

# **The International Human Rights Framework and Sexual and Reproductive Rights**

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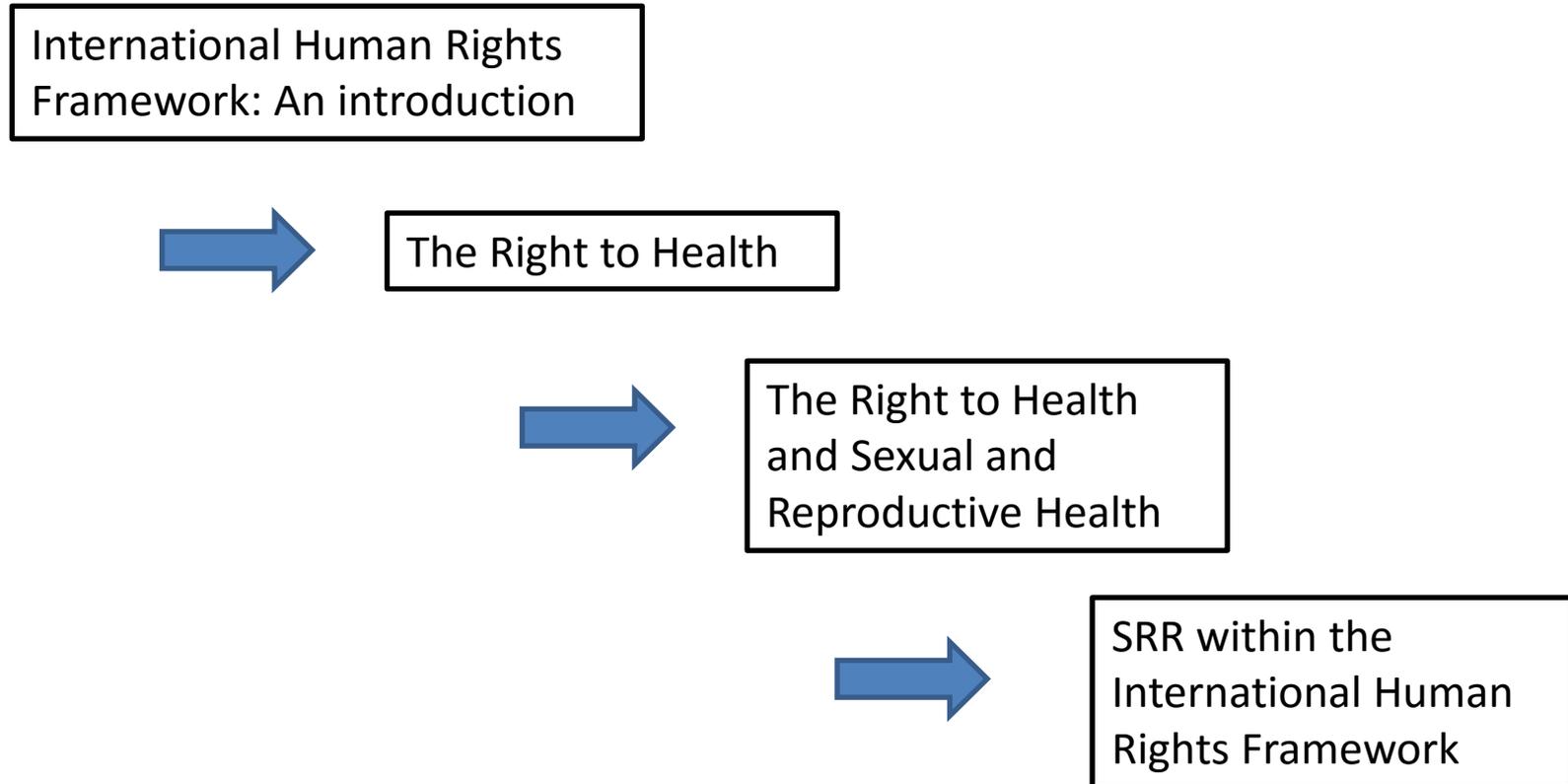
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Training Course in Sexual and Reproductive Health Research  
Geneva 2015

# International Human Rights Framework and Sexual and Reproductive Rights (SRR)

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# International Human Rights Framework and Sexual and Reproductive Rights (SRR)



# 1. International Human Rights Framework: An Introduction

# International Human Rights Framework: Background

- Ongoing Internationalization of Human Rights
  - International protection of human rights: beyond national sovereignty, a legitimate concern for the international community.
- Human rights references in UN Charter:
  - Preamble: *“We the peoples of the UN determined [...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”*
  - Art 1.3: *“The purposes of the UN are [...] To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;”*
  - Art 55: *“[...] the United Nations shall promote [...] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”*

# International Human Rights Framework: Background

- In the aftermath of the atrocities of World War II, the UN adopted the ***Universal Declaration of Human Rights (UDHR)*** (10 December 1948)
  - “A common standard of achievement for all peoples and all nations“
  - A set of basic fundamental rights and freedoms for every person without distinction of any kind + applicable everywhere
  - Compromise between different ideologies.
  - Not a legally binding document, but of high authoritative value: International customary law.

# International Human Rights Framework: Background

- UN Human Rights Commission was given the task to create a body of binding international human rights law based on the provisions in the UDHR
  - Complicated process due to political friction (cfr. cold war)
- 2 binding treaties were adopted by the UN General Assembly in 1966 and entered into force in 1976:  
***International Covenant on Civil and Political Rights*** (ICCPR) & ***International Covenant on Economic, Social and Cultural Rights*** (ICESCR)
  - Legally binding instruments for all States Parties to the treaty.
- The UDHR together with the ICCPR and the ICESCR comprise the ***International Bill of Human Rights***.

# International Human Rights Framework: Human Rights Treaties

## *International Covenant on Civil and Political Rights (ICCPR)*

- Guarantees set of civil and political rights and fundamental freedoms:
  - Right to life
  - Freedom from torture or other cruel, inhuman or degrading treatment or punishment
  - Right to liberty and security
  - Right to a fair trial
  - Right to vote
  - Right to a private life
  - Freedom of religion or belief
  - Freedom of opinion and expression
  - Freedom of peaceful assembly and association
  - Right to marriage
  - Etc.

# International Human Rights Framework: human rights treaties

## *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

- Guarantees set of economic, social and cultural rights and fundamental freedoms:
  - Right to work
  - Right to highest attainable standard of physical and mental health
  - Right to education
  - Right to an adequate standard of living
  - Right to food
  - Right to water
  - Right to participation in cultural life
  - Right to family life
  - Right to enjoy benefits of scientific progress
  - Etc.

# International Human Rights Framework:

## Other human rights treaties

- In addition to the two covenants, the UN has adopted many other binding treaties and optional protocols to existing treaties, further elaborating the human rights enshrined in the international bill of human rights.
  - [International Convention on the Elimination of All Forms of Racial Discrimination \(CERD, 1969\)](#)
  - [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW, 1979\)](#)
  - [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(CAT, 1984\)](#)
  - [Convention on the Rights of the Child \(CRC, 1989\)](#)
  - [International Convention for the Protection of All Persons from Enforced Disappearance \(CED, 2006\)](#)
  - [Convention on the Rights of Persons with Disabilities \(CRPD, 2006\)](#)
  - [Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty \(1989\)](#)
  - [Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict \(2000\)](#)
  - [Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography \(2000\)](#)
  - Etc.

# Universality of human rights

- Article 1 UDHR: *“All human beings are born free and equal in dignity and rights”*
- A set of basic fundamental rights and freedoms for every person without distinction of any kind + applicable everywhere
  - Vienna Declaration (1993): *“All human rights are **universal, indivisible and interdependent and interrelated**. ... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of the political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”* (own indication in bold)
- All human rights are interrelated: improving the enjoyment of one right, facilitates the advancement of other human rights.

# International Human Rights Framework: UN Human Rights Bodies

- The **Office of the High Commissioner for Human Rights (OHCHR)** is created by the UN General Assembly in 1993 to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in the international human rights laws and treaties.
  - The current High Commissioner of Human Rights is Navi Pillay.
- the **Human Rights Council (HRC)** is a charter-based inter-governmental body that consist of 47 elected Member States, based on principle of geographic representation.
  - Replaced the former Commission for Human Rights in 2006.
  - Promotes universal respect for all human rights by addressing situations of human rights violations and making recommendations.
  - Min. 3 regular sessions a year (September, March and June) + special session upon request

# International Human Rights Framework: UN Human Rights Bodies

- The **Special Procedures** of the Human Rights Council are independent human rights experts, appointed by the HRC and mandated to report and advise on specific human rights issues.
  - Thematic mandates v. country mandates
  - Examples:
    - Special Rapporteur on the situation of human rights in Belarus;
    - Independent Expert on the situation of human rights in Haiti;
    - Special Rapporteur on freedom of religion or belief;
    - Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
    - Working Group on the issue of discrimination against women in law and in practice;
    - Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
    - Special Rapporteur on violence against women, its causes and consequences;
    - etc.

# International Human Rights Framework: UN Human Rights Bodies

- Each human rights treaty establishes a mechanism to monitor the implementation of the treaty provisions by the State parties: **Treaty Bodies**
  - Examples of treaty bodies:
    - The **Human Rights Committee** monitors the implementation of the ICCPR
    - The **Committee on the Elimination of Discrimination against Women** monitors the implementation of the CEDAW
    - Etc.
  - Mandate of treaty bodies:
    - **Formulation of General Comments or General Recommendations:** These are authoritative interpretations that explain the content of the treaty provisions.
    - **State reporting procedure:** State Parties are obliged to submit a country report on a regular basis. The treaty-bodies will consider these reports and address their concerns and recommendations in ‘concluding observations’.
    - **Jurisprudence:** Treaty-bodies can be mandated to receive communications on human rights violations (individual complaints, inter-state complaints, etc.
    - **Others:** e.g.. Inquiry Procedures.

# International Human Rights Framework: State Obligations

- Human rights entail both rights and obligations.
- States assume obligations and duties under international law. There are 3 levels of human rights obligations:
  - Obligation to Respect: the State should refrain from intervening with the human rights of the individual.
    - E.g.: States cannot arbitrarily deprive someone of his/her liberty.
  - Obligation to Protect: the State should create mechanisms to prevent third parties to interfere with the human rights of the individual.
    - Egg: States must require employers not to discriminate on the basis of gender.
  - Obligation to Fulfill: the State should take positive measures to assist individuals to enjoy their human rights, including the allocation of resources.
    - Egg: States should ensure access to basic health care services for all.

## 2. The Right to Health

# The Right to Health: General Overview

- The human right to health
  - ≠ the right to be healthy
  - ≡ broad and inclusive right to the enjoyment of a variety of services, goods and facilities that are necessary for attaining and maintaining good health.
- The right to health has been evolved and moved from the margins to the mainstream of the UN context.
- References to the right to health within the International Bill of Rights:
  - Art 25 UDHR: *“right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”*.
  - Art 12 ICESCR: *“the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”* (See next slide for full text of article)

# The Right to health: General Overview

## Article 12 ICESCR

- *1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
- *2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of 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;*
- *(b) The improvement of all aspects of environmental and industrial hygiene;*
- *(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- *(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

# The Right to Health: General Overview

## **Other UN human rights treaties that recognize the right to health**

- International Convention on the Elimination of All Forms of Racial Discrimination (1965): art. 5 (e) (iv)
- Convention on the Elimination of All Forms of Discrimination against Women (1979) : arts. 11 (1) (f), 12 and 14 (2) (b)
- Convention on the Rights of the Child (1989): art. 24
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990): arts. 28, 43 (e) and 45 (c)
- Convention on the Rights of Persons with Disabilities (2006) : art. 25.

# The Right to Health: General Overview

## Interpretative Mechanisms

- The normative content of the right to health, on the basis of art 12 ICESCR, have undergone a rapid evolution, mainly due to two interpretative mechanisms that were put in force: The drafting of the General Comment 14 and the appointment of a Special Rapporteur on the right to health.
- In 2000, the Committee for Economic, Social and Cultural rights (CESCR) issued the **General Comment 14** to article 12 ICESCR. It explains and expands in great detail the scope and content of the right to the highest attainable standard of health.
- In 2002, The Human Rights Council appointed a **Special Rapporteur on the right to health**, as an independent expert to examine, report and make recommendations on specific issues or on the health situation in specific countries.

# The Right to Health: Scope and Content

- Right to health can be broken down into freedoms and entitlements:
  - Freedoms: e.g.. The right to be free from discrimination and the freedom to control one's own body, including sexual and reproductive freedom.
  - Entitlements: all individuals are entitled to a system of health protection which offers an equal opportunity for all to enjoy this highest attainable standard of health.
    - Positive duty of the state to ensure this opportunity

# The Right to Health: Scope and Content

## Article 12 ICESCR

- 1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of **the highest attainable standard of physical and mental health.***
- 2. *The **steps to be taken** by the States Parties to the present Covenant **to achieve the full realization of 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;*
  - (b) *The improvement of all aspects of environmental and industrial hygiene;*
  - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
  - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

# The Right to Health: Scope and Content

- 'Highest attainable standard of health'
  - Indirect recognition of the existing differences between countries regarding their social and economic development. This should be taken into account when analyzing compliance with the state's positive duties.
- 'Progressive realisation of rights'
  - Certain degree of **flexibility** for states on how to comply with their duties according to their socio-economic status
  - **Margin of discretion** in terms of assessing suitable measures, but states must certainly **take steps forward** in a deliberate, concrete and targeted way.
  - It must therefore use **all appropriate means**, particularly through the adoption of legislation, but also by adopting administrative, budgetary, promotional, and other measures .
- 'Core Content'
  - the 'bottom-line' of obligations, a **universal minimum standard for all**: A basic package of health-related services and conditions, which is not subjected to the "progressive realisation-principle"
  - Obligations of immediate effect to which the government has to comply with under all circumstances, irrespective of the amount of resources available for health and health care.
  - **Basic reproductive, maternal (pre-natal as well as post-natal) and child health care is seen as part of this core content.** (ICESCR GC 14, Par.44 (a))

# The Right to Health: Scope and Content

- Restrictions to the right to health:
  - One cannot be denied from access to health facilities, goods or services without justified reasons as embodied in the ICESCR.
  - Any restriction made must be:
    - proportional,
    - in accordance with the law (including international human rights standards),
    - compatible with the nature of the rights protected by the Covenant,
    - in the interest of legitimate aims pursued, and
    - strictly necessary for the promotion of the general welfare in a democratic society.

# Right to Health: State Obligations

1. Obligation to *respect*: refraining from interfering directly or indirectly with the enjoyment of the right to health.
  - E.g.. by denying equal access to services for all persons.
2. Obligation to *protect*: engaging in efforts to prevent third parties from interfering with art 12 ICESCR.
3. Obligation to *fulfill*: adopting appropriate legislative and other measures with the view upon achieving a full realisation of the right, taking into account the limited available resources.

# Right to Health: State Obligations

- 4 interrelated elements must be considered when analysing compliance with the right to health:
  - Availability:
    - the resources integral to health must exist: functioning public health services and healthcare facilities, goods and services must be *available* in a sufficient quantity.
  - Accessibility:
    - These health facilities, goods and services must also be *accessible* to all. Any barrier to access must be eliminated. No discrimination is allowed on any of the prohibited grounds as set forth in paragraph 18 of the general comment. Also physical accessibility, economic affordability must be ensured, as well as access to information.
  - Acceptability:
    - The health facilities, goods and services must be *acceptable*, according to cultural traditions and standards of medical ethics.
  - Quality:
    - The level of *quality* should also be consistent with medical and scientific standards.
- These 4 elements are variables, as the concrete form of application will depend on the conditions within the particular state party.

# Interdependence of the Right to Health

- The right to health is indivisible, interdependent and interrelated with the other human rights contained in the International Bill of Human Rights.
- Therefore, it is closely related to and dependent upon the realization of other human rights, because elements contained in other human rights are a precondition to and therefore protected by the right to health.
- Examples: human dignity, equality, physical integrity, privacy, access to information, right to food, housing, etc.

# Right to Health and Reproductive Health

- The General Comment 14 emphasizes that ensuring reproductive health care is a core obligation of the human right to health and reproductive health services therefore must be provided through primary health care systems.
  - Clear reference to ICPD, see slide 29.
- Reproductive health is clearly encompassed within the right to health, but that has also a strong connection with other human rights that are interrelated and complementary. Interests related to reproductive health can therefore be protected, not only on the basis of the right to health, but through several specific human rights recognized in international human rights law, as reproductive health occupies an interactive position between several specific rights.
  - E.g.. Right to life, right to privacy, right to freedom of opinion and expression, right to information and education, Right to be free from torture and ill-treatment

### 3. The International Human Rights Framework and Sexual and Reproductive Rights (SRR)

# The International Human Rights Framework and Sexual and Reproductive Rights

- Sexual and reproductive health was initially not directed towards human rights, but gradually moved towards a rights-based paradigm.
- *Key event:* International Conference on Population and Development (ICPD), Cairo 1994.
  - Paradigm shift, moving away from prior focus on population control through fertility control towards a comprehensive approach that prioritized a rights-based approach to protect sexual and reproductive health.

# International Conference on Population and Development (ICPD), Cairo 1994

- Legal Status of the Cairo Programme of Action:  
Soft law instrument: it does not create any new human rights, and is not legally enforceable as such  
BUT  
great authoritative value, as it is endorsed by 179 states.
- It affirms the existing human rights standards and interpret them in the view of the comprehensive concept of sexual and reproductive health and rights.

# International Conference on Population and Development (ICPD), Cairo 1994

Definitions (Cairo Programme of Action; Par. 7.2).

- “**Reproductive health** is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore 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. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. [...]”

# International Conference on Population and Development (ICPD), Cairo 1994

Definitions (Cairo Programme of Action; Par. 7.2 and 7.3 ).

- “[...] In line with the above definition of reproductive health, **reproductive health care** is defined as the constellation of methods, techniques and services that contribute to reproductive health and wellbeing by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases”
- “[**R**]eproductive 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 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.”

# Sexual and Reproductive Rights

- Sexual and reproductive rights are this set of human rights related to sexuality and reproduction that should be protected.
- Examples:
  - End (sexual) violence, especially against women and girls
  - Ensure access to sexual education and all information related to sexual and reproductive health., especially for young people
  - Right to access reproductive health care services
  - Right to contraception
  - Right to legal and safe abortion
  - Freedom from *coerced* sterilization, abortion, contraception, etc.
  - Protection against harmful practices related to sexuality and reproduction, such as female genital mutilation, or early and forced marriage
  - Guarantee equality and non-discrimination in law and practice regardless of sexual orientation and gender identity.
  - Guarantee equality and non-discrimination in law and practice regardless of health status (e.g.. HIV/AIDS)
  - Ensure enjoyment right to health for sex workers
  - Ensure access to medicines, information campaigns concerning HIV/AIDS
  - Right to family planning education and services
  - Etc.

**THANK YOU**