

Application of a Human Rights-based Approach to Sexual and Reproductive Health

Paper submitted to the thematic consultation on ‘Health in the Post-2015 Development Agenda’ by the Sexual Rights Initiative, a collaborative project of six partner organizations - Action Canada for Population and Development, Akahatá - Equipo de Trabajo en Sexualidades y Géneros, the Coalition of African Lesbians, Creating Resources for Empowerment in Action (CREA, India), the Egyptian Initiative for Personal Rights, and the Federation for Women and Family Planning (Poland) - that aims to advance human rights related to sexuality, i.e., sexual rights within global policy processes.

INTRODUCTION

The right to health is central to the achievement of sustainable development and the realization of all other human rights. This submission focuses on sexual and reproductive health, which are confirmed to be “integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”¹ and yet, often marginalized; for instance, the Millennium Development Goals (MDGs) added target 5B on ‘universal access to reproductive health’ as late as 2006, and this target is among the ones least likely to be met by 2015. Hence, rights to sexual and reproductive health must receive high priority in the post-2015 development agenda.

Narrow health interventions alone are inadequate to achieve meaningful and sustainable progress in the areas of sexual and reproductive health. For example, in order to eliminate adolescent maternal mortality and morbidity, providing antenatal and post natal care, skilled birth attendance, referral systems and emergency obstetric care is not enough; measures to provide education on sexuality, gender equality and human rights in schools and communities and challenge norms that perpetuate gender stereotypes, early and forced marriage, early pregnancy and gender-based violence must form part of the response.

Applying a human rights-based approach to policy formulation, institutional strengthening and programme design, implementation and evaluation is essential to improve sexual and reproductive health. There exist several United Nations documents that guide the application of a human rights-based approach to sexual and reproductive health. These must be utilized in devising the post-2015 development agenda.

¹ Commission on Human Rights resolution 2003/28, preamble and para 6

EXISTING INTERNATIONAL STANDARDS

A human rights-based approach was promoted at both the 1994 International Conference on Population and Development (ICPD) and the 1995 Fourth World Conference on Women in Beijing. Through the ICPD's Programme of Action 179 governments committed to ensuring the realization of reproductive rights for all, including women and adolescents and to providing a comprehensive range of sexual and reproductive health information and services. At Beijing 189 States achieved consensus that the "human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."²

The Beijing Platform for Action represented the first inter-governmental recognition of sexual rights, even if the term was not used, and it is clear that for this acknowledgement to be meaningful it must be given full effect with particular attention to those whose sexual rights are frequently violated or whose exercise of sexual rights can lead to their being subjected to violence, including: young women, adolescents, men who have sex with men, sex workers, women who have sex with women, transgender persons, and women seeking abortion. Focussing on the most marginalized in this way is an essential component of a human rights-based approach.

The human rights-based approach advanced at the ICPD and Beijing was diluted in the Millennium Declaration, through which States resolved to respect, protect and promote human rights but set for themselves reductionist goals and targets. Efforts to achieve these goals and targets have been inconsistent in their utilization of a human rights-based approach, and have achieved widely varying degrees of success.

The UN Human Rights Council (HRC) and its mechanisms on the other hand have made significant advances in the normative framework. HRC Resolution 11/8 recognizes that preventing maternal mortality and morbidity "requires the effective promotion and protection of the human rights of women and girls, in particular their rights to life, to be equal in dignity, to education, to be free to seek, receive and impart information, to enjoy the benefits of scientific progress, to freedom from discrimination, and to enjoy the highest attainable standard of physical and mental health, including sexual and reproductive health".

The HRC's Special Procedures mandates have also promoted the use of a human rights-based approach to address sexual and reproductive rights and health issues. The Special Rapporteurs on violence against women and the right to

² Beijing Platform for Action para 96

health have confirmed that the legal framework relating to sexual and reproductive health rights includes freedom from violence and discrimination, entitlements to reproductive health and access to underlying determinants of health such as education, female literacy and empowerment³ and that “policies that are based on human rights norms, including the right to health, are more likely to be effective, robust, sustainable, inclusive, equitable and meaningful for all members of society.”⁴

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has prepared guidance⁵ to assist in the application of a human rights-based approach to policymaking, implementation and review aimed at reducing preventable maternal mortality and morbidity. The principles contained in this report as well as the technical guidance can be applied comprehensively to all aspects of sexual and reproductive health and, as such, this guidance is a critical resource for formulating the post-2015 development agenda.

APPLICATION OF A HUMAN RIGHTS-BASED APPROACH

This paper discusses a few critical aspects of the OHCHR technical guidance, which must be taken into account while developing the post-2015 agenda.

Principles

The guidance reiterates general principles of a human rights-based approach including accountability, participation, transparency, empowerment, sustainability, international assistance and non-discrimination, and identifies entitlements as being core to human rights:

“A human rights-based approach identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and promotes strengthening the capacities of both rights-holders to make their claims and duty-bearers to meet their obligations.”⁶

The guidance asserts that a human rights-based approach views health holistically and not in terms of isolated pathologies. Health systems must be just and particular attention must be paid to marginalized groups, for example, adolescents, ethnic and racial minorities, indigenous women, persons with

³ A/HRC/11/6/Add.5 para 55

⁴ E/CN.4/2004/49 para 88

⁵ A/HRC/21/22

⁶ Ibid. para 10

disabilities, sex workers, persons living with HIV, transgender persons, men who have sex with men, women who have sex with women, migrant and displaced persons and rural women. Meaningful participation of marginalized groups is required in the identification of problems, policy design and budget allocation, and the evaluation of programmes and policy implementation.

Simultaneous attention must be paid to health interventions and social transformation in order to guarantee rights to sexual and reproductive health. Gender-based discrimination and violence must be eliminated as well as other social inequalities.

According to the guidance, accountability is “fundamental to each stage of the process - from identifying accountability gaps in a situational analysis to ensuring appropriate monitoring mechanisms and remedies in a national plan, to allocating resources for these mechanisms and remedies, to ensuring feedback from the ground through to implementation in practice.”⁷

States are required to use maximum available resources, including resources from international cooperation, for the progressive realization of rights to sexual and reproductive health. States are also required to protect individuals from interference with their rights to sexual and reproductive health by third parties by enacting or promulgating and enforcing appropriate laws, policies, regulations and guidelines.

Transformative approach

States must ensure the following standards are met in relation to health facilities, goods and services: availability, accessibility, acceptability and quality.⁸ However, rights to sexual and reproductive health cannot be realized through only the provision of services. The dominant assumptions underlying the structural determinants of sexual and reproductive health of different population groups must be identified and addressed. This includes changing systems of power and decision-making at all levels and in all spaces, including the household, community, workplace, state and non-state institutions at a local, national, sub regional, regional and international level, and addressing root causes of various forms of social inequalities. It also involves carrying out a “participatory review of the legal framework and the enactment, modification or rescission of laws, policies, regulations and guidelines, as required”.⁹

⁷ Ibid. para 18

⁸ Ibid. para 20

⁹ Ibid. para 30

As also argued by the Special Rapporteur on the right to health in his reports¹⁰ to the HRC and to the UN General Assembly, laws, policies and regulations that impede access to sexual and reproductive health information and services must be changed. According to the Special Rapporteur, these include, for example: third-party authorization requirements for adolescents' access to contraception, abortion and HIV testing and counselling; laws criminalizing abortion or imposing restrictions on the conditions under which an abortion can be sought; laws criminalizing adult consensual sexual activity; laws criminalizing unintentional transmission of HIV; and laws and policies allowing conscientious objection of a provider to hinder women's access to a full range of services. Different UN agencies have produced documents that promote similar positions on restrictive laws, policies and regulations¹¹, and must be utilized in formulating global commitments.

The post-2015 agenda must strive to remove legal, regulatory and administrative barriers to the realization of sexual and reproductive rights of all, including rights to sexual and reproductive health.

Comprehensive approach

The MDGs addressed different components of sexual and reproductive health in silos, namely maternal health and HIV. Today, goal 5 on maternal health is the least likely to be achieved. A human rights-based approach to health requires and consists of a holistic and integrated approach. Sexual and reproductive health policy and programmes must incorporate comprehensive information and services related to contraception and family planning; safe abortion services and post-abortion care; pregnancy care (antenatal and post natal care, skilled birth attendance, referral systems, and emergency obstetric care); assisted reproductive technologies; prevention, treatment, and care of sexually transmitted infections and HIV; and prevention, treatment and care of reproductive cancers, provided in an integrated manner. The World Health Organization (WHO) also makes the case for greater effectiveness and efficiency of health systems through integration.¹² Health systems can be strengthened through carefully designed efforts to strengthen the provision of

¹⁰ A/HRC/14/20 and A/66/254

¹¹ WHO, 2010, *Medical eligibility criteria for contraceptive use*, page 12; WHO, 2012, *Safe abortion: technical and policy guidance for health systems*, Chapter 4; UNAIDS, 2012, *Guidance Note on HIV and Sex Work*, page 10 and Annex 1, pages 6-7; WHO, 2012, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach*, pages 17-18; UNDP, 2012, *HIV and the Law: Risks, Rights and Health*, pages 97-105

¹² World Health Organization, 2006, *Policy brief: Implementing the Global Reproductive Health Strategy*, page 1

comprehensive and integrated sexual and reproductive health information and services.

Accountability

Accountability is central to every stage of a human rights-based approach, and includes not just transparency but meaningful participation by all affected populations and civil society groups at all levels of decision-making, implementation and review, and access to justice. The OHCHR technical guidance among other UN documents and actors emphasizes that it is also essential that rights-holders are aware of their entitlements and are empowered to claim their sexual and reproductive rights including rights to sexual and reproductive health. Within this framework, particular attention should be given to marginalized groups such as adolescents, ethnic and racial minorities, indigenous women, persons with disabilities, sex workers, persons living with HIV, transgender persons, men who have sex with men, women who have sex with women, migrant and displaced persons and rural women.

States are also responsible for exercising due diligence to ensure that non-State actors, including private sector actors, comply with human rights standards, and to prevent, investigate and punish violations of rights. Non-State actors also have the responsibility to ensure that their activities do not violate human rights. This due diligence obligation of States has been affirmed by treaty monitoring bodies as well. For instance, the Committee on Elimination of all Forms of Discrimination against Women in its General Recommendation 24 has specifically dealt with the obligation of States to ensure both public and private health care providers do not violate the rights of women and girls accessing sexual and reproductive health services. The recommendation on “women and health” further recommends that States address social structures and inequalities, including laws and policies that prevent women and girls from accessing reproductive and sexual health information and services. States are legally obligated under international human rights law to ensure these human rights standards are met and required within the treaty monitoring body system and through the HRC’s Universal Periodic Review to report on them. In the context of international assistance and cooperation, States have the responsibility to ensure that their activities overseas do not violate human rights.

In developing the post-2015 agenda, accountability must be at the foundation of not only the outcome but also the processes devised to arrive at the outcome. In particular, proactive measures are required to ensure participation by marginalized groups in shaping the post-2015 agenda.

CONCLUSION

The post-2015 development framework must be grounded in international human rights standards, and in its implementation all stakeholders, including governments, must utilize a human rights-based approach. States have obligations to ensure the realization of all human rights, including sexual and reproductive rights and rights to sexual and reproductive health, and their development commitments must be in consonance with these obligations.