

# Evolution of Sexual and Reproductive Health as Human Rights under International Law

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# Objectives

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To enable participants understand the historical development of sexual and reproductive health as human rights

To provide participants with information about the content and nature of sexual and reproductive health and rights

To explain the normative framework for sexual and reproductive health and rights

To enable participants understand the similarities and differences between sexual and reproductive health and rights

To explain states obligations in relation to sexual and reproductive health and rights

# Historical development

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The recognition of sexual and reproductive health as human rights was due to the activities of various actors including women's right advocates, various UN processes, international health authorities and feminist scholars

At the international law, the right to sexual and reproductive health is implicitly recognised in provisions relating to the right to health.

For instance, art 25 of the Universal Declaration of 1948 guarantees the right to adequate standard of living including health

Despite this provision, the right to sexual and reproductive health was not formally recognised as a discrete rights.

# Historical Devp cont

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The first attempt to give recognition to sexual and reproductive health as human rights was during the first International Human Rights Conference in Tehran in 1968

It was agreed in Tehran that ‘parents have a basic right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect...’

Tehran is significant in that the international community affirmed the rights of parents, including women, to exercise their reproductive autonomy

At the first United Nations (UN) Conference on Population and Development which took place in Bucharest in 1974, the international community affirmed that couples and individuals have the right to have control over decisions relating to their reproductive lives.

# Historical devep cont.

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In 1975, at the International Women's Year Conference in Mexico City, the international community emphasized the right of every couple and individual to freedom of choice and to make informed reproductive health decisions. Emphasis was also placed on non-discrimination and gender equality.

At the international Conference on Population 1984 in Bucharest it was agreed that government should make universally available family planning services

At Vienna in 1993 during the International Conference on Human Rights, it was affirmed that women's rights are human rights and that acts of violence against women constituted a gross violations of their rights.

# Historical Dev. cont

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Despite these developments, it was not until 1994, during the UN International Conference on Population and Development (ICPD) that the international community formally affirmed reproductive health as a recognised human right for all.

The ICPD amongst others sought to advance gender equality, equity, women empowerment, eliminating violence against women, promote reproductive freedom and assist women to control their own fertility without external coercion

During the Fourth Women's Conference in Beijing, the international community reinstated that women have the right to autonomy in relation to sexual and reproductive health matters.

# A conceptual definition of Reproductive Health and Rights

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Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its function and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, and when and how often to do so. **Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice of regulation of fertility** which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. (Para 7.6)

In line with the above definition of reproductive health, reproductive care is... constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.

# Some Observations

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From this definition of reproductive health, the international community has taken a more holistic approach to address the issue of reproductive autonomy

Reaffirms WHO's definition of health as a state of complete physical, mental and social well-being and not absence of infirmity.

Reproductive health is viewed from a right perspective rather than as a tool for procreation

It recognises the right to reproductive autonomy of individuals and access to reproductive health care services



# Some Observations

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Subsumes sexual health and rights under reproductive health and rights

Affirms that women do have the right to full respect, bodily integrity including the autonomy to make informed decision on issues relating to reproductive health or fertility without any discrimination or coercion.

Implicitly recognises sexual health and rights by urging states to take all measures to eliminate all forms of exploitation, sexual abuse, harassment and violence against women, adolescent and children

Rights relating to sexual and reproductive health are already recognised in various human rights instruments

# Understanding Sexual Health and Rights

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According to WHO ‘Sexual health is a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence’

Sexual Rights embrace existing and recognised human rights at international, regional and national levels

# Understanding Sexual Health and Rights cont.

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The working definition of sexual rights includes the right of all persons, free of coercion, discrimination and violence, to:

The highest attainable standard of sexual health, including access to sexual and reproductive health care services;

seek, receive and impart information related to sexuality;

sexuality education;

respect for bodily integrity;

choose their partner;

decide to be sexually active or not;

# Sexual Health and Rights cont

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consensual sexual relations;

consensual marriage;

decide whether or not, and when, to have children;  
and

pursue a satisfying, safe and pleasurable sexual life

# Rights Applicable to SRH

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Applicable rights to SRH include

Right to highest attainable standard of health

Right to equality and non-discrimination

Right to dignity

Right to privacy

Right to liberty

Right to life

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Right to be free from cruel, inhuman  
degrading treatment

Right to family life

Right to marry

Right to benefits of scientific progress



# Exploring the link between SHR and RHR

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Although sexual health and rights and reproductive health and rights are interrelated, yet they are distinct

Dixon Muller attempted to divide the elements of reproductive health care into two categories- sexual health and reproductive health-each with specific components

For sexual health, its components include protection from STIs, protection from harmful practices and violence, control over sexual access, sexual enjoyment and information on sexuality.

On the other hand, the components of reproductive health include safe, effective protection from (and termination) of unwanted pregnancies, contraceptive choice and satisfaction with method, protection from harmful reproductive practices, safe pregnancy and delivery, contraceptive and reproductive information and treatment of infertility.

# Link between SHR and RHR

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In her seminal article ‘Sexual but not Reproductive: Exploring the Junction and Disjunction of Sexual and Reproductive Rights’, Alice Miller (2000) observes that a discussion on sexual health and rights goes beyond traditionally held notions of reproduction and heterosexuality

Rather, such a discussion embraces diverse groups of people and issues including homosexual and heterosexual and reproductive and non-reproductive sexual activities. She particularly argues that limiting sexual relations to procreation alone will lead to the ‘disappearance’ of certain categories of people such as gay and lesbian and those who merely engage in sex for pleasure.



# Other Important sources of SRHR

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International and regional human rights instruments notably the ICESCR, CEDAW, CRC, African Charter, African children's Charter and African Women's Protocol

**General Comments/Recommendations** by treaty monitoring bodies

**Concluding Observations** to reports of states parties

**Resolutions of the UN Human Rights Council, UN General Assembly and Security Council**

**Reports by UN agencies such as WHO, UNFPA, UN Women, UNICEF and UNAIDS**

# Sources of SRHR cont

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Reports by civil society groups such as Amnesty International, Human Rights Watch, Center for Reproductive Rights, Allan Guttmacher Institute, Population Council, IPAS, Gender Links (SADC Barometre)

Activities of the **UN Special Rapporteurs on the right to health, violence against Women and Trafficking in persons** e.g Reports on SRHR (2004) Criminalisation of consensual relationship (2011) IPR and Access to medicine (2009)

Decisions of international, regional and national tribunals/courts- CEDAW, HRC, IACHR, ECHR, South Africa, Kenya, Uganda, Malawi, Namibia

# Clarifications by Treaty Monitoring Bodies

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According to General Comments 14 of the Committee on Economic, Social and Cultural Rights, the right to health has 4 interrelated components – availability, accessibility, acceptability and quality (the 3As & Q).

**Availability:** requires the state to ensure provision of functioning public health care facilities

**Accessibility:** has four overlapping elements – non-discrimination, physical accessibility, economic accessibility and information accessibility

**Acceptability:** requires services to be ethically and culturally acceptable including being gender sensitive.

**Quality:** requires health services to be scientifically and medically appropriate

# Clarifications cont.

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In **General Comment 22** the Committee notes that the right to health embraces the right to sexual and reproductive health

It notes that the right to SRH constitutes both ‘freedoms’ and ‘entitlements’

The Committee reasons that the right to SRH is dependent on other rights

In same manner as the right to health, the Committee identifies the elements of the right to SRH to include availability, accessibility, acceptability and quality. It identifies obligations of states to include elimination of discrimination in the enjoyment of the right to SRH

States have the obligations to respect, protect and fulfil the right to SRH

# Clarifications cont

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Committee on CRC in **general comment 3** affirms the right of children and adolescents to sexual and reproductive health information and the need for state to establish youth-friendly care services

**General Comment 4** urges states to provide sexuality education to young people. It further imposes obligations on states to ensure that health facilities, goods and services (including contraception) are of good quality and are sensitive to the specific needs of adolescents

**General Comment 14** explains that ensuring access to health care services, including SRH services for children is in their best interests

**General Comment 15** explains that the right to health of children includes access to sexual and reproductive health care services without discrimination

**General Comment 22** recognises the rights of children during adolescence to sexual and reproductive health information and services

# Clarifications cont

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CEDAW Committee in its **General Recommendation 24** has urged states parties to ensure access to sexual and reproductive health care services, without prejudice to all women and girls

The Committee has further noted that failure by states to ensure health care services, including SRHR services specifically needed by women will amount to discrimination in contravention of the CEDAW

**General Recommendation 33** on harmful practices which covers issues such as child marriage, FGM, virginity testing Ukthuwala

In **General Recommendations 19 and 35** the CEDAW Committee describes forced sterilisation as a form of gender-based violence that amounts to cruel, inhuman and degrading treatment

# Some notable cases on SRHR

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*KL V Peru* HRC held that forcing a woman (with anencephalic foetus) to carry an unwanted pregnancy to term amounted to cruel, inhumane and degrading treatment

*Alyne v Brazil*- CEDAW Committee notes that failure to prevent death of a poor indigenous woman during childbirth amounted to discrimination

*AB and C V UK*- failure to remove barrier to access to abortion services was violation of women's rights to information, health and family life

# SRHR Remain contentious

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Despite the array of human rights instruments and consensus statements affirming sexual and reproductive health as human rights, they have remain subject of contestations across the world, including in Africa

Opposition from religious and cultural sectors

Conservatives and traditionalists

Universalism and Relativism debate

Sometimes issues around SRHR are used as tools for political manipulations

Issues around SRHR are often scrutinized with moral lens- sex work, same sex relationships adolescent sexuality

Allocation of resources to SRHR issues remains inadequate