



Women's reproductive rights

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Introduction: the significance of rights

Those concerned with women's reproductive health are invoking women's legal rights and reciprocal duties of government because political processes have historically excluded women. Women's lack of political influence to persuade governments to protect and promote women's reproductive health has obliged activists to turn to alternatives to political compromise. People invoke claims to legal rights in order to legitimate their concerns and compel political attention. National and international tribunals can investigate claims against governments, require governments to respond to claims, and reach findings, e.g. that governments have neglected women's reproductive health in ways that are unlawful and violate human rights. In short, those concerned with women's reproductive health invoke legal rights because they cannot otherwise protect women's interests and oblige governments to observe their legal duties.

The modern international human rights movement followed the abuses that individuals suffered at the hands of their own governments that were

demonstrated before war crimes tribunals after 1945. A country can no longer invoke its sovereignty to render it immune to international investigation and accountability for human rights violations. The 1948 Universal Declaration of Human Rights, adopted by the United Nations, identified duties that countries owe to all individuals, and that their governments are obliged to respect. Human rights empower vulnerable and defenseless individuals to insist that attention be given to the entitlements they enjoy by reason of their inherent human dignity.

The 1948 Universal Declaration gained legal force through a series of international human rights treaties, notably the International Covenant on Civil and Political Rights (the Political Covenant) and the International Covenant on Economic, Social and Cultural Rights (the Economic Covenant). Their principles acquired regional expression in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention), the American Convention on Human Rights (the American Convention) and the African Charter on Human and Peoples' Rights (the African Charter). More specific human rights conventions include the Convention on the

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Rights of the Child (the Children's Convention) and, most relevantly, the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention).

International conventions have drawn from national constitutions and laws that specifically address human rights, including equality of the sexes. Reciprocally, they have also inspired states to match their national laws with the international legal order. For instance, in Colombia, the Women's Convention was incorporated into the 1991 Constitution. The Colombian Constitution provides that every individual may claim judicial protection through a petition procedure whenever constitutional rights appear threatened by an act or omission of any public authority.

Reproductive health

Many women die or are chronically disabled from pregnancy-related causes because they cannot protect their reproductive health. The World Health Organization has estimated that each year 500 000 women die from pregnancy-related causes [1]. This distressing statistic becomes even more dramatic when it is realized that unsafe abortion associated with unwanted pregnancy 'causes some 25–50% of [maternal] deaths, simply because women do not have access to family planning services they want and need, or have no access to safe procedures or to humane treatment for the complications of abortion' [2]. These statistics are only one indication of how countries have neglected women's reproductive health and well-being. Others include rates of maternal morbidity, unwanted pregnancy, teenage pregnancy, sexually transmitted diseases and infertility.

Epidemiological studies can indicate which women have limited access to care and are therefore at higher risk of maternal mortality and morbidity. Maternal sickness and death may be triggered by pregnancy, but are frequently conditioned by cultural, medical and socioeconomic factors that devalue the status and health of women and girls. It has been explained that:

The cause of maternal death often has some of its roots in a woman's life before the pregnancy. It may lie in infancy, or even before her birth, when deficiencies of calcium, vita-

min D, or iron begin. Continued throughout childhood and adolescence, these faults may result in a contracted pelvis and eventually in death from obstructed labor or in chronic iron-deficiency anemia and often death from hemorrhage. The train of negative factors goes on throughout the woman's life: the special risks of adolescent pregnancy; the maternal depletion from pregnancy too closely spaced; the burdens of heavy physical labor in the reproductive period; the renewed high risk of childbearing after 35 and, worse, after 40; the compounding risks of grand multiparity; and, running through all this the ghastly dangers of illegal abortion to which sheer desperation may drive her. All these are links in a chain from which only the grave or menopause offer hope of escape [3].

A response to the multi-faceted causes of poor reproductive health is adoption of a more comprehensive definition of reproductive health that can be the basis for national reproductive health programs and health service delivery. Dr. Mahmoud Fathalla has observed that reproductive health is:

a condition in which the reproductive process is accomplished in a state of complete physical, mental and social well-being and is not merely the absence of disease or disorders of the reproductive process. Reproductive health, therefore, implies that people have the *ability* to reproduce, to regulate their fertility and to practice and enjoy sexual relationships. It further implies that reproduction is carried to a *successful outcome* through infant and child survival, growth, and healthy development. It finally implies that women can go *safely* through pregnancy and childbirth, that fertility regulation can be achieved without health hazards and that people are safe in having sex [4].

The aspects of reproductive health that countries should rationally emphasize as a matter of health policy should be related to national health indicators. For instance, in some countries priority might be given to the prevention of high rates of unwanted teenage pregnancy, while in others priority might be given to the prevention of HIV infection or infertility.

Rights relevant to reproductive health

Reproductive health may be defined in several ways, but the application of any definition depends upon the human rights recognized in the Universal Declaration and given effect through the derivative international, regional and specific conventions. These conventions identify a range of individual rights that may be invoked separately or

jointly with others to protect and promote reproductive health. Health in general and reproductive health in particular are compromised through the continuing oppression and subordination of women. Denials of women's rights to nutrition when young, educational opportunities and, for instance, personal security against domestic violence prevent enjoyment of the feeling of physical, mental and social well-being that constitutes 'health' as understood by the World Health Organization [5]. Denials of rights that affect such interests as choice of marriage partner, timing of marriage and spacing of pregnancies have a more immediate harmful effect on sexual health and reproduction.

A transcending right that now enjoys universal respect in national and international law, although not necessarily in practice, is the right to enjoy equal treatment without discrimination on the ground of sex. The duty of sexual non-discrimination obliges governments and those who act under their authority to afford women the same respect and entitlements as men may claim.

More specific to reproductive health are the rights to enjoy liberty and security of the person; to marry and found a family; to enjoy private and family life; to provide and receive health information and education; to obtain access to health care; and to enjoy the benefits of scientific progress.

The application of rights to reproductive health

An emerging analysis identifies neglect of preventable causes of maternal mortality and reproductive morbidities, including infertility, as a principal denial of women's human rights, and part of a larger social phenomenon of systematic discrimination against women [6]. Laws that deny, obstruct or condition availability of, and access to, reproductive health services and that criminalize medical procedures that only women need are being challenged and condemned as violations of women's basic human rights protected by national and international human rights principles [7].

International and national tribunals, including courts of law, legislatures and administrative and professional bodies, that are called on to apply human rights to reproductive health will provide substance to the meaning of rights by specifying

their particular content and what they compel governments, health service institutions and health care practitioners to do and to refrain from doing.

The right to sexual equality

The 130 states that are members of the Women's Convention accept the obligation 'to eliminate discrimination against women in the field of health care in order to ensure...access to health care services, including those related to family planning' (Article 12(1)). The Convention also requires member states to 'ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation' (Article 12(2)).

The Colombian Ministry of Public Health, for instance, has interpreted the Women's Convention to establish a gender perspective in their health policies that considers 'the social discrimination of women as an element which contributes to the ill-health of women' [8]. A Ministerial resolution orders all health institutions to guarantee women the right to decide on all issues that affect their health, their life and their sexuality and rights 'to information and orientation to allow the exercise of free, gratifying, responsible sexuality which cannot be tied to maternity' [9].

The Women's Convention also prohibits discrimination on grounds of marital status and maternity, providing special employment protection during pregnancy. For example, a practice of health clinics to require a wife, but not an unmarried adult woman, to obtain the authorization of her husband in order to receive health care constitutes marital status discrimination that violates the Convention. The Convention also requires modification of social and cultural patterns of conduct in order to eliminate practices and prejudices 'based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women' (Article 5(a)). Female circumcision, for instance, arises from the stereotypical perception that women are the principal guardians of a community's sexual morality, and also the primary initiators of unchastity.

Women's sexual and reproductive behavior has long been and remains controlled by laws and

policies that compromise their health in ways that men have not suffered. For example, access to voluntary sterilization services in some countries is governed by whether women have arbitrarily set numbers of living children or a history of cesarean deliveries [10]. Laws and policies stereotype, confine and punish women because of their role in reproduction, denying them equal opportunities with men. Laws regulating the age of marriage, for instance, frequently allow younger ages for women than for men, which in effect lead women into premature childbearing and confine them to service roles, denying them the additional years of education and experience by which men become influential contributors to the political and economic functioning of their societies.

In countries where there is no legal minimum age of marriage or where it is low or unenforced, young girls often face the health hazards of adolescent pregnancy. Childbearing at an early age is associated with high obstetrical risk and a high incidence of maternal mortality. In Nigeria, for instance, there is no legal minimum age of marriage. One-quarter of all women are married by the age of 14, one-half by the age of 16 and three quarters by the age of 18 [11]. In Zaria, Nigeria, girls under 15 constituted 30% of maternal deaths [12]. A high proportion of teenage pregnancies ended in fetal loss, embryotomy or infant death, and maternal death or severe harm, such as vesicovaginal fistulas (VVF). VVF victims often suffer infection and/or infertility that, through social pressures, may make them outcasts by divorce or being unacceptable for marriage, leaving them no economic alternative but prostitution.

The right to liberty and security

The right to personal liberty serves women's interests in non-interference by the state in their individual pursuit of means to limit, or to promote, fertility. The right transcends that of a woman to protect her life and health, and recognizes her right to reproductive choice as an element of her personal integrity and autonomy not dependent on health justifications. A violation of liberty and security occurs when the state denies women provision of means of fertility control they cannot obtain without government support, leaving them

to risk unintended pregnancy. For example, in El Salvador the lack of availability of contraceptives causes women to have about twice as many children as they want [13].

Women's human right to liberty and security of the person is expressed through the doctrines of free choice of and informed consent to medical care. For example, rates of cesarean section are unnecessarily high in many countries [14] in part because physicians do not possess or provide adequate information regarding the alternative of vaginal delivery, or do not allow women responsible choice.

A barrier to the application of the right to liberty and security may be uncertainty about whether people with free choice will make wise or good decisions. Those with experience of life may well be able to make better choices than those without experience, but wisdom and experience are not conditions of freedom. Individuals may reach capacity for autonomous choice before they appear trustworthy to exercise their freedom wisely. The tendency of states and health professionals to try to protect mature individuals against poor choices, and to place them under the control of others whose judgment is deemed to be better, does violence to nationally and internationally protected human rights to individual liberty. Responses to any perception that women may make poor choices should not be to deny choice, but to facilitate education, information and experience in exercising liberty.

The right to marry and found a family

Recognition of the right to marry and found a family is a reaction to Nazi racial and reproductive policies that progressed through forced sterilization to culminate in genocide. Leading international human rights treaties acknowledge the family as the natural and fundamental group unit of society. They recognize the right of men and women of marriageable age to marry and found families and that special protection should be accorded to mothers during a reasonable period before and after childbirth, for instance in employment legislation.

An act of 'foundation' of a family involves the right of a woman to plan, time and space births of

children to maximize their health and her own. Accordingly, the Women's Convention requires states parties to ensure that women enjoy

rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. (Article 16(1)(e))

The right incorporates the right to maximize the survival prospects of a conceived or existing child, through birth spacing by contraception or abortion. This right is complementary to the right of a woman herself to survive pregnancy, for instance by delaying a first pregnancy. In some countries, the right to found a family is most threatened by reproductive tract infections. In Africa, for example, it is the cause of up to 50% of infertility [15]. Government inaction to reduce the incidence of infection violates the right to found a family not only because of infertility itself but also because of the differential impact infertility has on the lives of women, for instance in justifying their divorce.

The right to private and family life

The right to private and family life is distinguishable from the right to found a family, although for some purposes the latter right may be considered to be part of the former. The European Convention specifies that everyone has 'the rights to respect for his private and family life, his home and his correspondence.' Respect for women's right to private life was shown when the European Commission upheld a British court decision preventing a woman from being coerced to continue an unwanted pregnancy through her husband's veto of her abortion. The Commission gave priority to respect for a wife's private life over her husband's right to respect for his family life in birth of his child, because his right depended on her voluntary consent [16].

Rights regarding information and education

Rights to seek, receive and impart information are protected by all the basic human rights conventions and are essential to the realization of reproductive health. The Women's Convention explicitly requires that women have the right to information and counselling on health and family

planning. Further, the European Court of Human Rights recently found that the Irish government cannot ban counselling of women in Ireland on where to find abortions abroad [17].

The right to education, found in most human rights conventions including the African Charter, serves the goal of individual and reproductive health. Women have access to contraception more easily when they are literate, and can read and understand the risks to their health and the health of their children presented by close birth spacing. Literacy also improves women's means to reduce risks to fertility, to avoid sexually transmitted diseases and to promote safe pregnancy and childbirth.

The right to reproductive health and health care

The Economic Covenant recognizes 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' and that the steps to achieve this right

shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child. (Article 12)

Article 12 addresses women's reproductive health indirectly, in that multiple pregnancies and short birth intervals endanger both infant and maternal survival and health. The Children's Convention similarly requires that states parties 'develop preventive health care, guidance for parents and family planning education and services.' Epidemiological evidence demonstrates the significance of birth spacing to this goal.

The new Colombian policy requires provision of a full range of reproductive health services, including infertility services, safe and effective contraception, integrated treatment for incomplete abortion, and, for example, treatment for menopausal women. The policy emphasizes the need for special attention to high risk women, such as adolescents and victims of violence.

The right to the benefits of scientific progress

Scientific research into, for instance, fertility control, fertility protection and safe motherhood, is not simply a privilege of physicians and scientists, but a responsibility. The protection and

enhancement of women's reproductive health justifies and compels scientific research, conducted consistently with women's rights to informed and free choice of participation.

The way forward

Unless it is understood that women's status and functions within their families, communities, and political systems affect their health, the role of medicine as a health science will never be more than marginal. Conscientious doctors cannot practice medicine on women's bodies alone, but must become engaged with the denials of equality and justice that contribute to women's ill-health. The claim of physicians to be the advocates of their patients rings true only when physicians advocate for remedies of the causes as well as of the consequences of their patients' ill-health. Physicians who aspire to maintain and promote women's health, rather than merely to respond to their illness, must recognize how sexual discrimination and other denials of human rights and dignity prejudice women's health.

Women's reproductive rights, based on transcending principles of human rights conventions drafted and agreed by nations of the world, may direct, educate and inspire physicians dedicated to the ideal of health to higher levels of appreciation of their patients as persons worthy of respect. Regard for patients' individuality and dignity should lead physicians to conduct relations with patients on a basis of equality, and to practice equality in respect for the reproductive rights of men and women.

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