



Sexual and reproductive rights and the human rights agenda: controversial and contested

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Abstract: *In this paper I share some of my experience and observations, as an advocate for women's rights, of the last 20 years of struggles for sexual and reproductive health and rights, carried out in many key places where these issues have been debated and decided. I do not aspire to be comprehensive about the current status of human rights related to sexuality and reproduction. Given that my expertise is of a practical (rather than theoretical) nature, the complexity of the topic and contradictory events with regard to it, which take place almost everyday, I will highlight some selected achievements and setbacks in this area, particularly regarding abortion rights. I will provide examples of how human rights related to sexual and reproductive health have been addressed in UN policy-setting bodies, such as the Commission on the Status of Women and Commission on Population and Development, as well as in the UN human rights system such as Treaty Monitoring Bodies and Human Rights Council. Given my work with European institutions, I provide examples of important decisions by the Council of Europe and the European Court of Human Rights. Lastly, I discuss growing opposition to a progressive human rights agenda and the universality of human rights. Despite significant successes, sexual and reproductive rights will long remain controversial and contested. Hence, it is crucial to try to find new ways to engage and new partners to work with. ©2011 Reproductive Health Matters. All rights reserved.*

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Women's rights – looking back

The last decade of the 20th century marked major achievements regarding the recognition of women's human rights in the international arena and is sometimes called the UN Decade for Women. UN conferences made an essential breakthrough in expanding the understanding of human rights in general and women's rights specifically. Major achievements included the global recognition that women's rights are human rights; and that violence against women is a violation of human rights (UN Conference on Human Rights, Vienna, 1993). Recognition of reproductive rights and health as fundamental human rights as well as states' obligations to make these

rights a reality, gender equality, and equity and women's empowerment as essential strategies of development, have been the foundations of the Programme of Action of the International Conference on Population and Development (ICPD) in Cairo in 1994. The whole concept of a rights-based approach to sexual and reproductive health, identification of 12 critical areas of concern where women's rights were being breached, including the right to health, and adoption of strategies for gender equality and women's human rights, were major accomplishments made in the Beijing Fourth World Conference on Women (FWCW) in 1995.

In the mid-1990s the spirit was rather high among transnational women's movements.

Many of us hoped that new gains would soon be made, such as recognizing the right to legal abortion and sexual rights. However, the UN conferences also brought disappointing failures and missed opportunities to move the agenda further in global arenas. These included lack of political will of the international community to confirm women's right to abortion and condemn discrimination on the basis of sexual orientation and gender identity.

In the era of the Bush administration in the US, though, and especially since the 9/11 attacks and the launch of the War on Terror, which have had a detrimental impact on human rights standards globally, it has become clear that there is little chance for further achievements in the UN. In reality, women's movements have been pushed into a corner and have had to put all our efforts into holding the line, i.e. defending the gains of Cairo and Beijing rather than trying to push the boundaries for progress on unresolved issues. It has also become very visible that despite governments' agreements, the implementation of both the Cairo and Beijing action programmes has been far from satisfactory, even though significant successes have taken place in a number of countries. Additionally, increasing trends challenging the universality of human rights and initiatives undermining human rights have created new frontlines.

On the other hand, there is no doubt that numerous decisions of human rights institutions, such as UN Treaty Monitoring Bodies and the European Court of Human Rights, have contributed to strengthening sexual and reproductive health and rights standards, thanks to effective advocacy and litigation undertaken by many NGOs.

Therefore, the answer to the question of where we are on the path to sexual and reproductive health and rights is not simple. It depends a lot on where we sit.

Major successes at the national level

There have been major successes regarding the right to abortion in several countries where abortion rights advocates used international human rights obligations extensively and effectively to campaign for legal reform. The strict anti-abortion law in Nepal was liberalized in 2004¹ and now allows abortion on broad grounds.

This legal change was achieved by a coalition of women activists and professionals – lawyers and health providers – who identified hundreds of women who were prosecuted and imprisoned for terminating unintended pregnancies. Good collaboration with the Government was instrumental in the reform process.

Another spectacular victory in liberalizing restrictive anti-abortion legislation took place in Colombia.² The Colombian lawyer Monica Roa, who played a key role in the process, argued in the Constitutional Court of Colombia that the country's ban on abortion, one of the world's most restrictive, violated Colombia's own commitments to international human rights treaties that ensure a woman's right to life and health. In 2006, the Court overturned the restrictive ban on abortion, allowing voluntary terminations in cases of rape, fetal malformation, or when the life or health of the woman or fetus is in danger.

Abortion laws have also been liberalized in South Africa (1996),³ Ethiopia (2005)⁴ and Mexico City (2007).⁵ In Europe, abortion was liberalized in Switzerland (2002), Portugal (2007) and Spain (1985⁶ and 2010).

At the United Nations

Sexual and reproductive health and rights are being addressed by numerous UN bodies from different perspectives. Here I will focus on policy-setting bodies, such as the Commission on the Status of Women and the Commission on Population and Development, and on treaty monitoring bodies and the Human Rights Council.

UN policy-setting bodies

Generally speaking, the UN political bodies have not made much progress in strengthening sexual and reproductive health and rights standards in the last ten years. This has become increasingly clear at UN conferences since 1998, especially sessions of the UN Commission on the Status of Women and Commission on Population and Development, who are responsible for monitoring the implementation of the Cairo (Cairo+5, 1998) and Beijing (Beijing+5, 1999) agreements. During the Cairo+5 process some important provisions regarding post-abortion care and adolescent sexual empowerment were adopted, but the political climate around sexual and reproductive health and rights had shifted. Annual resolutions

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