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Module 3

Sexual health & human rights

Upon successful completion of this module you should be able to:

- Describe what human rights are and identify the different international human rights instruments.
- Describe the key aspects of rights to sexual health and the obligations of the state.
- Integrate a rights-based approach to sexual health into their work setting.

What are human rights?

Human rights are universal legal guarantees

- ... inherent to individuals
- ... and, to some extent, to groups of different nature (civil, political, economic, social and cultural rights)
- ... that protect human values (liberty, equality, dignity)
- ... grounded in international norms and standards
- ... and that are legally binding on states.

International Instruments: International Bill of Rights

Universal Declaration of Human Rights, 1948

Articles 1 and 2 : Right to equality and freedom from discrimination

Articles 3-21 : Civil and political rights

Articles 22-27 : Economic, social and cultural rights

International Covenant on Economic, Social and Cultural Rights, 1966

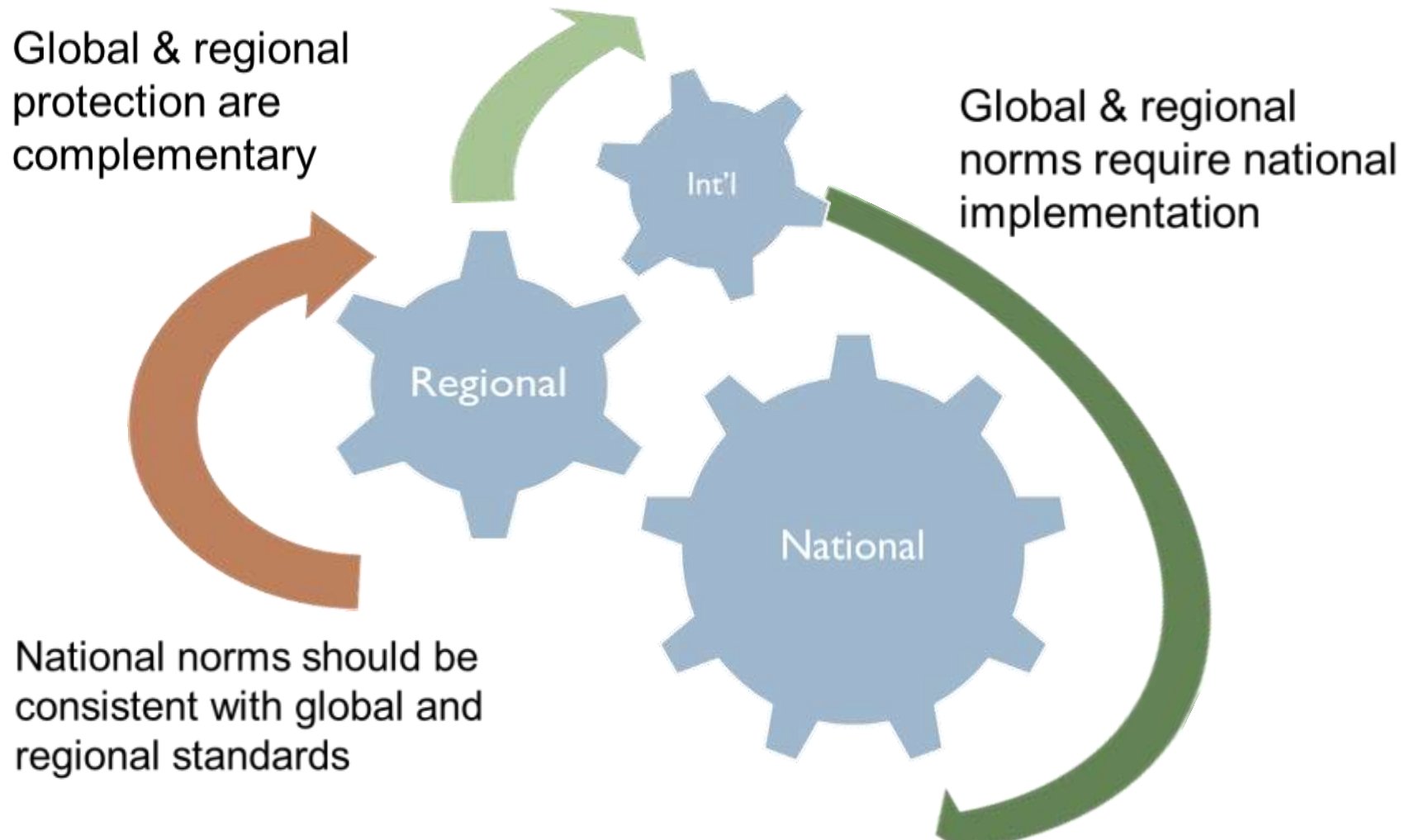
*Right to non-discrimination; Right to work; Just and favourable conditions of work; Trade union rights; Right to social security; Protection of the family; Right to an adequate standard of living; **Right to health**; Right to education; Right to participate in cultural life; etc.*

International Covenant on Civil and Political Rights, 1966

Right to life; Right to physical integrity; Right to liberty and security, freedom of movement; Life and safety; Right to public participation; Right to justice; Right to freedom of association; Right to assemble; Right to freedom of expression; Freedom of religion; etc.

Module 3 - Sexual health & human rights

Links between national, regional and international protection systems



Sexual health & human rights

In order to achieve and maintain sexual health, sexual rights of all persons must be respected, protected, and insured.

Plurality of rights

- Encompasses more than the right to health.
- Rooted in the rights to equality, privacy, health, personal integrity, right to a family life, freedom not to be subjected to torture and other types of violence, and freedom of thought and expression.

The right to health framework takes into account this plurality of rights.

What is the right to health?

The right to health is the broad and inclusive right to the enjoyment of a variety of services, goods, and facilities that are necessary for attaining and maintaining good health.

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.”*

What is the right to sexual health?

- Sexual health, as defined by the WHO, is “a state of physical, emotional, mental and social well-being in relation to sexuality”.
- The right to sexual and reproductive health is an integral part of the right to health enshrined in article 12 of the ICESCR. It is also reflected in other international human rights instruments, such as CEDAW, CRC, etc.
- The adoption of the Programme of Action of the International Conference on Population and Development in 1994 further highlighted reproductive and sexual health issues within the human rights framework.
- Most recently, the 2030 Agenda for Sustainable Development includes goals and targets to be achieved in the area of sexual and reproductive health.

Rapport of the Special Rapporteur on the right to health (2004)

“54 [...] sexuality is a characteristic of all human beings. It is a fundamental aspect of an individual’s identity. It helps to define who a person is”.

“54 [...] The Special Rapporteur notes the abiding principles that have shaped international human rights law since 1945, including privacy, equality, and the integrity, autonomy, dignity and well-being of the individual”.

“In these circumstances, the Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference.”

The right to the highest attainable standard of sexual health includes:

- access to specialized medical services on sexual and reproductive health;
- the right to seek, receive, and impart information related to sexuality;
- the right to sexual education;
- the right to physical integrity;
- the right to choose their partner;
- the right to decide to be sexually active or not;
- the right to consensual sex;
- the right to consensual marriage;
- the right to decide to have or not to have children at the time of their choice;
- the right to have a satisfying, safe, and pleasurable sex life.

Key aspects of the right to sexual health

“The highest attainable standard of physical and mental health”

This is not confined to the right to health care. On the contrary, the drafting and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health overall.

An inclusive right that extends to the “underlying determinants of health”

Including: access to safe and potable water, adequate sanitation, adequate food and nutrition, adequate housing, safe and healthy working conditions and environment, health-related education and information, and effective protection from all forms of violence, torture and discrimination, and other human rights violations that have a negative impact on the right to sexual and reproductive health.

Key aspects of the right to sexual health

Entails both freedoms and entitlements

- These freedoms include the right to make free and responsible decisions and choices – free of violence, coercion, and discrimination – regarding matters concerning one's body and sexual health.
- The entitlements include unhindered access to a whole range of health facilities, goods, services, and information, which ensure for all people the full enjoyment of the right to sexual health.

Key aspects of the right to sexual health

Non – discrimination & equality

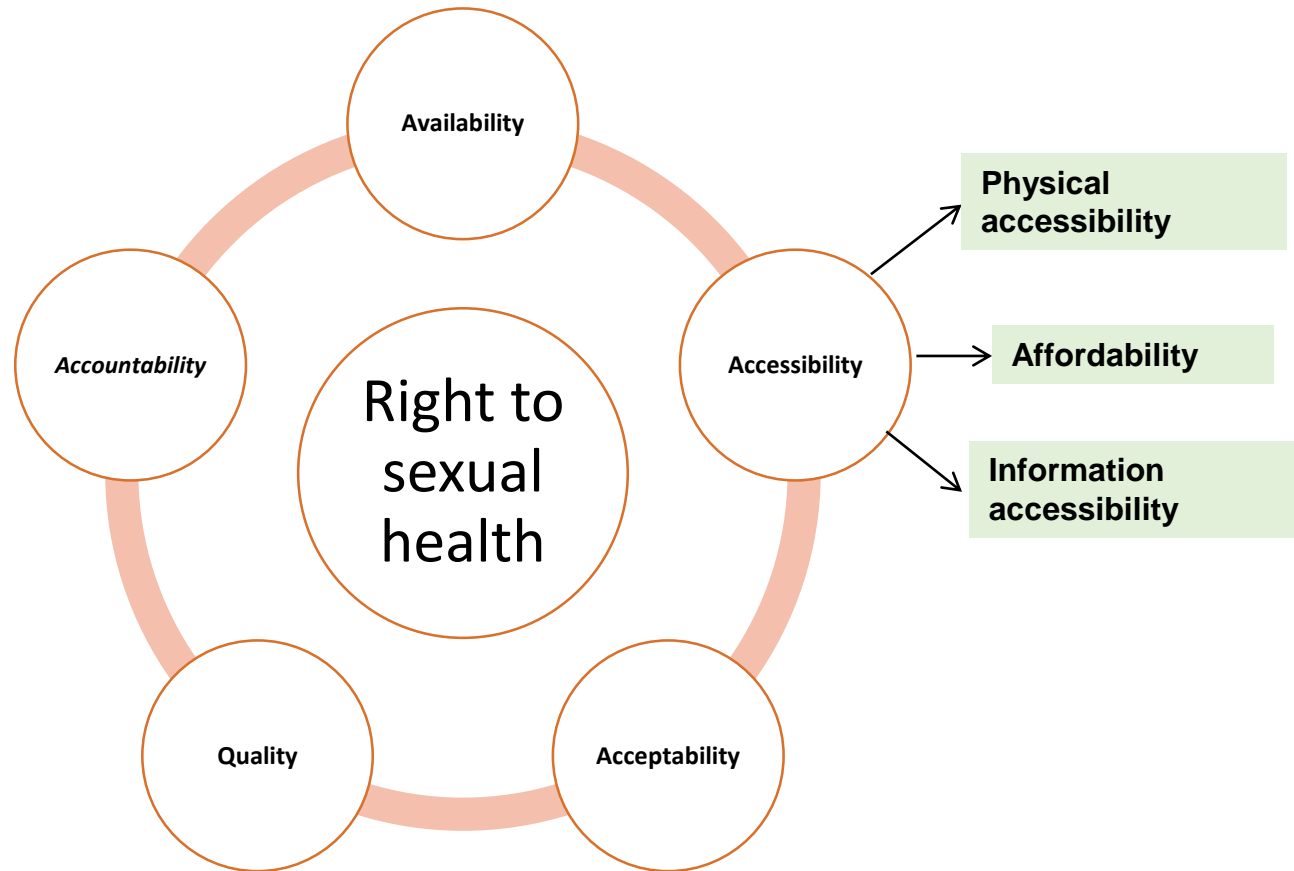
- Non-discrimination and equality are fundamental human rights principles and critical components of the right to health.
- Non-discrimination and equality imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases.
- Positive measures of protection are particularly necessary when certain groups of persons have continuously been discriminated against in the practice of States parties or by private actors.

Key aspects of the right to sexual health

Interrelated & complementary

- Sexual health is clearly encompassed within the right to health, but that also has a strong connection with other human rights that are interrelated and complementary. The right to sexual 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.
- Sexual health occupies an interactive position between several specific rights:
 - Right to life,
 - right to privacy,
 - right to freedom of opinion and expression,
 - right to information and education, and
 - right to be free from torture or ill treatment.

Elements of the right to sexual health



Non-Discrimination & Equality

Elements of the right to sexual health

Availability: Functioning public health and health-care facilities, as well as goods and services, must be available in sufficient quantity within a State.

Accessibility: The facilities, goods, and services must be accessible physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities, and other vulnerable groups), as well as financially and on the basis of non-discrimination. Accessibility also implies the right to seek, receive and impart health-related information in an accessible format (for all, including persons with disabilities), but does not impair the right to have personal health data treated confidentially.

Elements of the right to sexual health

Acceptability: The facilities, goods and services should also respect medical ethics, be gender-sensitive, and be culturally appropriate.

Quality: They must be scientifically and medically appropriate, and of good quality. In particular, this requires trained health professionals, scientifically approved and unexpired drugs and hospital equipment, adequate sanitation, and safe drinking water.

Accountability: Duty bearers should be held accountable for meeting human rights obligations in the area of public health, including through the possibility of seeking effective remedies for breaches, for example, such as the denial of treatment.

Human rights obligations

Duty-bearers



Respect

Protect

Fulfill

Free from violence related to one's sexual orientation

Prohibit child marriage

Provide comprehensive sexuality information

Refrain from interfering with the enjoyment of rights

Prevent others from interfering with the enjoyment of rights

Adopt appropriate measures towards full realization of rights

Right to sexual health

Obligations of States regarding sexual health

Include:

- Repeal and/or eliminate laws, policies, and practices that criminalise, obstruct, or undermine an individual's or a particular group's access to health facilities, services, goods and information.
- Ensure all have access to comprehensive education and information that is non-discriminatory and evidence-based, and takes into account the evolving capacities of children and adolescents.
- Ensure universal access to quality sexual and reproductive health care, including maternal health care; contraceptive information and services; safe abortion care; preventative care; diagnosis and treatment of infertility; reproductive cancer care; diagnosis and treatment of sexually transmitted infections and HIV/AIDS.

What is a Human Rights-based approach (HRBA)?

A HRBA is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

Under a HRBA, plans, policies, and programmes are anchored in a system of rights and corresponding obligations established by international law. This helps to bolster sustainability by empowering people themselves (right-holders) — especially the most marginalized — to participate in policy formulation and hold accountable those who have a duty to act (duty-bearers).

HRBA to sexual health:

The International Conference on Population and Development (ICPD, 1994) created a paradigm shift by moving away from prior focus on population control through fertility control and towards a comprehensive approach that prioritized a rights-based approach to protecting sexual and reproductive health.

Key principles of the HRBA

- **Empowerment of all right-holders**
- **Meaningful participation of affected communities**
- **Non-discrimination de facto and de jure in all stages**
- **Accountability mechanisms**

Module 3 - Sexual health & human rights

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