Towards a sexual ethics of rights and responsibilities

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Abstract: Sexual rights as human rights encompass individual freedoms and social entitlements. Both depend for their realisation on equally important social responsibilities on the part of individuals, couples, families, other social institutions, and the State. The principle that all persons must understand their own sexual rights and responsibilities and respect the equal rights of others – particularly those of their sexual partners – informs our interpretation of the ethical basis of sexual behaviours. We propose a conceptual framework for defining a sexual ethics of equal rights and responsibilities pertaining to five dimensions of sexual behaviour: 1) sexual relationships and the right to choose one’s partner; 2) sexual expression and the right to seek pleasure; 3) sexual consequences and the right to cooperation from one’s partner; 4) sexual harm and the right to protection; and 5) sexual health and the right to information, education and health services. We suggest that the ethical principles presented here pertaining to sexual partnerships should be incorporated into sexuality education, sexual and reproductive health services, and social policies aimed at promoting the health and rights of all persons regardless of gender, marital status, sexual orientation, religion, ethnicity and other personal or group identities. ©2009 Reproductive Health Matters. All rights reserved.

Keywords: sexual rights, sexual responsibilities, sexual ethics, sexual health, sexual pleasure

The term “sexual rights” is generally understood to encompass both formal and non-formal applications of codified human rights in the realm of sexuality and sexual relationships. These applications, which derive from basic principles of the 1948 Universal Declaration of Human Rights and subsequent international agreements, include the right to self-determination, freedom of association and expression, liberty and security of the person, non-discrimination and equal treatment under the law, the enjoyment of the highest attainable standard of physical and mental health, and protection from cruel, inhuman or degrading treatment. Sexual rights also derive from principles of gender equality as affirmed in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and other documents, and from principles of non-discrimination based on sexual orientation and gender identity as proposed in the 2007 Yogyakarta Principles, among other sources. The fulfillment of sexual rights as human rights is a fundamental element of social justice and of the exercise of full citizenship for all persons.

Declarations of sexual rights by United Nations (UN) agencies and international assemblies, non-governmental organizations, and activists and researchers offer a rich array of perspectives on the nature of the individual freedoms and social entitlements that are “claimed”. Although the obligations of the State and civil society to create the enabling social, economic and legal conditions necessary for the fulfillment of individual rights are emphasized in many declarations, such as the International Planned
Parenthood Federation’s 2008 Declaration on Sexual Rights15 and the Yogyakarta Principles,4 most make only passing reference to the role of individuals’ responsibilities. Yet, the realization of sexual rights is possible only if all persons respect the autonomy, dignity and equal rights of others – especially of their sexual partners – as well as their own integrity and self-worth.

Sexual responsibilities as sexual ethics: five applications

In its groundbreaking affirmation of women’s sexual rights by UN member states in Beijing in 1995, the Platform for Action of the Fourth World Conference on Women makes two references to individual responsibilities:

“The human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.” (Paragraph 96)

Similarly, an interpretation of sexual rights framed by an international group of women’s health advocates who were deeply engaged in the UN conferences held in the 1990s on the environment, human rights, population and women, declares that:

“Sexual rights refer to the human rights of all persons with respect to the free and responsible expression of their sexuality and their control over their bodies. They encompass the right to experience a pleasurable sexuality, which is essential in and of itself and, at the same time, is a fundamental vehicle of communication and love between people. Sexual rights include the right to liberty and autonomy in the responsible exercise of sexuality.”16

Despite these and other references to “free and responsible” sexual expression, the international community of sexual rights advocates has been somewhat reluctant to spell out what “responsible” sexual expression might mean. There are several reasons for this – and, indeed, for our own cautiousness in proposing such a clarification. The first derives from a conservative political climate in which sexual freedom is equated with sexual irresponsibility and carries strong moral and legal condemnation. Rather than avoiding the issue, however, we believe that sexual rights advocates must claim the concept of responsibilities and define it in the language of respect for the rights of others. A second concern is that the idea that sexual partners have (or should have) equal rights and responsibilities vis-a-vis one another appears to overlook the realities of power hierarchies that prevent many persons – especially women and sexual minorities – from enjoying their sexuality and protecting themselves from harm. Yet, all declarations of human rights are statements of what ought to be and not necessarily of what is: they are ideals. Because sexual rights are human rights, we contend that an ethic of equal rights, mutual respect, consent, and shared responsibilities applies to all sexual partners regardless of their sex, sexual orientation, gender identity, marital status, and other personal or social characteristics.

The ethical guidelines proposed here are not meant to be legally enforceable in their entirety, but neither are they simply wishful interpretations. Rather, they are proposed as logical extensions or applications of broader human rights principles to individuals and couples with respect to five dimensions of sexuality and sexual behaviour, namely: 1) sexual relationships and the right to choose one’s partner; 2) sexual expression and the right to seek pleasure; 3) sexual consequences and the right to cooperation from one’s partner; 4) sexual harm and the right to protection; and 5) sexual health and the right to information, education and services. The mutual rights and responsibilities of sexual partners are outlined in the context of the State’s obligations to protect and fulfill a corresponding range of individual freedoms and social entitlements pertaining to each of these five dimensions.

• Sexual relationships and the right to choose one’s partner

Formal UN agreements such as the 1966 International Covenant on Civil and Political Rights and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, which are binding on States Parties, declare that
everyone of full age has the right (freedom) to marry and found a family. In addition, men and women have equal rights to freely choose a spouse and to enter into marriage only with their free and full consent. Non-formal declarations of sexual rights from non-governmental organizations and other sources typically extend the same rights to freedom of choice and consent to non-marital relationships as well, and the same marital and non-marital rights equally to all persons regardless of their sex, sexual orientation or gender identity.

The implications of these principles for the exercise of personal responsibilities are clear. Because everyone has the right to refuse any or all marital or non-marital sexual relationships with any other person, no one is entitled to enter into a sexual relationship with another person against that person’s will, or to coerce or attempt to coerce another person into staying in such a relationship if the other no longer consents to it. Everyone thus has the responsibility to respect the equal rights to freedom of choice and consent of his or her partner(s) and of other persons in their families and communities. Everyone also has an ethical obligation not to participate in or condone practices that either compel two people to form or remain in a marital or non-marital sexual relationships if at least one of them does not wish to, or that prevent any two persons above the age of consent who wish to establish a marital or non-marital relationship from doing so.

- **Sexual expression and the right to seek pleasure**

According to a working group convened by the World Health Organization (WHO), all persons have a right “to pursue a satisfying, safe and pleasurable sexual life” free of coercion, discrimination and violence (emphasis added). Erotic pleasure is celebrated as a “natural right” in many non-formal declarations that grant to everyone – including children, adolescents, adults and the elderly – a right to know and value their own body and to seek pleasure from it free of misinformation, shame, guilt or mockery.

Principles of sexual freedom and of the right to seek sexual pleasure grant to no one the right to receive or demand sexual satisfaction from others against their will, wishes, or inclination, however. The freedom to choose whether, when, with whom, and how to have sexual relations or exchanges, and to initiate and respond to expressions of sexual desire, carries a corresponding responsibility to respect the other person’s integrity, privacy and freedom to choose – including their right to say no – regardless of the nature of the relationship. Sexual ethics places limits on the pursuit of pleasure as well as on its realization: a pleasurable sexual life cannot be guaranteed.

The exercise of sexual rights requires freely given consent in the context of mutual choice in every sexual encounter. This means that everyone is (i.e. should be) free to refuse, or to demand the termination of, any sexual initiative, act, or practice at any time in any relationship, including marriage, cohabiting unions, love affairs, dating relationships, casual encounters, and commercial sex transactions. Moreover, consent to the formation of a sexual relationship or to a sexual exchange in general, no matter how brief, does not imply consent to all sexual acts within that relationship. The growing body of laws in many countries that recognize marital rape, date rape and the rape of sex workers as criminal offenses regardless of the perpetrator’s claims of entitlement or implied consent attests to the legitimacy of an individual’s right to refuse any sexual act even within a relationship in which sexual exchanges are (or may be) expected.

- **Sexual consequences and the right to cooperation from one’s partner**

The Platform for Action of the 1995 Fourth World Conference on Women declares that sexual relations and reproduction should be based on “mutual respect, consent and shared responsibility for sexual behavior and its consequences”. Both positive and negative consequences are relevant here. Sexual expression may contribute to the strengthening of emotional bonds between partners or to pain and humiliation; to the conception and birth of a much-wanted child or to an unwanted or life-threatening pregnancy; to the physical health and well-being of both partners or to the transmission from one to the other of a sexually transmitted infection, including HIV.

With respect to protection from unwanted pregnancies, UN agreements since the Proclamation...
of Teheran of the 1968 International Conference on Human Rights have affirmed that individuals and couples have the right to decide freely and responsibly on the number and spacing of their children and to the information, education, and means to do so. The entitlement of all persons to the fullest possible range of safe, affordable and acceptable contraceptive methods and to appropriate information and services has been emphasized in numerous international declarations, such as the Programme of Action of the 1994 International Conference on Population and Development, and constitutes a fundamental obligation of the State to provide.

If individuals are to be guaranteed the right to decide “freely and responsibly” on whether and when to have children and how many, then it follows that no person has the right to prevent another – including his or her sexual partner – from using contraception, or the right to force another to use a method against his or her will. If both partners agree that conception should be avoided, then each is ethically responsible for using a contraceptive method or cooperating with its use by the other. If conception does occur, the woman has the final right to decide on the outcome of the pregnancy because her bodily integrity is at stake, and no woman should be forced to terminate a pregnancy or to carry a pregnancy to term against her will. If both partners agree that conception should be avoided, then each is ethically responsible for using a contraceptive method or cooperating with its use by the other. If conception does occur, the woman has the final right to decide on the outcome of the pregnancy because her bodily integrity is at stake, and no woman should be forced to terminate a pregnancy or to carry a pregnancy to term against her will.

If individuals and couples are entitled to information, education and the means of fertility regulation, then it also follows that no individual has the right to prevent any other person – whether a sexual partner or anyone else in the family or community – from exercising this entitlement. Rather, everyone has an ethical responsibility to be informed, where possible, and to ensure that his or her sexual partner is informed. Family planning providers can promote an ethic of sexual cooperation by offering routine joint counselling for couples on pregnancy prevention and pregnancy care.

The HIV/AIDS pandemic has thrown into high relief conflicts over sexual rights and responsibilities relating to the prevention of HIV and other sexually transmitted infections. HIV poses particular ethical challenges to individuals, couples and governments given the difficulty people face in ascertaining their own and their partner’s status, and the harsh personal, social, economic and health consequences of doing so in many countries. Nevertheless, everyone has the right to decide on matters relating to his or her own sexual and reproductive health, as the Beijing declaration declares, then everyone has a “need to know” the health status of his or her partner and the right to insist on safer sex (or no sex). Everyone also has an ethical obligation to know and to inform his or her sexual partner(s) of his or her own health status in recognition of the partner’s need to know and equal right to decide. In this sense, an individual’s ethical responsibility to inform and to avoid transmitting HIV to a sexual partner may compete with his or her right to privacy. We argue for the individual to give the greatest possible weight to responsibility and to seek help with the disclosure process where necessary, recognizing that there may be disclosure-related risks.

All persons involved in sexual relationships, whether casual encounters or long-term commitments, are entitled to cooperation from their partners in the use of male or female condoms or other methods to prevent the transmission of STIs/HIV. This means that everyone has a corresponding obligation to use a preventive method or to cooperate in its use by their partner if the possibility of infection is present. The same principles of cooperation apply to the obligation to fully support a partner’s decision to seek STI/HIV testing and treatment and to disclose their status. As is the case for pregnancy prevention, however, ultimately, each person must be responsible for his or her own protection if a mutually satisfactory agreement cannot be negotiated. Health service providers can encourage an ethic of mutual rights and responsibilities by offering routine couple counselling, testing, opportunities for safe mutual disclosure, and treatment for sexual partners regardless of their sex, gender identity and sexual orientation.

In order for individuals and couples to exercise their rights and responsibilities in ascertaining their STI/HIV status and in protecting themselves and their partners, governments must meet their obligations to ensure that everyone has access to confidential, voluntary testing and counselling that offers comprehensive information on HIV and other sexually transmitted infections, as well as access to information and the means of prevention and treatment. Governments and civil society have a duty to work toward the
elimination of stigma, discrimination and violence against those living with HIV and AIDS, as do individuals with respect to their sexual partners and others in their families and communities. Much needs to be done to elaborate further the responsibilities of State and non-State actors in less than ideal conditions and to engage multiple stakeholders, including women’s health and human rights activists as well as the international AIDS community.

- **Sexual harm and the right to protection**
  The 1948 Universal Declaration of Human Rights affirms that everyone has a right to liberty and security of the person, to freedom from cruel, inhuman or degrading treatment, and to freedom from torture. These rights have been extended in UN agreements such as the Vienna Declaration of the 1993 World Conference on Human Rights and the 1993 Declaration on the Elimination of Violence Against Women as well as in non-formal declarations to encompass freedom from rape, sexual violence, sexual slavery, forced pregnancy, female genital mutilation, and other forms of degradation and abuse.

  The State can be held accountable for violations of sexual rights resulting from direct and indirect actions or inactions, the latter involving a failure to provide, enforce or protect. Direct state actions include practices such as the use of rape as an instrument of war; state-sanctioned sexual torture of male or female prisoners; and policies such as the criminalization of certain types of consensual sexual relations (e.g. homosexuality or adultery). Indirect actions involve the State’s failure to prevent or to fully prosecute rights violations such as violence against women; the sexual abuse of male or female children; sexual trafficking; child marriage; rape (including marital or date rape); “honour crimes”; and related practices. Violations such as these are addressed by the various monitoring committees of the human rights treaties of the UN, while others still need to be clarified, legislated and enforced.

  The right to liberty and security of the person encompasses both the freedom to make responsible sexual choices and the right to protection from bodily harm. We suggest that all persons above the age of consent have the right (freedom) to engage in sexual relations with a willing partner – including in exchange for cash payments, gifts or other considerations – free from the threat of discrimination, coercion, violence, arrest or detention. However, no third person (e.g. pimp, sexual trafficker) should have the right to demand payment for the display or use of the body of any other person. Similarly, despite claims to the contrary regarding tradition in some cultures, we contend that no individual, family, kinship group, clan or community “owns” the body of another person or is entitled to use or abuse it, sell it, or dispose of it in any other manner. Rather, everyone has an ethical responsibility to not engage in or tolerate practices that cause harm to their sexual partners or others in their families and communities, or that violate their rights to safety and security with respect to their sexuality.

- **Sexual health and the right to information, education and services**
  The UN Committee on Human Rights as well as other UN agencies and committees have affirmed that sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. As part of their overall mandate to respect, protect and fulfill people’s right to health, governments are responsible for ensuring that high-quality sexual and reproductive health information, services and supplies are available and accessible to all, without discrimination. The rights of adolescents have been further elaborated in a number of documents. The Programme of Action of the 1994 International Conference on Population and Development, for example, declares that “Full attention should be given to the promotion of mutually respectful and equitable gender relations, and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality.” Subsequent recommendations urge that legal, regulatory and social barriers to information and care for adolescents be removed; that health services be appropriate to both male and female adolescents’ needs; that adolescents’ rights to privacy, confidentiality and informed consent be respected; and that young people’s responsibility for their own sexual behaviours be promoted along with gender equality and the prevention of unwanted and early
pregnancies, sexually transmitted infections, and sexual violence and abuse.

Because everyone has the right (entitlement) to acquire the information, education and means to decide on matters relating to their sexuality, including their sexual and reproductive health, it follows that no one has the right to censor or block another person’s access to such information or services. Rather, everyone has a positive duty to acquire the information, education and means to advance and protect his or her own sexual health and rights, where feasible, and to advance and protect the health and rights of their sexual partners and any other persons—such as children and young adolescents—for whom they bear responsibility.

Conclusions

The global discourse on sexual rights reflects the contributions of organizations and individuals representing a variety of constituencies. Among the contributors to the debate are representatives of the reproductive health community, including women’s health activists and family planning organizations; sexology researchers and sex educators; feminist groups; human rights organizations; young people’s networks; associations of people living with HIV; organizations of sex workers; and coalitions of persons of diverse sexualities.32–34 Each of these constituencies brings a somewhat different set of issues to the policy table, and each reflects individual views as well as the political, economic and socio-cultural conditions of particular world regions, countries and social communities.

The potential for constructive collaboration to advance the global sexual rights agenda is significant. But so, too, is the potential for disagreement on content. Commentators differ on the concept of sexual responsibilities, for example. Some argue that powerless persons may not be able to exercise their rights or meet their responsibilities without jeopardizing their personal safety, and that their inability to do so can result in “blaming the victim”.35–37 Others fear that the ethical obligation to behave responsibly can too easily be translated into laws that violate human rights. Still others are concerned that non-normative behaviours will be arbitrarily condemned as “irresponsible”, especially because sexual rights advocacy has faced, in various forms and degrees, opposition at international, national and local levels from powerful conservative forces for whom the idea of sexual rights is deeply threatening, and for whom the concept of responsibility means that individuals must strictly conform to conservative and often punitive moral codes.38–40

With the goal of promoting sexual equality and social justice for all, this paper aims to build a common foundation for sexual rights discourse based on an understanding of a sexual ethics that encompasses individual responsibilities as well as rights. Two major challenges must be addressed. One, widely recognized, is to identify a core set of legally binding and potentially enforceable sexual freedoms and entitlements as basic human rights for the purposes of negotiating the language of international agreements and national and local laws and policies. These rights encompass both the freedom from harm, such as entitlements to protection from discrimination, rape and other forms of sexual violence, sexual harassment or abuse, sexual trafficking, and forced marriage; and the freedom to make voluntary and informed sexual choices. Whereas the former category requires the imposition of laws and policies to prevent and punish violations that now often go unsanctioned, the latter requires the removal of laws and practices that infringe on the capacity of individuals to decide freely and responsibly on matters relating to their sexuality and sexual health. Both relate to the obligations of governments to create, insofar as is possible, a safe and secure environment for their citizens based on effective protection of human rights. The State is obliged to create a policy framework for protecting all persons from sexual harm and for guaranteeing their sexual freedoms regardless of gender, marital status, sexual orientation, age, race, nationality and other social identities and characteristics. Further, the State is obliged to recognize that everyone has the right to know and exercise their sexual rights, to receive information and services relating to their sexual health and rights, and to enjoy equal benefits and protection of the law.

The second challenge, which lies outside the legally enforceable aspects of sexual rights, involves the transformation of an array of attitudes, beliefs, prejudices and behaviours relating to sexuality, sexual relations and gender that
can best be approached from a rights-based ethical perspective. Policy discussions and programmatic investments urgently need to stress the ethical principles of equal rights, mutual respect, consent and shared responsibility as integral components of the rights of all persons to decide freely and responsibly on matters relating to their sexuality, including their sexual and reproductive health, free from coercion, discrimination and violence. Boys and men need particularly to understand their responsibilities to respect the rights to freedom of choice, pleasure and protection of their sexual partners; girls and women need particularly to understand and exercise their own rights. Rights and responsibilities need to be balanced. We suggest that these ethical guidelines be promoted as normative expectations relating to all forms of sexual partnerships in programmes such as sexuality education for young people, HIV counselling and testing, contraceptive advice and services, and public education messages that promote a rights-based vision of sexuality, sexual relationships and gender equality.

Acknowledgement
The authors are grateful to Susanna J Smith of IWHC for her assistance in the preparation of this paper.

References


Résumé
Les droits sexuels en tant que droits de l’homme englobent les libertés individuelles et les prestations sociales. La réalisation de ces deux types de droits dépend de responsabilités sociales aussi importantes de la part des individus, des couples, des familles, d’autres institutions sociales et de l’État. Notre interprétation du fondement éthique des comportements sexuels est basée sur le principe selon lequel tous les individus doivent comprendre leurs responsabilités et leurs droits sexuels, et respecter l’égalité des droits de l’autre, en particulier leurs partenaires sexuels. Nous proposons un cadre conceptuel pour définir une éthique sexuelle d’égalité des droits et des responsabilités touchant cinq dimensions du comportement sexuel : 1) les relations sexuelles et le droit de choisir son partenaire ; 2) l’expression sexuelle et le droit de rechercher le plaisir ; 3) les conséquences sexuelles et le droit à la coopération du partenaire ; 4) les atteintes sexuelles et le droit à la protection ; et 5) la santé sexuelle et le droit à des services d’information, d’éducation et de santé. Nous recommandons que les principes éthiques présentés ici sur les partenariats sexuels soient intégrés dans l’éducation sexuelle, les services de santé génésique et les politiques sociales de promotion de la santé et des droits de toutes les personnes, quels que soient leur sexe, leur état civil, leur orientation sexuelle, leur religion, leur origine ethnique et autres identités personnelles ou collectives.

Resumen
Los derechos sexuales como derechos humanos abarcan libertades individuales y derechos sociales. La realización de ambos depende de responsabilidades sociales de igual importancia por parte de particulares, parejas, familias, otras instituciones sociales y el Estado. El principio de que todas las personas deben comprender sus propios derechos y responsabilidades sexuales y respetar la igualdad de derechos de los demás, particularmente de las parejas sexuales, influye en nuestra interpretación de la base ética de los comportamientos sexuales. Proponemos un marco conceptual para definir la ética sexual de la igualdad de derechos y responsabilidades concernientes a cinco dimensiones del comportamiento sexual: 1) relaciones sexuales y el derecho de escoger su pareja; 2) expresión sexual y el derecho de buscar placer; 3) consecuencias sexuales y el derecho a la cooperación de la pareja; 4) daño sexual y el derecho a la protección; y 5) salud sexual y el derecho a la información, educación y servicios de salud. Sugerimos que los principios éticos aquí presentados concernientes a las parejas sexuales se incorporen en la educación sexual, los servicios de salud sexual y reproductiva y las políticas sociales destinadas a promover la salud y los derechos de cada persona independientemente de su sexo, estado civil, orientación sexual, religión, etnia y otras identidades personales o de grupo.