

Sexual Rights are Human Rights: But How Can We Convince the United Nations?

Kate Sheill*

1 Introduction

Across the world, there is much talk and action on sexual rights: individuals campaign; organisations run programmes; academics publish papers; activists lobby. We have learnt a great deal and enjoyed many successes. Yet in the international human rights sphere, ten years on from that first articulation of sexual rights in the Beijing Platform for Action (BPfA), there has been little progress and much opposition. In this article, I will examine some of the dynamics around the human rights discourse on sexual rights at the international, intergovernmental level.

Sexual rights embrace human rights that are already recognised in national laws and international human rights standards. The treaties themselves do not explicitly refer to or define 'sexual rights', but they do include rights that have direct bearing on sexual health and sexual rights, including: the right to life (International Covenant on Civil and Political Rights (ICCPR) Article 6); to liberty and security of person (ICCPR Article 9.1); to enjoy the benefits of scientific progress (International Covenant on Economic Social and Cultural Rights (ICESCR) Article 15.1(b)); to freedom of expression, including the right to seek, receive and impart information (ICCPR Article 19); the right to marry and found a family (ICCPR Article 23); to health (ICESCR Article 12); and the right of equal access for women to healthcare services, including family planning (Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Article 12).

The concept of sexual rights was first articulated in a UN document in 1995, with the adoption by consensus of the BPfA, the outcome document of the Fourth World Conference on Women.¹

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 ... (Para. 96)

Sexual rights frequently serve as a pivot around which civil, political, social and economic rights intersect – HIV/AIDS providing a good example. Sexual rights are not separate from the goals of the broader human rights movement. Human rights are universal, indivisible and inalienable. Realisation of sexual rights requires gender equality in society. It challenges deeply seated racial prejudices. It calls on us to confront the limited conceptualisations of gender-conforming sexuality and social 'norm'-conforming sexual behaviour. Taking a rights-based approach to sexuality is an important part of the struggle to achieve equality, an end to violence and justice for all.

2 Timing and contexts

It is timely to look at the human rights discourse on sexual rights and the efforts and opposition to progress at the intergovernmental level. Most of this article deals with events in 2005, which presented several opportunities to further the sexual rights discourse – at the annual UN sessions of the Commission on the Status of Women (CSW), Commission on Population and Development (CPD) and the Commission on Human Rights (CHR) and the five-year review of the Millennium Development Goals (MDGs) – none of which were as successful as we might have hoped. In light of the struggles to get human rights, much less sexual rights, onto the agenda for the UN World Summit and the failure of states to commit to almost all of the proposed meaningful human rights reforms, casts a shadow

over the forums in which sexual rights will be debated in future.² What seems clear is that we will continue to face challenges in our efforts to set a progressive agenda for the realisation of sexual rights.

The CSW in March 2005 undertook a ten-year review of the BPfA. Despite US-led opposition, coded as being against 'new international human rights', the BPfA was reaffirmed and several states, notably Nigeria speaking on behalf of the African Union, New Zealand on behalf of Canada and Australia, and the European Union, spoke of women's right to control their sexuality. The CPD in April of the same year looked at two issues relevant to sexual rights: HIV/AIDS³ and the Contribution of the implementation of the Programme of Action of the International Conference on Population and Development (ICPD)⁴ to the Millennium Development Goals.⁵ The 61st Session of the CHR followed immediately after the CSW and ran concurrently with the CPD. In 2005, there were six resolutions at the CHR that addressed sexual rights concerns: access to medication;⁶ the right to health;⁷ education;⁸ HIV/AIDS;⁹ extrajudicial, summary or arbitrary executions¹⁰ and violence against women.¹¹

While the MDGs do not speak directly of sexual rights, they address some of the effects of denying sexual and reproductive rights by attending to the crises of maternal health (goal 5) and the HIV pandemic (goal 6). Without taking steps to realise individuals' sexual rights and reproductive rights the MDGs cannot be achieved.¹² Indeed, sexual and reproductive rights are vital in the contemporary struggle against global poverty.¹³

3 So what are the obstacles to progress?

Several governments are attempting to retreat from human rights and the commitments they have made in signing and ratifying the international standards and joining consensus at world conferences. This goes beyond sexual rights – to the challenging, in the context of counter-terrorism, of the absolute prohibition against torture¹⁴ – though efforts to reframe sexual rights issues only as sexual health demonstrate this trend clearly. For example, at the 2005 CPD, the resolutions on HIV/AIDS and the links between the Cairo (ICPD) consensus and the MDGs made almost no mention of human rights.¹⁵ Perhaps this is not surprising given that the MDGs themselves do not use a rights framework. And we have struggled to put human rights at the centre of

the review of these goals and the attempts at UN reform. But beyond the threats to the human rights framework, what are the obstacles we must overcome to advance sexual rights?

Much is written about the opponents of sexual rights active in UN forums (e.g. see Buss and Herman 2003) but we also need to think about our own activities if we are to be successful in our goals. By and large, opponents of sexual rights outnumber us and are better organised and better funded than most sexual rights activists. Galvanised by what they saw as failures in the human rights conferences of the 1990s, conservative activists, organisations and states now form a vociferous opposition at every UN forum where sexual rights concerns are on the table. For ten years, they have been refining their tactics and now they set the rules of engagement.

The effort to resist progress or to renege on existing commitments to sexual rights can be so strong that it overwhelms our own strategies and we find ourselves time and again solely on the defensive. Instead of focusing on what we want, including the need to build on the groundbreaking conceptualisation of sexual rights, we can find ourselves spending virtually all of our time reacting to our opponents' agendas.

We need to be more affirmative in our own agenda. What do we mean by sexual rights? Would we agree on the definitions and strategies we need to pursue? We are not a homogeneous movement. How could we best handle that diversity? At a recent activist/practitioner meeting to review the ten years since the adoption of the Programme of Action (POA) of the ICPD, there was strikingly little talk of sexuality and it was kept to a side track. In the plenary sessions, with one notable exception, there was no talk of sexuality and definitely no talk of non-conforming sexualities. What does that mean – is 'queer' cracking consensus? Can the gains made in those 1990s world conferences survive the full implications of sexual rights? When lesbian, gay, bisexual and transgender (LGBT) rights were explicitly put on the table at the UN CHR in 2003, the reaction was so strong that it threatened the very foundation of human rights – the concept of universality.¹⁶

Even when states are not explicitly against sexual rights, the controversy seemingly inherent in these

rights gives them a value that can be a very useful bargaining tool in negotiations. Too often we have seen ‘friendly’ governments use the controversy of sexual rights as an implicit threat to be levered to gain agreement elsewhere, ensuring that their language on another issue is adopted.

Another big obstacle is the sheer breadth of debate. Unlike the challenge of organising for those international conferences, there are now so many UN meetings where sexual rights are at stake that the human, financial and time resource costs makes participation at every meeting impossible, even for the bigger organisations with the required UN accreditation. We need to work together to develop strategies of ensuring our presence across these many forums and of sharing feedback from them as opponent states and organisations often use the same strategies at the different meetings.

4 The challenges to and of maintaining the *status quo*

Even the BPfA gives us a formulation of sexual rights that applies only to women, speaks only in terms of violence and came about largely because of awareness of the impacts of disease (the HIV/AIDS pandemic). If we are to realise the full promise of sexual rights we also have to move beyond the violation-based protectionist model of human rights (see, amongst others Kapur 2002; Mahoney 1994; Miller 2004). By this I mean the model that focuses only on the negative articulation of rights – the right to be free from rather than free to – and the focus on protection from disease, harm and danger – that seeks only to limit sexual rights. We need to recognise different articulations of human agency and ensure that we find ways and means of promoting and protecting affirmative claims to and diverse expressions of sexuality. For example, ensuring that we have the conditions in place for people to enjoy sexual pleasure, if they wish: no sexual violence, sexuality education, adequate and accessible health services, gender equality, anti-discrimination measures, partnership recognition, etc.

Not only is our past use of victimisation rhetoric and protectionist model of human rights limited in what it can deliver for sexual rights, but our advocacy strategies are beginning to rebound on us. The USA has attempted to contain efforts to promote sexual rights by opposing the creation of any ‘new’ rights, and considering sexual rights as new. Sexual rights

activists have worked hard to reject this, by referring to the clauses in international covenants (which I outlined in my introduction) to show that basic principles of sexual rights have already been implied in existing texts. However, the opposition are using ‘our’ own argument against us, i.e. they are using this argument to demonstrate that – and show that we agree that – if specific rights have not been explicitly codified in previously negotiated texts, then they are not then endorsed by the international agreements. At Beijing Plus Ten the USA-based right-wing Catholic Family and Human Rights Institute used this refutation by activists to contest abortion rights, hence their headline assertion ‘UN Abortion Advocates Admit Beijing Excludes Abortion Rights’.¹⁷ Their argument could equally be extended to other sexual rights issues such as LGBT rights or sex worker rights and indeed, there was strident opposition to the inclusion of reference to men who have sex with men and sex workers in the political outcome document of the five-year review of the UN General Assembly Special Session on HIV/AIDS (UNGASS review) in May–June 2006.¹⁸

If sexual rights are not new rights, can we at least use new language? It would appear not. A tactic opposing states, used at the CHR in 2005, is that they would not accept any language that has not previously appeared in an international negotiated resolution. Regional texts are not sufficient, which rules out the only reference to sexual and reproductive rights in any negotiated regional text I know of, in the Mexico City Consensus.¹⁹ Nor would they accept an expansion of the concept of sexual rights contained in the BPfA – the outcome document of a women’s conference – to include men. If we can never use language that has not been used before, how can we ever progress?

Yet the attacks go deeper than that – it seems that we are not allowed to use any old language either. In 2005 in both the CHR resolutions on violence against women and HIV/AIDS, the opposition of some states to sexual rights issues was to be expected, but the opposition to the long-established concept of ‘reproductive rights’ was more surprising. The scope of reproductive rights is long established, having been first set out in a UN document in the ICPD POA (1994), which informs the language on reproductive rights in the BPfA (1995). While we are used to statements clarifying positions against abortion, following adoption of the violence against women resolution, Guatemala,

Ecuador, Honduras and Costa Rica delivered strongly worded comments just on the term 'reproductive rights' – in spite of the clear support for sexual and reproductive rights at the Beijing Plus Ten Latin American and Caribbean preparatory conference.²⁰

In the HIV/AIDS resolution, China and certain Latin American states were particularly vocal in their opposition to reproductive *rights* (as opposed to reproductive health). Both resolutions also saw a weakening of references to these progressive UN guidelines on HIV/AIDS and Human Rights,²¹ even though the guidelines were adopted in 1997 and have been referred to numerous Commission resolutions since then – indeed, the HIV/AIDS resolution came about *because* of the guidelines. Their attention to, among other issues, men who have sex with men; the repeal of 'sodomy' laws; same sex marriage and decriminalisation of sex work, were the likely triggers for this last-minute challenge to the guidelines, as evidenced by the USA 'Explanation of Position' on the HIV/AIDS resolution, in which they expressed their concern that Commission members have sought action 'on a number of highly controversial and deeply divisive issues relating to sexuality ...'.²²

This questioning of the gains made in the 1990s UN world conferences and elsewhere constitute an attack on the human rights framework. The 2006 review of the 2001 Declaration of Commitment on HIV/AIDS marginalises human rights-based approaches. The Human Rights Caucus at the UNGASS review commented: '... we are concerned by the dearth of language stressing the necessity of rights-based approaches to HIV and AIDS policy, programming and services. We are concerned not only because this is an obligation of governments but also because it makes work more effective. Rights-based approaches require ensuring the participation of affected communities, non-discrimination in programme delivery, attention to the legal and policy environment in which interventions take place, and accountability for what is done, and how it is done'.²³

5 The opportunities we must seize

We have to seize opportunities such as the IDS workshop, which gave rise to this *IDS Bulletin*, to

make connections between the many actors working on different sexual rights issues, including HIV/AIDS, LGBT rights, sexual health, whether from policy or practice, at local, national, regional and international levels. Only through such exchange can we end the compartmentalising which prevents the sharing of lessons and of evidence that different practitioners could contribute to the debates and advocacy efforts. We must continue to challenge funding restrictions that silence so many sexual rights workers and results in the loss of these experts in negotiation spaces. We must ground our arguments and interventions in human rights and lobby for the inclusion of language using clearly articulated rights-based approaches.

Maybe we need to move the debate. The regional preparatory conferences for Beijing Plus Ten and Cairo Plus Ten saw more progressive language on sexual rights than we ever see at the international level. How can we maximise these regional organising successes? Should we take our efforts to the regional human rights bodies (where they exist)? How can we internationalise our gains at the regional level?

We also need to spread the word. None of us can cover every meeting so we need to give others the tools to push our concerns, or at least stave off the worst attacks. There are many professional lobbyists working at the UN, they cover a huge range of issues and we must ensure that they understand ours. We must also educate negotiators in our ally governments so that when they have opportunities to progress the human rights discourse they are able to do so.

We have the new opportunities presented by the Human Rights Council (which replaced the Commission on Human Rights in 2006). While we will always need to be vigilant against attacks on our previous gains, we must move beyond solely defensive tactics and develop holistic, coherent strategies so that we can push on to realise the full promise of that first articulation of sexual rights. Sexual rights are human rights – it is time to stay strong and be bold.

Notes

- * Kate Sheill is Campaign Coordinator on Identity-Based Discrimination in the Policy and Evaluation Programme of the International Secretariat of Amnesty International. The views expressed here are the author's and do not represent those of Amnesty International.
- 1 A/CONF.177/20, 17 October 1995.
 - 2 UN Summit: Human Rights Betrayed by a Failure of Leadership, Amnesty International (AI Index No: IOR 41/059/2005), 12 September 2005.
 - 3 Population, Development and HIV/AIDS with Particular Emphasis on Poverty, E/CN.9/2005/L.4, 11 April 2005.
 - 4 The ICPD Programme of Action was adopted by consensus in 1994 and addresses, among other issues, reproductive rights and sexual and reproductive health: Ch. 7 of the ICPD POA is entitled 'Reproductive Rights and Reproductive Health' and employs a model which encompasses sexuality, see in particular paras 7.2 and 7.3 (www.unfpa.org/icpd/icpd_poa.htm#ch7).
 - 5 Contribution of the implementation of the Programme of Action of the International Conference on Population and Development, in all its aspects, to the achievement of the internationally agreed development goals, including those contained in the United Nations Millennium Declaration, E/CN.9/2005/L.5, 11 April 2005.
 - 6 Access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria: Human Rights Resolution 2005/23.
 - 7 The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Human Rights Resolution 2005/24.
 - 8 The right to education: Human Rights Resolution 2005/21.
 - 9 The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS): Human Rights Resolution 2005/84.
 - 10 Extrajudicial, summary or arbitrary executions: Human Rights Resolution 2005/34.
 - 11 Elimination of violence against women: Human Rights Resolution 2005/41.
 - 12 A/59, 27 September 2004, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the UN General Assembly, para. 30.
 - 13 *Ibid*, para. 31.
 - 14 See for example, Amnesty International Report 2005, AI Index: POL 10/001/2005; UK: Law Lords confirm that torture 'evidence' is unacceptable, AI Index: EUR 45/057/2005.
 - 15 While the resolution on 'Population, development and HIV/AIDS with particular emphasis on poverty', E/CN.9/2005/L.4, 11 April 2005, references rights on four occasions, the resolution on the 'Contribution of the Implementation of the Programme of Action of the International Conference on Population and Development, in all its aspects, to the achievement of the internationally agreed development goals, including those contained in the United Nations Millennium Declaration', E/CN.9/2005/L.5, 11 April 2005, makes only one explicit reference to human rights, simply stressing the importance of promoting women's full enjoyment of all human rights and fundamental freedoms (para. 7).
 - 16 Amnesty International, UN Commission on Human Rights: Universality under threat over sexual orientation resolution, AI Index: IOR 41/013/2003, 22 April 2003.
 - 17 Catholic Family and Human Rights Institute: 'UN Abortion Advocates Admit Beijing Excludes Abortion Rights', 4 March 2005, www.c-fam.org/FAX/Volume_8/faxv8n11.html
 - 18 UNAIDS Statement on the Political Declaration on HIV/AIDS, http://data.unaids.org/pub/PressStatement/2006/20060620_PS_HLM_en.pdf
 - 19 'Review and implement legislation guaranteeing the responsible exercise of *sexual and reproductive rights* and non-discriminatory access to health services, including sexual and reproductive health' – from Report of the Ninth Session of the Regional Conference on Women in Latin America and the Caribbean [regional preparatory meeting for Beijing Plus Ten]; Mexico City, LC/G.2256 (CRM.9/6, 10–12 June 2004, para. 6(xi), emphasis added.
 - 20 Report of the Ninth Session of the Regional Conference on Women in Latin America and the Caribbean; Mexico City, LC/G.2256 (CRM.9/6, 10–12 June 2004).
 - 21 UN guidelines on HIV/AIDS and Human Rights, www.unaids.org/NetTools/Misc/DocInfo.aspx?LANG=en&href=http://gva-doc-owl/WEBcontent/Documents/pub/Publications/IRC-pub02/JC520-HumanRights_en.pdf
 - 22 Item 14: Human Rights and AIDS. Explanation of Position. Statement of Leonard A. Leo, United States Public Delegate. Delivered at the Commission on Human Rights, 21 April 2005.

23 Statement by the Human Rights Caucus at the High Level Meeting on HIV and AIDS, New York, 2 June 2006.

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