

Using human rights for sexual and reproductive health: improving legal and regulatory frameworks

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Abstract This paper describes the development of a tool that uses human rights concepts and methods to improve relevant laws, regulations and policies related to sexual and reproductive health. This tool aims to improve awareness and understanding of States' human rights obligations. It includes a method for systematically examining the status of vulnerable groups, involving non-health sectors, fostering a genuine process of civil society participation and developing recommendations to address regulatory and policy barriers to sexual and reproductive health with a clear assignment of responsibility. Strong leadership from the ministry of health, with support from the World Health Organization or other international partners, and the serious engagement of all involved in this process can strengthen the links between human rights and sexual and reproductive health, and contribute to national achievement of the highest attainable standard of health.

Une traduction en français de ce résumé figure à la fin de l'article. Al final del artículo se facilita una traducción al español. الترجمة العربية لهذه الخلاصة في نهاية النص الكامل لهذه المقالة.

Introduction

The world health report 2008 draws attention to the significance of policies for achieving primary health care objectives, including both those necessary to make health systems function properly and those beyond the health sector that contribute to health.¹ This emphasis is welcome, in particular the inclusion of policy beyond the remit of the health sector. The report adopts an inclusive approach to "policy" – incorporating not only policy but also law, regulation, intervention and even practice. While the term human rights is not used, a concern for human rights permeates much of what is presented both in terms of inequalities highlighted and the approaches suggested to address them.

Human rights increasingly form part of the language and approach of many international organizations, governments, nongovernmental organizations and civil society groups concerned with sexual and reproductive health. This application is now so widely accepted that human rights have been named as central to achieving the goals and targets of the Millennium Declaration, and also as guiding principles in the World Health Organization's (WHO's) 2004 Reproductive Health Strategy.² Yet it is only recently that there has been recognition of the range of human rights that combine to make up "reproductive rights". The international community's first affirmation that the enjoyment of reproductive health is based on these rights was made at the International Conference on Population and Development in 1994:

"Reproductive health... implies 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. ... Bearing in mind the above definition, *reproductive rights embrace certain human rights* that are already recognized

in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly on the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence."³ (Emphasis added)

A major achievement of this conference was recognition of the responsibility of governments to translate international commitments into national laws and policies that promote sexual and reproductive health. Consequently, as recognized in *The world health report 2008*, policies and laws that act as barriers to the availability, accessibility, acceptability and quality of sexual and reproductive health services (whether for the entire population or only for certain population groups), are a serious area of concern.¹

Since 1994, human rights have been incorporated in diverse ways into the approaches used to address sexual and reproductive health, as well as other health issues including the provision of essential medicines,⁴ HIV/AIDS⁵ and child health.^{6,7} Some organizations such as the Center for Reproductive Rights carry out fact-finding missions and strategic litigation, focusing on human rights violations such as forced sterilization of Roma women in Slovakia and high rates of maternal mortality due to unsafe abortion in Mexico.⁸ Others develop and use what has been termed "a rights-based approach" to sexual and reproductive health programming. Organizations including United Nations agencies such as the United Nations Children's Fund (UNICEF)⁹ and the United Nations Population Fund (UNFPA),¹⁰ and nongovernmental organizations such as CARE¹¹ and Save

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the Children,¹² have generally focused on three key principles: the participation of affected communities; ensuring discrimination does not occur in programme design or implementation; and the existence of accountability mechanisms. Some organizations have simply invoked these principles; others have used human rights as a conceptual framework for their actions; and still others have developed a checklist of actions tied to specific norms and standards. Taken together, this diversity has resulted in varied interpretations of what these linkages mean in practice, as well as questions about the practical value of human rights for improving population health.

In response to this, WHO's Department of Reproductive Health and Research and the Harvard School of Public Health's Program on International Health and Human Rights set out to create a practical tool that uses human rights concepts and methods to strengthen government efforts related to sexual and reproductive health.¹³

The human rights tool

Our starting point was that most, if not all, States have committed themselves to promote and protect human rights by ratifying international and/or regional human rights instruments. Our premise was that legal, policy and regulatory barriers exist both within and outside the health sector, in spite of country efforts to improve sexual and reproductive health in line with their human rights commitments. To overcome these barriers, we first need to identify them, then provide careful analysis and subsequent modification.

Methodology

The tool uses a data compilation instrument designed to bring together data relating to laws, regulations and policies on the one hand and health systems and health outcomes on the other. Data come from readily-available and reliable sources; new data are not collected. Special attention is paid to disaggregation by characteristics such as sex, ethnicity, age, educational and social status, to assist in identifying vulnerable groups.

The analysis is carried out through examining the legal/policy and public health data alongside the country's human rights commitments. The latter consist of international and regional human rights treaties ratified, the relevant general com-

ments to those treaties and country-specific concluding observations of the treaty monitoring bodies, as well as States' own national constitutions and human rights laws. The analysis almost always reveals discrepancies and gaps that need addressing. For example, a State that has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has a commitment to eliminate violence against women, but it may be that there is no appropriate legal/policy framework to bring a rapid response. This may be combined with lack of data to indicate the extent of the problem and an analysis of which groups of women are most directly affected. Without the analysis promulgated through the tool, it is likely that these kinds of gaps will not be systematically identified and that they will lack the legal mandate to be addressed effectively. The completed analysis across the full range of topics included under sexual and reproductive health, provides a comprehensive picture of the State's efforts to improve sexual and reproductive health as well as a human rights analysis of national laws, regulations and policies, and the barriers that exist.

The analyses are done by national researchers appointed by the ministry of health with support from international agencies such as WHO. Use of the tool requires a strong national team with the requisite skills and knowledge of both human rights (with an emphasis on women's human rights) and public health. The process must also engage a wide range of relevant stakeholders including various government sectors such as education, finance, justice, planning, religion, transport and women's affairs as well as representatives from nongovernmental organizations, human rights and academic institutions, bilateral and multilateral partners, health workers and civil society. These people must be ready to debate proposed recommendations for change identified through the analysis, and subsequently undertake actions that will lead to such change. Bringing together this wide range of actors is expected to improve understanding of barriers to effective service delivery and to define possible solutions that reflect local priorities. This process should result in broad-based ownership of the final actions.¹⁴

As linking human rights to public health is a relatively new phenomenon, there are few experts who can work simultaneously with these two broad

disciplines. Carefully-designed training is therefore a part of the process to build capacity in countries where such expertise is not yet available.

Field tests

The initial focus of the tool was on maternal and newborn health, because the related human rights had been well articulated and there was a renewed initiative on safe motherhood in the early 2000s.¹³ Subsequently, the focus has been extended to cover sexual and reproductive health more broadly. To determine global relevance, the maternal and newborn health tool was tested in three countries in different regions between 2003 and 2006 – Brazil, Indonesia and Mozambique – with a preliminary field test in Switzerland in 2002. In Brazil and Indonesia the tool was also used at sub-national level, taking into consideration the federal and decentralized political and health systems. The more recent sexual and reproductive health tool has just been tested in the Republic of Moldova, and a version focusing on adolescents' sexual and reproductive health was tested in Sri Lanka in 2008–2009 and is still on-going in Tajikistan. In Malawi, an adapted version of the tool is being used together with the *WHO strategic approach to sexual and reproductive health*.¹⁴ In all field-test countries, WHO started the process but other international partners including UNFPA, UNICEF, Ipas and GTZ (German Development Cooperation) provided technical and/or financial support.

Lessons learnt

The field tests demonstrate that the tool can specifically contribute to improving health. Here we highlight examples in five critical areas relevant to sexual and reproductive health policy and planning.

Understanding States' obligations

The tool's methodology is based on internationally-accepted human rights standards so it helps stakeholders to find out their countries' obligations in relation to sexual and reproductive health. For example, use of the tool in Indonesia led to a recommendation to amend the population law that required women to have their husband's authorization to obtain contraception. This law was found to contradict the national Law on Human Rights and the country's international human rights commitments on the rights

of individuals to decide whether, when and how often to have children, without control or coercion by the government or third parties.¹⁵ While such issues may be discussed at other times and in other ways, the field tests confirmed that use of the tool fostered a more grounded approach and made it possible to name human rights. Debates in stakeholder meetings demonstrated how legal norms and human rights were connected to the strategic health issues under discussion. Evaluations from all countries indicated that use of the tool not only resulted in increased understanding of human rights among stakeholders, but led to recommendations on the most contentious issues.¹⁶ Referring to human rights standards helped to lift discussions out of possibly entrenched positions on topics such as sex work, abortion and adolescents' access to information and services.

Vulnerable groups

The discrepancies in health status among different population groups within and between countries have long been recognized. Initiatives such as the report of the Commission on the Social Determinants of Health make clear the case for investing in policies and interventions geared towards redressing inequities in the distribution of power, money and resources such that everyone can access and utilize the same range of good quality services according to needs and preferences, regardless of gender, income level, social status or residency.¹⁷ However, few, if any, mechanisms exist to systematically take into account the needs of vulnerable or marginalized groups in laws, policies and strategies for sexual and reproductive health. In the field tests, it became clear that, while stakeholders can easily identify vulnerable groups (adolescents in Brazil, Indonesia and Mozambique, plantation workers in Sri Lanka, mountain populations in Tajikistan, rural inhabitants in all countries), it was nonetheless extremely difficult to find data about the health status of these groups. The tool also drew attention to the (lack of) responsiveness of a legal and policy framework to address the needs of identified groups, and whether the laws were in and of themselves discriminatory. The tool thus encourages stakeholders to make recommendations to redress first the lack of data and, second, the barriers that may exist in laws or policies to different groups' access to information and services. In Brazil, this

recognition led to a recommendation for increased antenatal care services for black, low-income women and women living in rural areas and in the poorest states of the country,¹⁸ and in Indonesia the lack of data on violence against women – particularly certain groups – was highlighted for action.¹⁵

Involving other sectors

In most of the field test countries, the ministry of health had not previously collaborated with other sectors. The field tests showed, however, that engagement with different sectors of government was not only desirable but completely feasible. In all countries, representatives from a variety of ministries participated in the stakeholder group. The extent to which they were engaged depended on the commitment and leadership of those leading the process, in particular the ministry of health. The involvement of ministries of justice, education, finance and religion, for instance, helped broaden understanding of the barriers to effective service delivery and create consensus for, and ownership of, proposed actions. It brought to light issues which would not normally have emerged from a typical sexual and reproductive health situation assessment. For example, in Indonesia and Mozambique it was found that, while universal access to education is guaranteed in international conventions ratified by the State and in national law, pregnant girls are still frequently expelled from school, and this is allowed in local regulations.^{15,19} In Indonesia, the final stakeholder meeting recommended the Ministry of Education forbid local schools to expel pregnant girls and better monitor the implementation of the law guaranteeing universal access, including plans for ensuring the continuing education of pregnant girls.¹⁵ Likewise, in Sri Lanka the tool highlighted custodial practices of the police department that were thought to further traumatize child victims of sexual abuse.

Civil society participation

An oft-repeated but rarely realizable development mantra is ensuring the participation of civil society. All country teams stressed the value of the tool for bringing together government ministries with nongovernmental organizations such as the family planning associations and human rights commissions as well as the more activist civil society organizations.¹⁶ Civil

society organizations – and particularly the women's groups – helped to ensure that the needs and rights of vulnerable girls and women were prioritized, and that barriers which might not be immediately apparent to government actors were recognized and addressed. In Mozambique, for example, the participation of women's rights organizations created an opportunity to discuss and propose solutions to longstanding barriers to adequate health care for female victims of violence.¹⁹ In this respect, WHO provided an ostensibly neutral platform for convening the different stakeholders, especially in countries where governmental engagement with the nongovernmental sector was not yet common practice. Among the advantages of this kind of participation, nongovernmental organizations said that the country report resulting from the process provided them with an important advocacy tool, particularly because it was endorsed by the government, and led to improved relations with both ministries and donor agencies. In Indonesia, the government consulted extensively with those nongovernmental organizations that were part of this process during parliamentary debates on the new draft health law, a development unlikely to have occurred previously.¹⁶

Recommendations

The stakeholders assigned ministries, or other bodies, with responsibility for implementing the recommendations. Government ministries and, in some cases, professional associations were held accountable, for instance, to revise ethical standards to ensure sufficient protection of privacy and confidentiality in family planning services. Making these recommendations and responsibilities public lends them a certain weight and legitimacy. In Mozambique the recommendations were used for development of the integrated maternal, neonatal and child health package of care; in Sri Lanka application of the tool is accompanying ongoing effort by the Ministry of Health to design and make services available and accessible for adolescents; in the Republic of Moldova and in Tajikistan, the tool is being used as part of the Ministry of Health's efforts to harmonize their laws on sexual and reproductive health issues. In Tajikistan it is also linked to the reporting process of the Committee on the Rights of the Child. In Indonesia, the conclusions reached at the end of the process

are forming part of the implementation of the maternal health strategy, and – as one of the immediate actions – the Ministry of Health issued a letter to organizations for health professionals concerning the urgent need for increased efforts by their members to halt female genital mutilation and counteract its medicalization.²⁰

In the decentralized federalist health system of Brazil, use of the tool led to recommendations about the need to educate and inform State (rather than federal) governments and professional organizations about their human rights obligations.¹⁸ Nonetheless, as is true with other processes, the extent to which ministries and others will actually follow through on proposed actions depends on many factors, particularly political will.

Moving forward

Even if stakeholders identify and prioritize actions and assign responsibilities, there is no guarantee that those actions will be done. This depends on the extent of real commitment from key stakeholders, and may require further support, both technical and financial, from international development agencies or donors. All materials will be published online by WHO by the end of 2010. The aim is for countries to use the tool themselves without initiation from WHO or other agencies, although they may require assistance.

The tool is not intended to capture the way that services are delivered nor the actions of communities. It is, therefore, one step in a process that includes other methodologies designed to assess, for

example, the service delivery environment and practice. We are now exploring ways of combining use of the tool with the WHO strategic approach to strengthening sexual and reproductive health policies and programmes which was developed to examine quality of care in sexual and reproductive health services.¹⁴

Conclusion

The tool – both the instrument and the process – provides a methodology for mapping a country's legal and regulatory environment and its connection to sexual and reproductive health, by using a human rights analysis. It also provides a useful point of reference for national policy-makers and actors to reflect on their policies, programmes, guidelines and other actions by highlighting them in one consolidated document. Use of the tool contributes to understanding States' human rights obligations and creates a method for systematically examining the status of vulnerable groups. It involves non-health sectors, fosters a genuine process of civil society participation and develops recommendations with a clear assignment of responsibility.

Governments have begun to seek assistance to improve their legal and regulatory frameworks to ensure they are supportive of their sexual and reproductive health efforts. Using human rights to help identify needed changes, the tool offers an important step in the process towards promoting and protecting people's rights, improving health outcomes, and providing evidence of the added value that human rights can offer for health. ■

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ملخص

استخدام حقوق الإنسان في الصحة الجنسية والإنجابية: تحسين الأطر القانونية والتنظيمية

لمواجهة العقبات التنظيمية والسياسية أمام الصحة الجنسية والإنجابية مع تحديد واضح للمسؤوليات. ويمكن بحسن القيادة من قبل وزارة الصحة، وبدعم منظمة الصحة العالمية وسائر الشركاء الدوليين، وبالمشاركة الجادة من جميع المعنيين في هذه العملية أن تتعزز الارتباطات بين حقوق الإنسان والصحة الجنسية والإنجابية، وأن يساهم ذلك في إنجاز وطني ببلوغ أعلى معيار صحي يمكن إحرازه.

تصف هذه الورقة العلمية كيفية إعداد أداة لاستخدام مفاهيم وأساليب حقوق الإنسان في تحسين القوانين والقواعد التنظيمية والسياسات المتعلقة بالصحة الجنسية والصحة الإنجابية. وتهدف هذه الأداة إلى تحسين مستوى الوعي والإدراك بالتزامات حقوق الإنسان. وتشتمل الأداة على طريقة للفحص المنهجي لأوضاع الفئات السكانية الضعيفة، وإشراك القطاعات غير الصحية، وتعزيز عملية المشاركة الحقيقية للمجتمع المدني، وإعداد التوصيات

Résumé

Recours aux droits de l'homme pour promouvoir la santé sexuelle et génésique : amélioration des cadres juridiques et réglementaires

Le présent article décrit le développement d'un outil faisant appel à des concepts et à des méthodes relevant des droits de l'homme pour améliorer les lois, les réglementations et les politiques pertinentes en rapport avec la santé sexuelle et génésique. Cet outil vise à faire prendre conscience

et à améliorer la compréhension des obligations des Etats en matière de droits de l'homme. Il comprend une méthode pour examiner de manière systématique la situation des groupes vulnérables, impliquer des secteurs autres que celui de la santé, promouvoir un processus véritable de

participation de la société civile et mettre au point des recommandations en vue d'éliminer les obstacles réglementaires et politiques à la santé sexuelle et génésique, avec une affectation claire des responsabilités. Un rôle moteur fort assumé par le Ministère de la santé avec l'appui de l'Organisation mondiale de la Santé ou d'autres partenaires internationaux

ainsi que l'engagement sérieux de tous les participants à ce processus peuvent renforcer les liens entre droits de l'homme et santé sexuelle et génésique et contribuer à l'obtention, au plan national, du niveau de santé le plus élevé possible.

Resumen

Uso de los derechos humanos en pro de la salud sexual y reproductiva: mejorar los marcos jurídicos y normativos

En este trabajo se describe el desarrollo de un instrumento que utiliza conceptos y métodos del campo de los derechos humanos para introducir mejoras en la legislación, la normativa y las políticas relacionadas con la salud sexual y reproductiva. Dicho instrumento pretende ayudar a comprender mejor las obligaciones de los Estados en materia de derechos humanos y sensibilizar al respecto. Incluye un método que permite, de manera sistemática, estudiar la situación de los grupos vulnerables, implicar a sectores distintos de la salud, promover un proceso de auténtica participación de la sociedad civil y formular recomendaciones para

abordar las dificultades con que tropieza la salud sexual y reproductiva en materia de reglamentación y política, con una clara asignación de responsabilidades. Un firme liderazgo del ministerio de salud, con el apoyo de la Organización Mundial de la Salud u otros asociados internacionales, y unido a un serio compromiso por parte de todos cuantos intervienen en este proceso, puede reforzar los vínculos entre los derechos humanos y la salud sexual y reproductiva, y contribuir a hacer realidad a nivel nacional el grado máximo de salud que se pueda lograr.

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