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Creating a supportive legislative and regulatory framework

This policy brief is intended to give guidance to policy-makers and others engaged in planning and implementing policies and programmes in sexual and reproductive health. It elaborates on one area of action outlined in the WHO Global Reproductive Health Strategy, by explaining what is meant by a supportive legislative and regulatory framework and providing examples of actions that can be undertaken to create such a framework. It covers three aspects of a supportive legislative and regulatory framework: developing national laws and policies that respect human rights, ensuring that national regulations and policies meet international standards, and removing policy and regulatory barriers and restrictions.

The WHO Global Reproductive Health Strategy emphasizes the importance of legislative and regulatory frameworks that support and facilitate universal and equitable access to sexual and reproductive health services. It notes that it may often be necessary to remove existing legal and policy barriers that impede the use of life-saving interventions and other necessary services.

The political, legal and regulatory environments are key determinants of the availability, quality, and accessibility of health services. These environments also affect other factors—such as access to information, education and resources—that have an influence on people's ability to achieve a healthy sexual and reproductive life.

A comprehensive approach to accelerating progress in sexual and reproductive health begins with a clear national policy framework that encompasses multiple levels—from presidential decrees and statutory laws to health systems' policies, standards and protocols. Many laws and policies that fall completely outside the health sector also have a bearing on sex-

ual and reproductive health. These include laws and regulations relating to education, social welfare, transport, justice, finance, employment and home affairs. States need to ensure that the laws, regulations and policies that affect particular aspects of sexual and reproductive health are harmonized and are in line with human rights enshrined in national constitutions, regional and international human rights treaties and international consensus documents.

The human rights principles of participation, non-discrimination and accountability are central to an equitable, democratic process that guides the elaboration of supportive laws and policies. The involvement of civil society organizations in the elaboration of laws and policies is a critical element not only to ensure participation but also as a mechanism to strengthen accountability of governments and health institutions for the health needs of their populations. Elaboration, assessment and revision of sexual and reproductive health laws and policies is likely to require a multi-stakeholder, participatory approach in order to generate a broad-based consensus for action and support for implementation.



The creation of a supportive legislative and regulatory framework needs, at a minimum, to consider: developing national laws and policies that respect human rights; ensuring that national regulations and policies meet international standards; and removing policy and regulatory barriers and restrictions that hinder the achievement of sexual and reproductive health.

Developing national laws and policies that respect human rights

Among the supportive actions that governments can take to advance sexual and reproductive health is the development of laws and policies that respect, protect and fulfill the human rights of all people in the country, and to ensure that such laws and policies specifically protect girls and women. States should embody basic human rights and the principle of equality in those laws and policies and adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women (1).

Example: Protection from gender-based violence. An established body of evidence has documented the extensive sexual and reproductive health consequences of violence. These include chronic pelvic pain, vaginal discharge, sexual dysfunction, unwanted pregnancy, sexually transmitted infections, miscarriage, premature birth, low birth weight, depression, serious injuries and death (2) Since the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Platform for Action of the Fourth World Conference on Women (Beijing, 1995), a number of countries have elaborated or revised laws pertaining to domestic and gender-based violence. These focus on serious penalties for perpetrators of gender-based violence, along with a series of supportive measures for victims of violence. States that have not yet done so, should adopt laws that criminalize the various forms of violence against women (including the criminalization of marital rape) in order to protect women and their rights. They should also eliminate discriminatory

laws such as those that allow a rapist to escape criminal liability by marrying his victim. States should also elaborate and implement policies that make available and accessible the health services that are necessary for the management of the health consequences of violence (e.g. emergency contraception, HIV prophylaxis, pregnancy-testing and management of unwanted pregnancy) since these can considerably contribute to improvements in sexual and reproductive health.

Ensuring that national regulations and policies meet international standards

Sexual and reproductive health are “integral elements of the right to health of everyone to the enjoyment of the highest attainable standard of physical and mental health” (3). Many national constitutions and domestic laws, as well as regional and international treaties, recognize the right to health. Obligations of States to take steps to achieve the full realization of this right include the creation of conditions which would “assure to all, medical service and medical attention in the event of sickness” (4). International standards for the provision of medical services, including pharmaceutical and other health-related regulations and quality-control mechanisms need to be used and applied in countries’ policies and regulations (5). Since many countries do not have their own drug licensing authorities, they can and should use the global norms, standards and guidelines developed by WHO.

Example: Registration and distribution of essential drugs. In some parts of the world, medicines and devices which can contribute to saving women’s lives are not available for health professionals to use. One reason for this may be that such medicines have not yet been included in the WHO Model List of Essential Medicines, on which many States base their procurement plans. In 2003, the WHO Expert Committee on Selection and Use of Essential Medicines approved levonorgestrel for use as an emergency contraceptive. This is a steroid hormonal drug that in small doses can be used soon

after unprotected sexual intercourse (or, for example, after condom failure) to prevent pregnancy. The addition of this medicine to the WHO Model List of Essential Medicines should encourage countries to align their own national lists with the WHO Model List, and start introducing and using this drug to prevent unintended pregnancies, thus preserving women’s health and lives. Levonorgestrel – along with, for example, other key medicines essential for emergency obstetric care or treatment of sexually transmitted infections – are presented as essential medicines that are intended to be available within the context of functioning health systems at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and the community can afford (6). Since access to essential medicines is recognized as a part of the right to the highest attainable standard of health, policies that support and ensure adequate supplies and provision of such drugs need to be put in place for the achievement of optimal sexual and reproductive health (7). Because the medication for emergency contraception must be taken as soon as possible after unprotected intercourse (maximum 72 hours), it is essential that any laws and policies that relate to the use of this drug are framed (or modified, as necessary) such that they help to ensure timely accessibility of the drug to those who can benefit from it, including adolescents.

¹ This is the committee that establishes and updates WHO’s Model List of Essential Medicines. The Model List is a guide for the development of national and institutional essential medicine lists. For the past 28 years the Model List has led to a global acceptance of the concept of essential medicines as a powerful means to promote health equity. This list has many key sexual and reproductive health commodities, such as hormonal contraceptives (oral and injectables), intrauterine devices and barrier methods of contraception as well as equipment and medicines needed to diagnose and treat sexually transmitted infections including HIV. See: http://www.who.int/medicines/services/essmedicines_def/en/index.html (accessed on 21.04.2006)

Removing policy and regulatory barriers and restrictions

Laws and policies often contain regulations and rules that are driven by outdated knowledge or, long-standing community customs or religious practices, but they have a harmful effect on the sexual and reproductive health of women and men and disrespect their basic human rights. National constitutions and national and international human rights laws enshrine human rights principles that countries commit themselves to observe in their treatment of individuals. These laws recognize the equality of the sexes and individuals' entitlement to protect their lives and health. Thus, the achievement of sexual and reproductive health requires that all relevant regulations and policies be reviewed and barriers and restrictions removed (8).

Example: Partner authorization and restriction on the basis of marital status. Laws and policies may require a husband's approval for a woman to use contraception, to have assistance during childbirth or to have access to her own medical records. Others may allow only married women to obtain access to sexual and reproductive health services. These regulations and rules represent a barrier to women obtaining access to services that they need in order to remain healthy. The inability of unmarried women and men to seek family planning services may result in unwanted pregnancy and can lead to unsafe abortion and even to the death of the woman. The stigmatization experienced by women who become pregnant outside of marriage, even when they become pregnant through sexual assault or abuse, may impair their access to care and to good-quality care, thus aggravating their vulnerability to unsafe motherhood. Human rights entitlements of individuals to be informed about, and to have access to, safe, effective, affordable and acceptable methods of family planning of their choice, as well as the autonomy to seek sexual and reproductive health services, has been increasingly accepted as an international standard in provision of family

planning services. States should therefore ensure that individuals can access services without restrictions, and work with professional associations and others to remove such restrictions.

Conclusion

Creating a supportive legislative and regulatory framework is one of the important actions called for by the WHO Global Reproductive Health Strategy. This is likely to require different levels of action, both in developing supportive laws and policies as well as in removing unnecessary barriers and restrictions. It also requires constant attention to ensure that international standards are applied and adhered to, particularly in light of rapid advances in reproductive technologies. A participatory process to examine and reform laws is likely to be the most effective in the long run.

References

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