

An Advocacy Brief: Post 2015 Development Agenda SEXUALITY

Introduction

"We know from experience that you don't eliminate prejudice by changing the law alone; you must change people's hearts and minds as well."

UN High Commissioner for Human Rights Navi Pillay

Sexuality is an integral and natural part of life, and is intertwined with the most fundamental of human rights. WHO recognizes "the highest attainable standard of health as a fundamental right of every human being," and if this right to health is to be achieved, human beings have to be able to exercise choice in their sexual and reproductive lives and be able to safely and confidently express their own sexual identity. 3

Twenty years after the International Conference on Population and Development conference, which resulted in the Program of Action (ICPD PoA), many people, including women and adolescents, still struggle to gain sexual rights. Various international instruments such as the outcome document of 6th Asian and Pacific Population Conference⁴, Addis Ababa Declaration on Population and Development in Africa beyond 2014⁵, Montevideo Consensus on Population and Development⁶, the outcome document on Conference on Population and Development in 2012⁷, and the outcome document from the Open Working Group for Sustainable Development Goals⁸, endorse the concepts of reproductive health, reproductive rights and sexual health, which, in turn, confer rights related to sex and sexuality despite not explicitly stating it. Furthermore, the Human Rights Council adopted resolution 17/19 (A/HRC/RES/17/19) in June 2011 – the first United Nations resolution on sexual orientation and gender identity, paved the way for the first official United Nations report on the issue prepared by the Office of the High Commissioner for Human Rights (A/HRC/19/41)⁹, a clear recognition of sexual rights. However, the term "sexual rights" is yet to gain international acceptance.¹⁰

Despite no explicit statement of sexual rights, the ICPD PoA does acknowledge sexual rights when it states that "people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so." ¹¹

What constitutes a 'safe and satisfying sex life'? It includes, but is not limited to, the following aspects and conditions, subject to the right to be free of coercion, discrimination and violence.¹²

- The highest attainable standard of health in relation to sexuality, including access to sexual and reproductive health care services
- To seek, receive and impart information in relation to sexuality
- Comprehensive sexuality education (CSE)

- Respect for bodily integrity
- Choice of partner(s)
- Choice to be sexually active or not
- Consensual sexual relations
- Consensual marriage
- Choice whether or not, and when to have children
- Pursue a satisfying, safe and pleasurable sexual life

In order to ensure a safe and satisfying sex life, it is important to use a framework that acknowledges and addresses the various dangers associated with health and violence aspects of sexuality, and also embraces positive assertions of sexual pleasure and diversity. Affirmative sexuality is such a framework that acknowledges that freedom from coercion, violence and discrimination is critical to achieving sexual rights, and affirms that "positive" sexual rights—including the right to sexual expression, pleasure, fulfilment and wellbeing, as well as broader sexual freedom—which are equally important. It calls for an "inclusive approach to sexualities" and underlines the importance of the "right to all non-conforming sexualities."

An approach that affirms sexuality as being integral and of value to people's lives also makes demands for human rights. Just as women's rights and reproductive rights are human rights, so must sexual rights be claimed as human rights. This is reflected in the evolving articulation of sexual rights that includes rights to be free from discrimination, coercion and violence; and rights based on positive ethical principles, such as those of bodily integrity (my body is mine), personhood (the right to make one's own choices), equality (among all people) and respect for diversity (in the context of culture, provided the first three principles are not violated). ¹⁵¹⁶

Therefore, it is of extreme importance that a human rights-based approach is taken to the post-2015 development framework. This would require a focus on, and the empowerment of, the most marginalized groups, including women and adolescents.

Context Analysis

Despite the demonstrated importance of sexual rights, there still remain gaps across the globe on the realization of these rights.

Sexual Rights of Adolescents and Young People

Today there are 1.8 billion adolescents and youth. They make up one quarter of the world's population. There is a need for realization of the fact that adolescents and young people need to be well equipped with information about their sexuality and that access to sexual and reproductive health services is an important aspect to ensure that they live healthy and productive lives. The sexual services is an important aspect to ensure that they live healthy and productive lives.

Comprehensive Sexuality Education (CSE)

Contrary to the popular myth that sex education can promote promiscuity among adolescents, studies have shown that it is untrue¹⁹. Despite its benefits that extend to many areas of decision-making and confidence building among adolescents²⁰, comprehensive sexuality education²¹ is still a distant aspiration in many parts of the world. The existing interpretation of sex/sexuality education

varies, with the emphasis in most cases being on biology rather than health and rights. In many countries, NGOs are working on raising awareness about adolescents' right to access CSE and governments' commitments to do so in line with international conventions they have signed and ratified. This has resulted in some governments including sex education in national policies and incorporating it into the education curriculum, though there is a difference in scope and coverage in each country. The increased acceptance in the countries for sex education is attributed to combating the HIV epidemic rather than providing sex education to adolescents.²²

CSE is necessary for all, including unmarried girls, to prevent unwanted pregnancies, to develop the idea of bodily rights and to have equitable and meaningful relationships with people.²³ The positive impacts of CSE on young women and girls include: an increase in the use of contraception, a decrease in the onset of sexual activity and in the number of sexual partners, as well as a drop in the frequency of sexual activity.²⁴

Access to Services within the Public Health System

The main obstacle to adolescents realizing their right to access services is cultural unacceptability of young people's sexual rights rather than the laws around it.²⁵ While some countries have programs in place, the lack of quality services and the stigma attached to young women and girls accessing sexual health services stop young people from reaching out to such facilities.²⁶

Sexual Rights around Choice of Partner, Consensual Sexual Relations and Consensual Marriage
Although early marriage and child marriage are being gradually transitioned out of their cultural context, they are still important issues in some parts of the world, especially in the Global South.²⁷ Child marriage is a violation of many aspects of rights, including sexual rights²⁸. Early marriage often leads to early pregnancies which could deprive girls of educational and other opportunities, and jeopardize their health and their children's health.

It should be noted that raising the legal age of marriage will give women more time to educate themselves and to work which can also result in women becoming more empowered and improving their sexual and reproductive health.²⁹

While not all arranged marriages are forced marriages, they both indicate the lack of control women and young girls have over their sexual rights and lives, from choosing their partners to consensual relationships.

Sexual Rights around Bodily Integrity

Gender-based violence continues to be endemic and constitutes an extreme violation of women and girls' human rights and rights to bodily integrity. These include sexual violence, traditional practices that are harmful to women and trafficking as well as new and emerging forms such as harassment via email and mobile phones. In analyzing violence as a manifestation of unequal power relations, women are not the only group that suffers; violence also occurs against gays, lesbians, bisexual and transgender people.³⁰

Sexual Rights around Identity and Expression

The past few years have witnessed some breakthroughs for sexual orientation and gender identity and expression (SOGIE), including the Yogyakarta Principles that state, "All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights." ³¹

The Status of Laws Related To Same-Sex Sexual Preferences, Relations and Marriage³²

Eighty-one jurisdictions in the world criminalize same sex relations.³³ "Almost 70% of the world population have their right to expression and information on matters related to sexual and gender diversities severely violated by states. And even where legislation is not repressive, social stigma and discrimination, fuelled by stereotypes, act daily to silence minorities."³⁴

Worldwide, male homosexuality is discriminated against by being prohibited and punishable under anti-sodomy laws in 76 countries³⁵. While lesbianism is illegal in about 30 countries³⁶, it is also the target of severe discrimination with social stigma attached. Non-conforming gender behaviors are criminalized under a wide spectrum of laws, and they are often categorized as public order laws or morality laws (i.e., vagrancy laws, anti-cross dressing laws and impersonation laws). In addition to the risk of criminalization under state law, there is also the risk of being sanctioned under state-endorsed religious law, such as provisions in sharia (Islamic law) or any other religious laws, which also carry heavy penalties.

A recent research reiterated the high levels of family violence perpetrated against lesbian, bisexual and transgender individuals as well as widespread discrimination in education, health and work sectors.³⁷

The Attitudes and Perceptions on Transgender People³⁸

Transgender people comprise of some of the most marginalized and most vulnerable groups within societies in the world and the issues that affect them can be vastly different from other sexual identity groups.

As of September 2012, 831 reported killings of gender-variant/trans people have been documented in 55 countries between January 2008 and December 2011. ³⁹ Transrespect v Transphobia (TvT) Legal and Healthcare Mapping reveals that in many countries "where a legal change of gender is possible, a 'psychiatric diagnosis', i.e. the pathologization of the applying gender-variant/trans person, is required." ⁴⁰ Furthermore, most legal measures require 'gender reassignment surgery' or 'sterilization' for legal gender recognition, which clearly violates human rights. ⁴¹

Most legal environments marginalize transgender people, with insufficient legal provisions in place against discrimination and abuse. Instead, the legal frameworks themselves discriminate against transgender people by criminalizing transgender people's sexual or gendered behaviors, subjecting them to gender-inappropriate detention or incarceration practices, and by withholding either practical or legal recognition of self-affirmed gender.⁴²

CASE STUDIES

Challenging Young People's Homophobic Attitudes in Brazil⁴³

In an impact evaluation of Program H in Brazil, homophobia was the attitude or topic that showed the least amount of attitude change on the part of young men who participated. While many young men apparently changed their attitudes toward women – moving toward seeing women as being subjects of rights – they often held steadfast to homophobic views even after the intervention. Thus, in 2005, Promundo, ECOS, Salud y Género, Papai and the other Program H partners, with support from the Brazilian National AIDS Program, developed a cartoon video – named "Afraid of What?" as a complementary educational tool focusing specifically on the issue of homophobia (and targeting mostly heterosexual youth). The video presents the story of a young gay man and the challenges and discrimination he faces. It is designed to engage youth, educators, and health professionals in discussions on homophobia and the promotion of respect for sexual diversity.

A Counselling Program for Young People in Vietnam⁴⁴

http://www.tamsubantre.org (Youth Sharing) is the first free online counseling program in Vietnam for young people on sexuality issues, reproductive health and HIV and AIDS. The program was innovated by Hoang Tu Anh, Founder-Director of the Centre for Creative Initiatives in Health and Population (CCIHP) when she recognized how 'online chatting' was used by the youth to share their intimate and sensitive feelings and thoughts on daily life and to build networks. Anonymity and immediacy are big advantages of Internet communication compared with other formats, especially with the rapid penetration of Internet usage in Vietnam in recent years.

Recognizing the challenges in both abstinence and safety approaches, Tâm Su Ban Tre employs the healthy sexuality framework that emphasizes mutual consent, satisfaction and safety in sexual relationships. Through the website, counselling and information provision activities are being conducted from a non-judgmental viewpoint to empower young people to make their own decisions. This is a critical difference from other existing counselling programs in the country that are focused on advice provision.

Women in Vietnam are traditionally sanctioned to be passive and repressed in sexual relations. Tâm Su Ban Tre always affirms that young women have the right to mutually consensual, safe and satisfactory sexual relationships, and that no one has the right to judge them. The program also addresses the sexuality issues of other youth groups including LGBTI people. These activities have not only assisted the young people in those groups and their families to get rid of stigma, but it has enabled other groups to have more information and have a more affirming and respectful attitudes and viewpoints as well.

Key Policy Directions

The political will of governments is essential to improving the status of women's sexual and reproductive health and rights. In all areas where progress has been noted, government policies and implementation were critical for success.

- Tackle intersecting and structural drivers of inequalities, and multiple forms of discrimination based on gender, age, class, caste, race, ethnicity, sexual orientation, gender identity and abilities.
- Fulfil the right to comprehensive, gender-sensitive and youth-friendly sexual and reproductive health including rights-based, non-discriminatory, evidence-based, and youth-friendly comprehensive sexuality education, including non-formal education.⁴⁵

- Review, amend and implement laws and policies to address the needs and realities of women, young people, sexual and gender minorities and other vulnerable groups, and to uphold human rights, including sexual and reproductive rights as affirmed by the Bali Youth Declaration.⁴⁶
- Eliminate laws and policies that impose barriers to access to sexual and reproductive health services and information and mainstream policies on sexual and reproductive health and rights into already existing national machineries, national policies and national plans in a cohesive manner.
- Create comprehensive programs, policies and plans for marginalized people, which will include sex-workers and people with diverse sexual orientation and gender identities within service provision and create and enact legislation, which will enable these groups to realize their sexual and reproductive rights to the fullest.
- Ensure a comprehensive sexual and reproductive health and rights agenda, recognizing that gender equality, equity and sexual and reproductive rights are central to sustainable development.
- Implement the post-2015 development agenda within the context of the human rights framework by using and building onto international human rights and humanitarian laws.

Key Definitions⁴⁷

Comprehensive Sexuality Education (CSE): CSE is a rights-based approach to education on sexuality, which discusses not just sex, but also provides young people with skills to be sexually responsible, positive attitudes, values and essential life skills. It helps young people to acquire the skills to negotiate relationships and safer sexual practices. CSE includes looking at sexuality as a broad issue, including emotional and social development, beyond just the provision of information to young people, and includes diversity and sexual orientation, violence, relationship, pleasure, SRH rights and others. It supports young people in shaping their life prospects and their social, health and economic potential.

Gender Expression: How one shows one's gender identity is usually expressed through such traits as appearance, clothing, movement, body language, way of speaking and voice, in terms of what is culturally accepted as masculine or feminine.

Gender Identity: Gender identity reflects a deeply felt and experienced sense of one's own gender. A person's gender identity is typically consistent with the sex assigned to them at birth. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth. In some cases, their appearance and mannerisms and other outwards characteristics may conflict with society's expectations of gender-normative behavior.

LGBT: LGBT stands for "lesbian, gay, bisexual and transgender." While these terms have increasing global resonance, in different cultures other terms may be used to describe people who form same-sex relationships and those who exhibit non-binary gender identities (such as hijra, meti, lala, skesana, motsoalle, mithli, kuchu, kawein, travesty, muxé, fa'afafine, fakaleiti, hamjensgara and Two-

Spirit). In a human rights context, lesbian, gay, bisexual and transgender people face both common and distinct challenges. Intersex people (those born with atypical sex characteristics) suffer many of the same kinds of human rights violations as LGBT people.

Sexuality: Sexual health cannot be defined, understood or made operational without a broad consideration of sexuality, which underlies important behaviors and outcomes related to sexual health. The working definition of sexuality is: "...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious and spiritual factors." (WHO, 2006a)

Sexual Health: Sexual health implies a positive approach to human sexuality and the purpose of sexual health care should be the enhancement of life and personal relations as well as counseling and care related to reproduction and sexually transmitted diseases. (Adapted, UN)

Sexual Orientation: Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is integral to a person's identity. Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people (sometimes known as "straight") are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity.

Sexual Rights: Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus documents. These include the rights of all persons, free of coercion, discrimination and violence, to the highest attainable standard of health in relation to sexuality, including access to sexual and reproductive healthcare services; seek, receive and impart information in relation to sexuality, sexuality education; respect for bodily integrity; choice of partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when to have children; and pursue a satisfying, safe and pleasurable sexual life. (WHO working definition)

Transgender: Transgender (sometimes shortened to "trans") is an umbrella term used to describe a wide range of identities —including transsexual people, cross-dressers (sometimes referred to as "transvestites"), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical.

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¹ UN High Commissioner for Human Rights, Navi Pillay to the Panel on Ending Violence and Discrimination against Individuals on the Basis of their Sexual Orientation and Gender Identity at the 19th session of the Human Rights Council, Geneva, March 7, 2012,

http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11917&LangID=E

- WHO Factsheet: Right to Health http://www.who.int/mediacentre/factsheets/fs323/en/
- ³ Sexual Rights: An IPPF Declaration. http://www.ippf.org/sites/default/files/sexualrightsippfdeclaration 1.pdf
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 11 Paragraph 7.2 of the ICPD PoA, http://www.un.org/popin/icpd/conference/offeng/poa.html
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