Celebrating the 70th anniversary of the UDHR, celebrating sexual and reproductive rights

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Sexual and reproductive rights as human rights

Sexual and reproductive rights are human rights. In 1948, when States proclaimed the Universal Declaration of Human Rights (UDHR) as a common standard of achievements for all peoples and all nations, they recognised “the equal and inalienable rights of all members of the human family”, civil, political, economic, social, and cultural rights. Most relevant to sexual and reproductive health (SRH), the UDHR recognised the right to non-discrimination, the right to life, liberty and security of person, the right to social security, the right to a standard of living adequate for health and well-being, and that “motherhood and childhood are entitled to special care and assistance”. The UDHR did not go into details about the areas of life to which these rights are particularly applicable, but reaffirmed the dignity and worth of the human person, the equal rights of women and men and the determination to promote social progress and better standards of life in larger freedom.

Human rights related to sexuality, gender, gender diversity and SRH have been recognised in the treaties which were generated from the UDHR, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. These have been expanded upon by the Treaty Monitoring Bodies’ General Recommendations and Comments, which constitute official interpretations of the treaties. The Committee on Economic Social and Cultural Rights, for example, adopted a specific General Comment on the Right to Sexual and Reproductive Health, and the Committee on the Rights of the Child’s General Comment on the implementation of the rights of the child during adolescence specifically recognises that “there should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, such as requirements for third-party consent or authorization”. The Human Rights Committee’s latest General Comment provides the international community a much-needed framework to hold governments accountable for the high rates of death and injury which occur when women are forced to seek unsafe abortions, and calls for the provision of comprehensive reproductive health services.

Sexual and reproductive rights have received extensive legal recognition at regional and national levels as well over the past decades. The European Court of Human Rights, for example, recognised the right to sexuality education as early as 1976, and most recently issued a similar decision in connection with Switzerland’s legal obligation to provide sexuality education to children, as a clear recognition of the role that sexuality education plays in the global education of children, in the fight against sexual abuse and in the protection of public health. At the national level, there is a major evolution of law reform in relation to decriminalising same-sex sexual conduct, and recognising equal rights regardless of sexual orientation and for same-sex couples, as well as the development of laws and adoption of supreme court decisions that recognise gender diversity as a prescribed ground for discrimination and grant legal gender recognition for transgender people.

Policy and strategy documents, at regional, national and sub-national levels, are not legally binding by nature; however, they can be important guides for the application and operationalisation of sexual and reproductive rights. For example, the Maputo Plan of Action provides a policy
framework for SRH in a clear rights framework for the African region;12 the “Action plan for sexual and reproductive health towards achieving the 2030 Agenda for Sustainable Development in Europe” is also set in a clear human rights framework.13 At the national level, an increasing number of countries have adopted SRH policies and strategies that are grounded in human rights. For example, the Maltese Sexual Health Strategy is one of the most progressive strategies in that it explicitly links sexual health to sexual rights. However, its failure to grant women access to abortion as a matter of sexual and reproductive justice remains a major controversy.14

The UDHR can be seen as the cornerstone that enabled all of the subsequent elaborations of sexual and reproductive rights at global, regional and national levels. There is much to celebrate about the progress of the last 70 years.

The politics of sexual and reproductive rights

The global solidarity, born out of a shared commitment to never again experience the atrocities of World War II at the time the UDHR was drafted, has somehow waned, however, particularly in recent years. While global progress in the recognition of sexual and reproductive rights is clear, rising nationalist sentiment and a retreat from the multilateral system present a challenge. Important progress continues to be made around the world and yet this is no time for complacency: the current political moment demands that we hold onto the gains we have made, that we continue to defend sexual and reproductive rights, highlighting violations where they occur and seeking appropriate redress, while also further elaborating the protective systems in place to prevent further violations and proactively realise sexual and reproductive health and rights.

As ever, we need to pay increased attention to politics that, intertwined with power and often ideology, have a particularly strong impact on individuals’ realisation of sexual and reproductive rights at all times. We need to recognise that while power and political structures can be effective means of expanding evidence-informed action, representation, voice, agency, community engagement, co-operation, and opportunity for progressive change, the pursuit of political, ideological, economic or other power-related interests by political bodies (including parliaments, government bodies and the judiciary) often curtail, deny or directly violate sexual and reproductive rights. For example, while legal and policy reforms to provide wider legal access to safe abortion services have been achieved in many parts of the world over the past decades, most recently in Ireland and Chile, struggles against legal restrictions continue in other parts of the world and legal reforms on abortion have failed – in Argentina and Brazil, for example – despite women’s demand for services.15

Courts, including supreme courts, supposedly independent bodies of the State, can be important watchdogs for the protection of sexual and reproductive rights despite dominant conservative political powers. A telling example is the recent case of Neverov in Russia, where a court dismissed the allegation brought against a 16-year-old boy alleging he had broken the country’s damaging “gay propaganda” law.16 Controversially, the implementation of such court decisions rests on the very government that enacted the law that violates human rights. But courts, including supreme courts, may also fail to protect human rights due to their composition and their members’ indirect or direct connection to the government, and/or the ideological standing of the judges themselves. For example, in June 2018, the Supreme Court of the United States weakened women’s rights to evidence-based, accurate information when it decided that the state of California could not require anti-abortion, crisis pregnancy centres to post notices about the availability of state-sponsored reproductive health care services, including safe abortion services.17 While such decisions undoubtedly affect reproductive rights in the given country, in this case in the US, they may also be influential globally, especially with the expansion of tactics from highly conservative movements across borders.18

New waves of anti-sexual and reproductive health and rights discourse

New waves of anti-SRHR discourse need special attention. The anti-gender discourse is the most recent such phenomenon around the world. Both religious and secular forces, driven by actors who usually do not work together and often even compete, may collaborate in attacks against sexual and reproductive rights under this discourse, to undermine and violate, among others, abortion rights, rights related to sexuality education, and LGBTI rights.19 For example, in October 2018, Hungary’s far-right prime minister banned gender studies programmes at universities – with his deputy
arguing that this area of study is an ideology rather than a science. Such social mobilisation and political action, as Andrea Petö, Professor in the Department of Gender Studies at Central European University, Budapest, Hungary explains, incites hatred against the “gender ideology” by trying to create a new consensus of what should be seen as normal and legitimate. It not only rejects the human rights paradigm that has for a long time been the basis of relative global consensus but also provides an alternative that seems realistic and acceptable to many people as it focuses on the family, the nation, religious values and freedom of speech. Articulations of beliefs such as these are becoming ever more frequent in many countries, and they are often translated into concrete political actions with direct negative impacts on sexual and reproductive rights.

The role of health systems in upholding SRHR

While laws, policies and regulations create national frameworks for upholding human rights, health systems are also an important site for fulfilling sexual and reproductive health and rights. Health systems operate within national legal systems and are thus shaped by national laws; health workers are duty-bearers with important obligations with regard to ensuring sexual and reproductive health and rights for all.

WHO has recognised certain human rights, standards and principles to be particularly central to the provision of human rights-based SRH services. These include participation, non-discrimination, privacy and confidentiality, informed consent, and accountability, as well as ensuring that health information, goods and services be available, accessible, acceptable and of good quality. For example, recent work has documented high levels of discrimination within healthcare settings, which can constitute a substantial barrier to accessing SRH and other services, but efforts are underway, including some that are firmly grounded in human rights, to address this issue and promote access to quality health services for all.

Accountability is critical to ensuring rights-based SRH services: mechanisms are needed both to highlight how best to promote human rights through health systems and to provide accessible redress in the case of any human rights violations. Non-legal remedies, such as public apologies or community-based reconciliation processes, might sometimes be appropriate, while in other instances legal mechanisms of redress may be required through which cases are brought to the courts.

The role of RHM

Since its inception, RHM has sought to expand the evidence base around sexual and reproductive health and rights, building knowledge and providing rigorous critical analyses of relevant topics. As a journal and an organisation, RHM has worked to uphold sexual and reproductive rights as they rest on human rights enshrined in the UDHR, human rights treaties, national constitutions and human rights laws. Weathering different political moments around the world, the journal has provided a consistent venue for rigorous discussion to inform and expand rights-based work to achieve sexual and reproductive health and rights. Building on and moving beyond the journal, RHM, working with partners, is part of global and local efforts to create research agendas, influence policy and inform programming to support sexual and reproductive health and rights.

Recent journal issues have highlighted the interests and rights of some often neglected people, such as those living in contexts of humanitarian crises, people with disabilities, and aging populations; and topical issues such as disrespect and abuse in maternal care, violence, and sexuality and sexual politics. The upcoming May 2019 issue will focus on the impact of politics on sexual and reproductive health and rights, while the November 2019 issue will make a strong call for the elimination of stigma and discrimination in sexual and reproductive health care.

To celebrate the 70th anniversary of the UDHR, RHM has compiled a collection of articles that illustrates some of the challenges faced in trying to ensure sexual and reproductive health and rights for all, as well as some of the ways in which, despite these challenges, human rights have helped improve many different aspects of SRH around the world. Dingake explores the continued relevance of the UDHR particularly to criminalised and marginalised populations in the context of the recent work of the Global Commission and the Law, noting how the human rights contained therein are critical to an effective HIV response. Buller and Schulte draw attention to the political and societal challenges to realising adolescents' sexual and reproductive health and rights and provide
compelling examples of how these challenges can be overcome. Birga and colleagues explore the potential negative impacts on health and human rights of applying criminal law to SRH and call for collaborative efforts to end this practice. Drawing on the work of the Lancet-Guttmacher Commission on Sexual and Reproductive Health and Rights, Sadinsky and colleagues analyse the evolving legal environment with regard to access to safe abortion, ongoing challenges and success stories. All of these papers note that attention to human rights within SRH is critical for progress towards the 2030 Agenda for Sustainable Development and also for the health, wellbeing and dignity of everyone everywhere.

Looking forward
For people working in the sexual and reproductive health and rights field, the question is: what do we want the next 70 years of sexual and reproductive health and rights to look like? And how can we learn from past successes to tackle current and future challenges with a view to maximising positive impact? This may be a time for fighting to protect gains made to date, and to create a broader political environment that is more conducive to additional progressive change in years to come. The UDHR can and should continue to provide a useful framework for all of these efforts: building on its foundation and continuing to expand definitions to address evolving SRH needs, the relevance of this visionary document in the years and decades ahead persists. We must not lose heart or capitulate to political pressures; we must hold strong to the UDHR and the vision of its creators, to hold our ground and to protect human rights, including sexual and reproductive rights, for everyone, everywhere.

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