Child has recommended to States Parties to increase the age for marriage to 18 years for both girls and boys.[xxiv] There is ongoing debate as to whether the age of sexual consent be set at the same threshold: failure to do so would 'legitimise' sex outside marriage – a position at odds with many religions and cultures, whereas to do so would 'criminalise' consensual adolescent sexual activity in which huge numbers of adolescents are already engaged: "In India, approximately 50% of women enter their first stable union before their 18th birthday, and almost 30% have their first child by age 18"[xxv]; "[In Colombia] Approximately one in every 10 women states that her first sexual relationship took place before the age of 15, and one-third before the age of 18."[xxvi] There is also debate as to whether the age gap between sexual partners should be regulated, and if so, what this should be.

Age of consent to medical and SRH treatment and services: States should remove legal hazards that dissuade healthcare providers from educating young people and providing SRH services.[xxvii] These hazards include requirements of healthcare professionals to report to, or gain consent from adolescents' caregivers for treatment.

> "With very few exceptions, there is no fixed age of consent in medical law. […] Adolescents below any arbitrary or abstractly set age who have the intellectual and emotional maturity to make an informed decision about whether or not to undertake a particular medical procedure can give legally effective consent to it."[xxviii]

> "For instance, in an Indian case before the Madras High Court, a father petitioned for authority to terminate his minor daughter's pregnancy. He failed, on the ground that the procedure could not be forced on a competent minor who was willing to bear the child. Judges usually accept that parents cannot override competent adolescents' refusals of abortion, although exceptionally a court may."[xxix]

> "Rigidly set ages below which mature minors legally require parental consent to receive therapeutic or preventative reproductive health services are frequently dysfunctional in that they prejudice adolescents' health and well-being, by creating barriers to care. The law does not require parental consent to treat young victims of serious conditions such as accidents, since there is implied consent under the law of emergency care, reflecting the legal proposition that 'peril invites rescue'."[xxx]

Three possible legal models:

1. Fixed age of sexual consent: no access to services under that age.
2. Fixed age of sexual consent, but young people can access advice and services below that age.
3. No fixed age of sexual consent: judgements need to be made by professionals based on assessment of competency on a case by case basis.[xxxi]

In the interests of maintaining the protection-autonomy balance, the second model is possibly the most appropriate.

3. Basic and targeted services

Access to services: There is an urgent need for access of young people to SRHR counselling, information, education and services. In 2009, 4 in 10 of all IPPF's services

were provided to young people.[xxxii] Services need to be designed with and for young people in order for them to be considered 'youth-friendly'. It is not enough to simply promote access of young to 'adult' services.

> "Denying non-emergency reproductive health care to mature or emancipated adolescents often offends the historical medical ethic to 'do no harm'. Denial may leave such adolescents at risk, for instance, of unplanned pregnancy, STIs, unskilled abortion, and parental or other familial violence, especially where punishment of 'honour killings' remains unenforced."[xxxiii]

Provide confidential services:

> "Contraceptive services require the confidentiality that adolescent patients believe they need. Healthcare providers should be aware that, unless assured of confidentiality, sexually active adolescents may choose to forgo contraceptive protection, and risk pregnancy and the dangers of unskilled abortion. It is not an exaggeration to observe that, every year, failure to assure confidential contraceptive care costs tens of thousands of adolescent girls their lives, and many more their reproductive and wider health. Denial of services or of confidentiality may be a matter literally of an adolescent girl's death, or severe and enduring injury."[xxxiv]

> "Highest courts have confirmed that adolescents capable of making their own choices of receiving medical care enjoy the same power as adults to decide whether their confidences may be shared with others, such as their parents, employers or schoolteachers. The legal and ethical challenge for service providers is not determining whether confidentiality should be respected, because in principle it should be, but in determining the practicalities of how it can be."[xxxv]

4. Attitudes, traditions, customs, behaviour and practices

The need for attitudinal change:

> "Sexuality is about a lot more than having sex. It is about the social rules, economic structures, political battles and religious ideologies that surround physical expressions of intimacy and the relationships within which such intimacy takes place. As external factors have a profound influence on young people and their sexual behaviour throughout their lives, it is in the interest of young people themselves, as well as the public good, to create an environment that is supportive and inclusive of young people's sexuality."[xxxvi]

It is essential for the protection of young people and the promotion of their increasing autonomy that people are educated against attitudes and behaviours which promote and condone violence (e.g. misperceptions that sex with a virgin cures HIV[xxxvii]), which perpetuate discrimination, and which prevent young people from accessing SRH information and services.

The promotion of universal human rights in the face of cultural relativism: Whilst provision of services and consideration of the 'best interests' principle has to take into account cultural risk factors, human rights are nonetheless absolute and universal. However, no situation is context-free. The need to understand the cultural context in which protection and autonomy support each other raises some difficult questions. For example: To what extent does *anyone* make completely autonomous decisions? Are we ever completely divorced from our cultural context? Should 'autonomy' override 'traditional' or religious values? How far should one start from a moral position of right and wrong behaviours versus support for 'autonomy'? Are 'traditional', 'cultural' and 'religious' frameworks necessarily opposed to SRR, or is everyone working towards the same objectives (i.e. the healthy, happy, safe, positive development of children to become responsible, caring citizens and contributors to families and communities) but just going about it in different ways? Can supporting the development of autonomy in a protective (but not overly-protective) environment be a way to navigate through cultural differences?

Risk assessment based on external context: The protection-autonomy balance in any given context will depend largely on the degree of risk within the external environment (e.g. accessibility of contraception, gender dynamics, prevalence of HIV/AIDS, 'honour crimes' and female genital mutilation). How far do young people, caregivers and service providers need to take account of, and make allowances for, local cultural constraints and how far are they able and expected to undertake advocacy and have the courage to challenge attitudes and practices which impact negatively on the enjoyment of SRR?

5. Open discussion, including the engagement of media and civil society

Whilst protection measures are required to regulate media content and information and communication technologies, these are nonetheless ideal mechanisms through which to promote protection and autonomy through sexuality education. Open discussion is needed to combat silence and taboo:

> "Silence about abortion, sexuality and means to prevent STIs and unintended pregnancy is pervasive not only among parents, but also among teachers of adolescents, government agencies and national and international health protection agencies. Unless they work together to break the silence regarding adolescent sexuality,

protections of adolescents' rights to reproductive health are violated."[38]

6. Capacity of those in contact with the young person (caregivers and professionals)

The need to understand and support child and adolescent development:

> "Evolving capacities in the context of sexual and reproductive health and rights refer to the progressive development of physiological abilities to experience sex and reproduce, the psychological abilities to make informed decisions about counselling and health care, and the emotional and social abilities to engage in sexual behaviours (in accordance with the responsibilities and roles that this entails)."[xxxix]

Caregivers and professionals need to support children's and young people's development though social learning, promoting participation in order to build competency, and creating opportunities for their capacities to evolve.[xl] They need to understand the implications of research on adolescent brain development which emphasises the importance of providing opportunities for young people to develop life skills during periods of 'cold cognition' (situations of lower emotional context such as a calm, quiet environment):[xli] the more opportunities for decision-making that children are given, the better they are able to exercise informed choices. This is an effective way to mitigate the risks that adolescents are likely to take as a normal stage of their development which can include engaging in sexual experimentation and risk taking, including unprotected sex and concurrent sexual partnerships.

The need to empower trusted adults to discuss sexuality with young people:

> "Adolescents' protection requires that they be spoken to and informed about all aspects of sexuality. However, adults influential in their lives, such as parents, teachers, religious leaders and healthcare practitioners, may lack the capacity to discuss sexual matters at all, or in language familiar to them. Judgmental language prohibiting adolescent curiosity about sex and sexual experimentation is inadequate."[xlii]

Assessing capacity and maturity:

> "A sign of maturity in minors is their understanding of the need to protect their reproductive health, and their requesting contraceptive services when they are, or are about to be, sexually active. A general rule is that adolescents capable of freely choosing to be sexually active without parental control are equally capable of receiving reproductive health counseling and care without parental control."[xliii]

> "Disputes may arise in relation to an adolescent's competence to seek, consent to, or refuse medical treatment, and his or her right to confidentiality. In most cases these disputes can be resolved by discussion, compromise, and partnership, but in extreme circumstances the courts may be involved."[xliv]

The need to guard against 'over-protection' and its negative consequences:[xlv] Whilst the dangers of under-protection can be witnessed around the world among young people exposed, without support or supervision, to alcohol, harmful drugs, sexual experimentation, and violent and sexually explicit media, over-protection can likewise be equally harmful. For example, excessive parental restrictions on young people's behaviour in the name of 'protection' run the risk of pushing the young person to take risks and act behind their caregivers' backs. Likewise, the 'abstinence only' approach of the Zimbabwean government is failing to protect young people and promote their autonomy: in a study of adolescent reproductive health rights, 42% reported a lack of information on forms of contraception and, in the absence of official provision of information, sought to acquire it from unreliable and ill-informed sources. This leads to misconceptions that increase rather than reduce exposure to harmful behaviours. For example, 60% of respondents believed that family planning leads to infertility, and many were convinced that condoms weaken sperm and that contraceptives cause viruses. The problem is compounded by the fact that medical staffs are required by law to inform the parents when children seek medical help or advice.[xlvi]

Training and capacity building of professionals: In 2009, 91% of IPPF Member Association staff were trained to provide youth-friendly services and to reduce barriers to access (e.g. communicating with young people on their SRHR, informed consent and confidentiality, medical/technical protocols, and the legal situation of youth SRHR).[xlvii] "'Good parenting involves giving minors as much rope as they can handle without an unacceptable risk that they will hang themselves'. Much the same can be said for adolescent medicine."[xlviii]

7. Young people's life skills, knowledge and participation

UNFPA's Framework for Action on Adolescents and Youth:

> "The Framework for Action seeks to: empower adolescents and youth, girls and boys, with skills to achieve their dreams, think critically, negotiate risky situations and express themselves freely; provide access to health, including sexual and reproductive health information, education, commodities and services; connect young people to livelihood and employment

programmes; uphold the rights of young people, especially girls and marginalized groups, to grow up healthy and safe; encourage young people to participate fully in development plans; and recognize the rights of young people to a fair share of education, skills and services, with a special focus on economically disadvantaged, socially marginalized and vulnerable groups."[xlix]

Failure of many adult-designed strategies for protecting children that deny children opportunities to contribute towards their own welfare: Children are capable of exercising agency which in turn enhances their developmental capacities. Interventions are too often based on an adult understanding of the risks children face and the nature of protection they need, rather than being informed by children's own perspectives. Over-protection can serve to increase vulnerability by failing to equip children with the information and experience they need to make informed choices in their lives, particularly when adult protections are withdrawn. The best interests of children will not be met by ignoring and consequently undermining the contribution that children themselves are capable of making. The scale of many national crises is undermining traditional family and community networks that served to protect children's well-being and development. In these environments, there is an acute need to harness children's own potential strengths in order to maximise their opportunities for survival and development. Given appropriate support, even very young children can be empowered to protect themselves.

Provide comprehensive, developmentally appropriate sexuality education from a young age: IPPF maintains that comprehensive sexuality education is

"a lifelong process of acquiring information and forming attitudes, beliefs and values about identity, relationships and intimacy. Good sexuality education is essential to help young people to prepare for healthy and fulfilling lives. Comprehensive sexuality education should provide information that is accurate, comprehensive, rights-based and gender-sensitive."[l]

It should be comprehensive, rights-based, gender-sensitive, citizenship-oriented and sex-positive.

"Policies and programmes for young people should focus not so much on age, but on the specific developmental needs and rights of individuals, including their evolving capacities, as they transition from childhood to adulthood."[li]

There is a wealth of evidence which demonstrates the effectiveness of comprehensive sexuality education in promoting protection and autonomy. For example, a 2010 survey of 100 male and 106 females in the UK under the age of 24 showed that one in four sexually active respondents said they had failed to use contraception with a new partner – up from 20% the previous year.[lii]

"In the UK 25.5 births per 1,000 are to teenage mothers, the highest in Europe and five times higher than in a country like Holland where sex and relationships education is taught to all students from a young age. Dutch women are on average a year older when they first have sex and are more likely to use contraception compared to British girls. Research shows SRE taught in conjunction with contraceptive services is effective in getting young people to delay sexual activity, to use contraception and condoms when they engage in sex and reduces the number of sexual partners. This results in a decrease in the number of unplanned pregnancies and sexually transmitted infections."[liii]

However, messages also need to be tailored specifically to the needs of children and young people with disabilities.[liv]

Involve young people in the development of policies and legislation: While there is a need for appropriate and effective frameworks governing the protection of all children, it is important that legislation, strategies and policies governing the implementation of programmes to provide protection are informed by young people themselves. The conventional view of protection has been a one-way process, with adults as agents and children as recipients. The reality is more complex, involving a dynamic process that recognises young people's capacities to contribute towards their own protection and allows them to build on their strengths.

8. Oversight, monitoring and evaluation

Accountability systems are needed to ensure that duty-bearers are fulfilling their obligations to respect, protect and fulfil young people's SRR within a rights-based framework which maintains the balance between protection and autonomy. This includes a responsibility to strengthen links with the empirical research community and to learn from mistakes and what works and what doesn't work (for example the failure of 'abstinence only' campaigns: "abstinence-only education and counselling often fail to protect against disease and pregnancy in practice. Abstinence advice affords no protection against rape and comparable non-consensual intercourse, of course and […] strict enforcement of anti-risk strategies can deny them social normalization and induce unjustified apprehension"[lv]).

References

Endnotes

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xxxi. See Lansdown (2005), op. cit., pp.x and pp.49–52 for details on the pros and cons of these types of models and pp.52–53 on principles for determining legal frameworks.

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xxxiv. Cook and Dickens (2000), op. cit., p.17.

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Published in February 2012 by the
International Planned Parenthood Federation

This Right to Decide series of papers was initiated by IPPF to learn more about young people, autonomy and sexual rights from experts working on these topics in various fields. We wanted to understand the theory behind the laws, policies and practices that both facilitate and restrict young people's autonomy as well as the key factors contributing to the development of young people as autonomous decision-makers.