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CONTENTS

PRESENTATION

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With the aim of seeking out different perspectives and dealing with subjects of a specialized nature, Conectas Human Rights has been creating partnerships with non-governmental human rights organizations in diverse parts of the world. In this issue of Sur – International Human Rights Journal, which is principally focused on access to medicines, a new cooperative partnership was formed with the Brazilian Interdisciplinary AIDS Association – ABIA.

Founded in 1987, it is the mission of ABIA to promote access to treatment and assistance to persons living with HIV and AIDS. Along these lines, ABIA has been monitoring public policies and developing projects regarding education, prevention, and access to information about HIV/AIDS. ABIA has also been coordinating the Working Group on Intellectual Property of the Brazilian Network for the Integration of Peoples – GTPI – REBRIP, in order to enrich and enlarge the debate over the harmful impacts of the rigid rules regarding intellectual property in the area of access to essential medicines, in addition to contributing to the construction of alternatives to the present model.

This eighth issue of the Sur Journal is divided into two parts: the first specifically examines access to medicines, while the second deals with questions that evaluate the present state of human rights in general.

Beginning with the discussion over access to medicines, the main problems related to the often conflicting interaction between human rights and international trade are debated. Those questions deal with the conflict between the human right to health and the protection of pharmaceutical innovations; efforts at making businesses responsible and breaking away from the protective framework initially confined to the sphere of the State; and the developing of the public debate over the political use of judicial power.

In the article by Chaves, Vieira and Reis the system for the protection of intellectual property is discussed, taking as a starting point the situation in Brazil. The relevance of the Brazilian case is based on Brazil's adoption of a policy of universal access to medicines for the treatment of AIDS as well as its recent adoption of a compulsory license for the supply of antiretroviral medicines. The model of universal access and the adoption of a compulsory license represent important benchmarks for the recognition of the preference of human rights over economic interests. The article also presents the main action strategies adopted by a Brazilian group of activists that has had a profound effect on the area. The description of these strategies is important because it enhances the possibility of exchanging experiences with other activist groups in the South.

In the article by Pogge, the author discusses the argument that patents stimulate pharmaceutical innovation. For the author, this system strengthens monopolies and the

concentration of research on the symptoms, and not the causes, of chronic illnesses. At the same time the treatment of specific illnesses of poorer populations is relegated to a secondary position because it is less profitable, thus increasing the rate of avoidable deaths. The author goes beyond simply spelling out the problem. He presents a proposal that would complement the patent system: a Health Impact Fund, financed by governments. This Fund would stimulate the development of new medicines with the promise of re-compensating successful innovators in proportion to the impact of the medicine on the global burden of illness.

The article by Hunt and Khosla deals with the responsibility of pharmaceutical businesses, along with the presentation of normative guidelines for health rights. In this sense, the article written by the Rapporteur of the United Nations on the right to health could be interpreted almost as "soft law", assisting in the structuring of this right in regard to the access to medicines.

In the last article of this first part of the Journal, which was authored by Contesse and Lovera, the question of access to medicines is analyzed beginning with individual cases that depict the perspective of those that lack access to medicines in Chile. The authors show how the litigation process can be used politically to create a public debate to sensitize the executive and legislative branches of the government to enact new public policies.

In the second part of this issue of the Sur Journal, the following issues are discussed: the justiciability of economic, social, and cultural rights (Cavallaro and Brewer); the growing consolidation of sexual rights as autonomous rights (Mattar); the participatory preparation and adoption of a new international treaty on rights of persons with disabilities (Dhanda); and the challenges that have to be overcome by non-governmental human rights organizations (Abregu).

We would like to thank the following professors and partners for their contribution in the selection of articles for this issue: Alejandro Garro, Bernardo Sorj, Carlos Correa, Denise Hirao, Frans Viljoen, J. Paul Martin, Jeremy Julian Sarkin, Juan Amaya, Julieta Rossi, Mustapha Al-Sayyed, Richard Pierre Claude, Roberto Garretón, Roger Raupp Rios, and Vinodh Jaichand.

Finally, we would like to announce that the next edition of Sur Journal will be a special issue in commemoration of the sixtieth anniversary of the Universal Declaration of Human Rights. The next issue will be published in partnership with the *International Service for Human Rights*.

The Editors

LAURA DAVIS MATTAR

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ABSTRACT

This article explores the reasons why legal recognition for reproductive rights is out of step with legal recognition for sexual rights, through an analysis of three perspectives: historical; religious moral, notably Roman Catholic; and, finally, legal. The article concludes by presenting the advances for democracy and for the citizenship of homosexuals (gays and lesbians) and heterosexual women that would come from legal recognition for sexual rights.

Original in Portuguese . Translated by Barney Whiteoak.

KEYWORDS

Human rights – Reproductive rights – Sexual rights – Gender – Sexuality

LEGAL RECOGNITION OF SEXUAL RIGHTS – A COMPARATIVE ANALYSIS WITH REPRODUCTIVE RIGHTS

Laura Davis Mattar

I. Introduction

This article will demonstrate the importance of legal recognition for the sexual rights of homosexuals (gays, lesbians and bisexuals) and women. It will, therefore, explore and discuss the reasons why reproductive rights enjoy more recognition from the standpoint of positive law than sexual rights. The relevance of this comparison centers on the frequent conceptual confusion between these rights and its consequences, a confusion that has arisen from the inherent connection between sex and reproduction that has endured for so long.[1] Reproductive rights refer, briefly, to the right to decide freely and responsibly on the number, spacing and timing of one's children, and the right to have the information and means to make this decision. Sexual rights, meanwhile, deal with the right to exercise sexuality and reproduction free from discrimination, coercion and violence. If on the one hand these rights are interrelated – since, as we shall see, the free and safe exercise of sexuality is only possible if the sexual act is detached from reproduction – on the other hand, setting them apart for different legal treatment is the way to guarantee full citizenship for women and homosexuals.

The importance of this study is due primarily to the recognition that the positivization of rights,[2] given the way domestic and international jurisprudence is currently structured, affects public policies and, subsequently, the lives of numerous people, the majority women, lesbians and gays. It should be noted, however, that the legal recognition of rights does not necessarily

Notes to this text start on page 79.

result in their full and immediate efficacy, although it is considered at least a step in the right direction.

The focus of this paper will be on international human rights law. This is because the constitution of reproductive rights and the signalization[3] of sexual rights has occurred on the international stage, that is, in the increasingly more democratic forums of international conferences of the United Nations. Women from across the developed and developing world, whether part of national delegations or representing non-governmental organizations, used these international forums to raise, in an articulate and provocative manner, fundamental questions of female citizenship and its consequences.

It is true that the Declarations and the Programmes and Platforms for Action of international conferences, regardless of which – for example on Population and Development or on Women – are considered soft law, i.e. they are not legally binding like human rights treaties and conventions. They are, in fact, moral commitments made by signatory states and do not imply automatic integration into domestic law.[4] These commitments result in external pressure to comply with a given agreement and, ultimately, political embarrassment for states that fail to comply. They are intended, therefore, while offering no guarantees, to promote enforcement inside national borders of the provisions of the international consensus.[5]

Nevertheless, since these soft law incentives are often insufficient, the academic community has tried to identify rights enshrined in human rights treaties that are related to sexual and reproductive rights, in a bid to lend them more legal clout. Since these treaties are legally binding, they place a legal obligation on states to enforce sexual and reproductive rights – albeit through indirect legal argument.

In order to explore these issues, this paper is divided into three parts. The first presents a brief historical retrospective of reproductive and sexual rights as they have developed on the international stage. The second part takes a look at the reasons why reproductive rights enjoy a greater degree of formulation and legal recognition compared to sexual rights. The third and final part draws the conclusion that a clear definition of sexual rights, and their subsequent positivization, would benefit society at large.

II. The current formulation of reproductive and sexual rights

In 1948, the General Assembly of the United Nations (UN) adopted and proclaimed the Universal Declaration of Human Rights (UDHR), the first step towards establishing an international human rights law and a global system of human rights protection within the UN framework. This system

embraces all human beings in all their abstraction and generality.[6] The construction and recognition of human rights has, since then, evolved and expanded into areas of vital importance for the preservation of human dignity. This process, which we might call the "specification of subjects with rights", took into account the specific characteristics of individuals and groups, shifting from the abstract figure of man to attend to the differences existing between genders, races, generations, etc. [7]

It was this process that led to the emergence of human rights for women and, later, sexual and reproductive rights – contemporary formulations that took shape in the final decade of the 20th century.

a) Reproductive rights

The term "reproductive rights" was coined at the 1st International Meeting on Women and Health in Amsterdam, Holland, in 1984. There was, at the time, a global consensus that this designation would convey a more complete and adequate concept than "health of women" for the broad agenda of women's reproductive self-determination.[8] The definition of reproductive rights, therefore, began to be formulated in a non-institutional framework, one of dismantling maternity as a duty through the struggle for the right to legal abortion and contraception in developed countries.[9]

From here, legal academics began to refine the concept of reproductive rights, in an attempt to give them a more precise definition. This is the case with Lynn Freedman and Stephen Isaacs, who identified the importance of reproductive choice as a universal human right.[10] Rebecca Cook, meanwhile, defends the idea that laws that deny, obstruct or limit access to health services violate basic human rights protected by international conventions. She claims that for international human rights law to be truly universal, it must require states to take preventive and curative measures to protect women's reproductive health, affording them the possibility to exercise their reproductive self-determination.[11]

The expression "reproductive rights" was enshrined in the International Conference on Population and Development (ICPD), held in Cairo, Egypt, in 1994, and was again used in the 4th World Conference on Women, in Beijing, China, in 1995. According to paragraph 7.3 of the Cairo Programme of Action:

> *[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, as expressed in human rights documents.*

b) Sexual rights

Sexual rights, meanwhile, began to be discussed towards the end of the 1980s, following the outbreak of the HIV/AIDS epidemic, primarily by the gay and lesbian movement, which was joined by part of the feminist movement.[12] According to Sonia Corrêa and Maria Betânia Ávila, the term "sexual rights" was introduced as part of a bargaining strategy at the ICPD, in 1994, to guarantee a place for reproductive rights in the final text of the Cairo Declaration and Programme of Action – the inclusion of the term "sexual" radicalized the language, and negotiations for its removal involved keeping the expression "reproductive rights".[13] As a result, the term "sexual rights" does not appear in the final document of the Cairo Programme of Action.

Nevertheless, these rights were broached again in discussions at the 4th World Conference on Women. According to paragraph 96 of the Beijing Declaration and Platform for Action:

> *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. 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.*

As we can see, this is still not a definition *per se* of sexual rights. It refers to the rights that supposedly comprise sexual rights, while pleasure as an objective in itself remains absent from the discourse of the UN's International Conferences.

Rosalind Petchesky points out that the emergence, albeit still incipient, of the concept of sexual rights has only occurred from a negative approach, i.e. expressing the right to not be the object of abuse or exploitation, in the corrective sense of combating violations. She asks, then: "why is it so much easier to assert sexual freedom in a negative way, and not in an affirmative, emancipatory sense? Why is it easier to reach a consensus on the right not to be abused, exploited, raped, trafficked or mutilated in one's body, but not the right to fully enjoy one's own body?". The author goes on to say that the development of sexual rights needs to expand and move towards an affirmative concept, going beyond combating the discrimination and abuse committed

against sexual minorities, which includes women that do not fit into the conventional role of their gender. These rights should, therefore, embody the so-called "affirmative entitlements", since affirmative and negative entitlements are two sides of a coin: I cannot enjoy my sexual body if I am subjected to constant fear of, say, battering.[14]

Bearing in mind the current formulation of sexual and reproductive rights, we shall now move on to an analysis of the obstacles and challenges to legal recognition of sexual rights in the international arena.

III. Historical perspective

The historical perspective behind the construction of sexual and reproductive rights is by far the most revealing. By examining scientific data on masculine and feminine from a medical point of view, the understanding of the human body and the evolution of the theories of sexuality grow clearer because even today it is difficult, first of all, to separate the act of sex from the task of reproduction and, second, to alter our gender models, with their corrupt power structures.

According to Wilza Villela and Margareth Arilha, "until the 17th century, humans were represented by men, and women were forms of intermediary corporality and existence between humanity and animality". There was, then, only the masculine sex, as women were considered an undeveloped male body.[15]

It was only from the 18th century, during the Renaissance, that the existence of a model of two distinct biological sexes began to be considered. It was the egalitarian environment of the French Revolution that overhauled the way of thinking about the existence of men and women, taking into account the need, on the grounds of equality, to change the perception of women as inferior human beings. Consequently, "in the cries for equality, liberty and fraternity, women shift from being a feeble version of man and acquire a sex and corporality of their own."[16]

However, in virtue of the phenomena that constantly transformed women's lives, such as pregnancy and "periodic hemorrhaging", men viewed women as strange beings whose inherent instability could upset the world order. Women appeared to be more susceptible to outside influences, since they were ostensibly more fragile and vulnerable – physically, morally and intellectually.[17] Intelligence was associated with the masculine and sensitivity with the feminine, since biological characteristics determined physical and mental capabilities and, therefore, the roles that each gender could play in society.[18] Accordingly, the primary function of women was procreation, and God had endowed them with the necessary characteristics to perform this task well.[19]

An interesting point, raised by Fabíola Rohden, is that the prevailing idea at the time was that nature had bestowed basic differences on men and women, although these would be operationalized and crystallized throughout their lives. The consolidation of these differences required the good governance by woman of their bodies – with culture (as opposed to nature), therefore, being fundamental. In other words, the development of society hinged on women's prudent and effective administration of their bodily development and their reproductive capacity.[20] And this, therefore, justified the control and subordination of women.

However, in the words of Wilza Villela and Margareth Arilha, "in the recently inaugurated world of two sexes, [it was] the differences imprinted by nature on the bodies of men and women that led [them] to occupy different social positions and functions. Women were endowed by nature with bodies and sentiments suited to the task of gestating, breastfeeding and caring for fragile human babies through their development – such an important task that they became almost incapable of performing any other social function. Men, since they had not been molded for any specific function, were entrusted with all the other functions necessary for human reproduction, namely social, political, cultural and economic activities".[21]

The importance of reproduction as the ultimate purpose of the sexual relation is not shaped only by the discourse on women and their role in society. It is also linked to the discourse on sex, as a means not only of restricting sexual relations between people of the same sex, since this does not produce children, but also restricting the exercise of sexuality by women outside marriage. As a result, "any sexual expression associated with obtaining pleasure, not reproduction, is rejected."[22]

The accepted norm, then, based on this link between sex and reproduction, could be none other than heterosexuality. This was (and still is) considered the 'natural' form of sexual relation,[23] which was only possible as a result of the repression against other forms of sexual expression.[24]

It can be concluded, then, that the norms concerning the exercise of sexuality are not predetermined, but rather learned socially: "each culture, in each historical era, constructs symbols and signs of what is acceptable and desirable in sexual terms."[25]

And it is drawing on this far-off historical overview that we shall make our analysis of the historical construction of sexual and reproductive rights. It is important during our examination of the evolution of these rights to bear in mind that (1) woman at the dawn of science was a less developed masculine body; (2) once the existence of two sexes was "understood", each one had social purposes determined by biological characteristics, woman's being procreation; (3) for a long time, there was (and there still is for some)

a necessary link between sex and reproduction, which, finally, (4) determines that heterosexuality, since it is the only one that can lead to reproduction, is the natural form of sexual relations, resulting in the social condemnation of all others that pursue only pleasure, such as homosexuality or sex outside marriage.

The construction of reproductive rights as human rights was achieved historically by two distinct movements: the population movement and the women's movement. For this reason, Lynn Freedman and Stephen Isaacs call it a "schizophrenic history", since it is split.[26]

The population movement in the 1960s, called neo-Malthusian,[27] predicted that if the population growth curve were not reversed, the world would self-destruct. There emerged, at the time, studies on ways of reducing fertility, which led to the introduction of contraception, such as the pill and IUDs, which are widespread nowadays. Third world countries that discouraged the use of contraception became a threat to the human race itself, making external interference necessary, i.e. international.

The only purpose of this interference was to reduce population growth; it was never concerned with women, the primary agents of reproduction. Contraceptive methods, which could have been tools of female liberation, since they separated the sexual act from reproduction, were actually viewed as devices for controlling women.[28]

Therefore, the history of reproductive rights as human rights – that is, focused on reproductive autonomy exercised primarily by women – supposedly began at the first International Conference on Human Rights, held in Tehran (Iran) in 1968. This Conference adopted, for the first time, what would become the essence of reproductive rights: "parents have a basic human right to determine freely and responsibly the number and the spacing of their children and a right to adequate education and information in this respect".[29]

Some years later, in 1974, at the World Population Conference in Bucharest, Romania, developing nations defended the idea that population growth was linked to a country's level of development.[30] They claimed that the priority of governments of the North to control population growth was a ruse to assure their supremacy on the international stage, not a "humane" plan to address population issues in less developed countries. The Conference ended up reaffirming the right to reproductive choice, although it broadened its definition to include couples and individuals. Furthermore, it established that people should have the information, education and means to exercise their reproductive right.

The International Conference on Population and Development, held in Mexico in 1984, however, at the suggestion of the United States, discussed

population growth as a neutral phenomenon. Nevertheless, its final document stuck to the same language that was adopted in Bucharest and also included the obligation of governments to make family planning programs universally available.

After that, there came a fundamental shift in the agenda at the International Conference on Population and Development, held in Cairo in 1994. Women, the main victims of the population control programs, were elevated from the object to the subject of the population and development programs. This was the occasion when an actual definition of reproductive rights – given earlier – was achieved.

The women's movement, meanwhile, not unlike the population movement also drew on reproduction for one of its central themes, but with a different focus: women's control of their own body, their sexuality and their reproductive life. The feminist slogan of the 1970s, "our bodies, our choice" was in direct opposition to the interference of the Church and the State.[31]

The United Nations Decade for Women began with the 1st. World Conference on Women, held in Mexico in 1975. This meeting drew people from across the world (practically 70% were women) who successfully managed to include in the Declaration of the Conference the right to reproductive autonomy. And they achieved more: the declaration provided for the right to reproductive choice grounded on the notion of bodily control and integrity.[32]

In 1979, the UN adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to Flávia Piovesan, CEDAW is based on the "twin obligation to eliminate discrimination and assure equality".[33]

Article 16 of CEDAW sets the obligation for all States Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

However, it was only in 1993, at the 2nd. World Conference on Human Rights in Vienna, that the sexuality of women was invoked for the first time. Paragraphs 18 and 38 of the Vienna Declaration and Programme of Action call on states to eliminate gender-based violence and all forms of sexual harassment and exploitation.

In December of the same year, the UN adopted the Declaration on the Elimination of Violence against Women, which condemns, in its second paragraph, the various forms of physical, sexual and psychological violence suffered by women, noting that these rights and principles are enshrined in

international instruments. It should be noted that this declaration was the basis for the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, approved by the Organization of American States in 1994 and legally binding for the countries that ratified it.

It was also in 1994, at the Cairo Conference on Population and Development that the feminist movement managed to definitively remove demographics from the scope of reproductive rights. It was explicitly defined at the Conference that population policies should be guided by human rights.[34]

Although it was not possible to define sexual rights in Cairo, there are countless references to "sex" and "sexuality". Petchesky claims that the inclusion of sexual health as a right to be protected can be attributed to the efforts of delegations from Sub-Saharan Africa, where the consequences of the HIV/AIDS epidemic were, and still are, devastating.[35]

The Platform of Action drawn up at the 4th World Conference of Woman, in Beijing in 1995, reaffirmed the advances made in relation to reproductive rights – by this point definitively incorporated into the human rights language – and also made some progress in formulating sexual rights as part of human rights. According to Petchesky, it was a "notable" consensus, since for the first time in history women were recognized as not just reproductive, but also sexual beings.[36]

One key point to emphasize in this historical retrospective is that the correlation between population and development clearly expedited the positivization of reproductive rights that, in the words of Norberto Bobbio, as human rights, "arise from [...] conditions characterized by the embattled defense of new freedoms against old powers".[37]

Furthermore, the fact that reproductive rights emerged as a demand made solely and exclusively by the feminist movement made them more cohesive and, as such, they acquired more clout. In defense of sexual rights, however, were gay and lesbian groups, and also part of the women's movement. The failure of these groups to develop the necessary liaison to come up with effective strategies undermined their claims for these rights.

We shall now move on to address the moral perspective obstructing the recognition of sexual rights, when compared to reproductive rights.

IV. Moral perspective, focusing on a Catholic religious perspective

Morally imposed obstacles to the recognition and the positivization of sexual (and reproductive) rights will be discussed from a religious angle, exemplified here by the Roman Catholic Church. This does mean that there are no impediments to this recognition in other religions, such as Islam or Judaism;

these also view the exercise of sexuality as a taboo. However, the Catholic Church, represented by the Vatican, has, with its status and its available resources, played a more active and visible role opposing sexual rights, making it a clearer example of the existing obstacles.

For the Roman Catholic Church: (i) there is only one ideal family structure which is the nuclear family, formed by a man, a woman and their offspring; (ii) sexuality should only be exercised for purposes of reproduction and, even then, only inside marriage; (iii) all kinds of contraception are wrong, and (iv) provoked abortion, even to save the life of a woman, is always immoral. A person's sex life has, in the eyes of this Church, no purpose in itself other than procreation. And, finally, (v) women may not be ordained into the priesthood, and they are excluded from all decision-making functions.[38] These were the precepts of the Code of Canon Law and they continue today as Catholic Christian doctrine. It is fair to say, therefore, that Catholicism naturalizes gender roles and that the institution strives to keep them ingrained in our culture.

This view is radicalized in the spheres of sexuality and reproduction. Their naturalization and crystallization over time, claim Sonia Corrêa and Maria Betânia Ávila, implies that it is not possible to apply the rationality of law to these realms of human life. The authors affirm that "an ongoing challenge in the theorization of reproductive and sexual rights has been to question this persistent naturalization [...], based on a new paradigm in which reproduction and sexuality are considered phenomena of social construction [...]. A first step in this direction is to demonstrate that the discourses that naturalize reproduction and sexuality do indeed constitute an ideological stratagem to conceal the many rules of regulation and discipline to which sexuality and reproduction were and continue to be subjected".[39]

Bearing this in mind, we shall now take a look at the role of the Catholic Church, represented by the Vatican, throughout the process of constructing sexual and reproductive rights on the international stage.

In both the Cairo and Beijing conferences, the feminist movement was pitted against fundamentalist religious groups, population groups and conservative governments – all far more powerful. According to Rhonda Copelon and Rosalind Petchesky, one of the challenges in Cairo was, therefore, to confront the coalition of religious fundamentalists, united with the Vatican and some Muslim states, that was trying to impose a strictly pronatalist agenda and objected to any language that might imply the acceptance of abortion or sexual pleasure, education and services for adolescents, the existence of gays and lesbians and their rights, or any form of family or union other than the traditional heterosexual form.[40]

This group tried persistently to establish in the final document of the Cairo Conference religion and traditional cultures as possible restrictions to the implementation of human rights, drawing on the terms of paragraph 22 of the Vienna Declaration – which stipulates that culture should not be invoked to deny women human rights. In this paragraph, all states are invited to put into practice the provisions of the UN's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

This Declaration states, in its preamble, that "it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations [...] is inadmissible". It goes on to say that "the expression 'Intolerance and Discrimination Based on Religion or Belief' means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis". Intolerance and discrimination were exactly what the Vatican, together with fundamentalist religious groups, was proposing. In view of this, the Cairo Programme was flawed insofar as it did not reaffirm that human rights have preference over traditional cultural and religious conflicts. [41]

At the end of the Cairo Conference, dissenting delegations registered their reservations to the final Programme of Action. Particularly relevant is the written statement of the Holy See, which reads: "with reference to the term 'couples and individuals', the Holy See reserves its position with the understanding that this term is to mean married couples and the individual man and woman who constitute the couple".[42] It is clear, though, that underneath the aversion to sexual rights lurks the taboo against homosexuality, bisexuality and alternative family forms.[43]

Nevertheless, the positive affirmation of the value of "a satisfying and safe sex life" without limitations based on sexual orientation or age can be considered a partial victory in view of the document's silence concerning sexuality.[44]

Negotiations at the Beijing Conference were also complicated: on one side, women and, on the other, the Vatican and its allies. The latter, also represented by a group of American women called the "Coalition for Women and the Family", as Rosalind Petchesky reports, distributed a flier entitled *Sexual Rights and Sexual Orientation: what do these words really mean?*, associating "these words" not only with homosexuality, lesbianism and sexual relationships outside marriage and among adolescents, but also with "pedophilia", "prostitution", "incest" and "adultery". Added to this organized

effort was the *coincidental* release, just months before the Conference, of the encyclical *Evangelium Vitae* in which "the pope condemns ideas and practices asserting reproductive and sexual autonomy by associating them with 'a hedonistic mentality unwilling to accept responsibility in matters of sexuality' and 'a self-centered concept of freedom'".[45]

This, therefore, explains the disappearance from the final version of the Beijing Platform for Action of the expression "sexual rights", which was in the draft, and the fact that the terms "sexual orientation" and "lesbians and gays" never even emerged.[46] In spite of this, however, it was possible to approve the historic paragraph 96, with reservations from the Holy See, which did not commit to its implementation.

Given the position of the Catholic Church in these International Conferences, it is possible to understand the obstacles to the legal recognition of sexual rights and also reproductive rights. There is a sexual morality and a security in the institution of the nuclear family that will be preserved as a reflection of a negative and decidedly discriminatory vision of women and the exercise of sexuality. The Church ends up transforming a person's sexual activity into their moral yardstick, making their character and their morality subordinate to their condition as a homo or heterosexual, married or not, bound or not by rules concerning sex.[47]

This, therefore, poses a threat to the universality of human rights, since there are still voices calling for a concept of human rights that is sensitive to cultural and religious values.[48] These voices clearly make political use of religion, culture and tradition to oppress not only women, but also sexual minorities, denying them the full exercise of their citizenship. But arguments of religious conviction, as argued by Lima Lopes, cannot be legitimately used in a democracy when they are purely religion-based. In other words, the religious beliefs of others, given the protection afforded to the freedom of religious belief to all, may not deprive of their rights a social group that does not refuse to observe the general duties of citizenship.[49]

V. Legal perspective

The legal perspective is the broadest of the perspectives addressed here, since it embodies a series of issues. First, the fact that human rights in their origin, as we shall see, have been formulated by men, based on their own needs. Second, there is the traditional distinction between the regulation and application of the law in the public and private spheres, which affected the legal recognition of sexual rights in relation to reproductive rights. Finally, this section of the article will also address the important connection between reproductive rights and the right to health, which has facilitated their

recognition. Sexual rights, on the other hand, whose link to health came later, remained, as we shall see, further on, associated with so-called liberal rights. Hence, the preference for their non-regulation by the state undermined their legal recognition.

Since the start of the contemporary conception of human rights, after the 2nd World War, a broad range of rights have been accorded legal recognition. But, despite having evolved significantly, this branch of the law, as Henry Steiner and Philip Alston point out, still has in the human rights of women one of its "blind spots".[50] The same can be said about the rights of homosexuals.

According to Katherine Bartlett, analyzing laws from a feminine viewpoint means examining how they fail to take into account the experiences and values that are more typical of women than men or how they actually disadvantage women.[51] Rebecca Cook, meanwhile, says feminists have stressed the indeterminacy of law and the extent to which, despite its claim to neutrality and objectivity, it masks hierarchies and distributions of power.[52] In other words, you cannot study the law without examining the power relations between the sexes, classes and ethnicities present in the society that formulated it. Evidently, it has a tendency to reflect the dominant group, which consists of white heterosexual males.

In view of this, the feminist movement built its agenda on discrimination, i.e. seeking equality between men and women. Discrimination, in this case, means the denial, non-recognition or infringement of human rights by women in virtue of distinction, exclusion or restriction on the basis of sex. But which human rights have been hardest for women to claim? According to Florence Butegwa,[53] those that do not have masculine equivalents, that is to say, that address needs that men do not have.

With no "exclusive" human rights for their gender, it took time for the state to regulate the fundamental human rights of women,[54] such as reproductive rights, concerning the reproduction that occurs within their bodies.[55] For women to prove that their rights had been violated, they had to prove, without any equivalent in the masculine world, that they had been discriminated against and that the state failed to provide them with the same protection as men.

In view of this, Margaret Schuler believes that while the discriminatory discourse is indeed a powerful instrument for claiming rights, the rights discourse is extremely important, since women (and also homosexuals) have characteristics that differ from men (heterosexuals), and that require a specific rights structure.[56]

Given this legal vacuum, the feminist movement started to reinterpret the rights that were not traditionally thought up to be applied to women.

This is the case with the right to life, embodied in article 6(1) of the International Covenant on Civil and Political Rights and traditionally understood to be the obligation of States Parties to observe the due process of law before capital punishment is imposed. The UN Human Rights Committee, linked to this Covenant, considers this interpretation restrictive and claims that protection of the right to life requires the adoption of positive measures, such as those aimed at reducing the infant mortality rate and raising life expectancy.

Women's right to life, or to survival, assures them access to healthcare services; therefore, any restriction to this access should be considered a violation of international human rights law. According to Rebecca Cook, the traditional application of the right to life is male-oriented, since men associate the violation of the right to life more easily with capital punishment than with death from pregnancy, ignoring the historic reality of women.[57]

This reinterpretation of rights has widened the responsibility of the state and, more recently, increased the power of the committees that monitor state actions/omissions related to the rights of women. And yet women, and homosexuals, enjoy less recognition as part of the system and as full subjects of human rights, since the protection of the law is often found to be lacking.[58]

And to this lack of protection of the law for the specific issues of women (and, even more of homosexuals) can be added the supremacy of the regulation and application of law in the public sphere. Karen Engle, when addressing the distinction between public and private, criticizes public international law presenting two positions: one that claims it is flawed because by excluding the private – the domestic sphere, where women are more present – it is not truly universal; and the other that claims that it uses the division between public and private conveniently to avoid issues related to women. According to the advocates of the first position, public international law should be re-conceptualized to include women and the private sphere. For those on the other side, it already exist the doctrinaire instruments in human rights necessary to accommodate women in international law, although their application is made inconsistently – a good example is the possible intervention to end "private" forms of violence, such as cannibalism or slavery.[59]

This analysis by Engle clearly indicates that it was not in the interest of the state to regulate what occurred in the domestic sphere, and that it was more convenient to remain detached from what went on there. This is why reproductive rights remained so long without state regulation.

The regulation of sexuality, meanwhile, is still found in the interface

between public and private. If on the one hand the exercise of sexual rights is in the scope of privacy and sexual liberty relating to the way we obtain pleasure, on the other hand state protection is needed for this liberty to be fully exercised, without discrimination, coercion or violence. The balance between state regulation and deregulation – that is, between freedom and protection – is, to borrow from Sonia Corrêa and Maria Betânia Ávila, an "inconclusive" matter. In particular because breaking the barriers of the private sphere, where abuses involving sexuality (and reproduction) frequently occur, can pave the way to an exaggerated state intervention that ends up restricting the freedom of the individual.[60] When looking to strike this balance, there is a risk of opening the door to abuse of discretion by the state.

It is evident, then, that the supremacy of the regulation and application of the law in the public sphere contributes to women and sexual minorities not having the necessary protection of the law to exercise their citizenship in the domestic context. Democracy, as Pitanguy tells us, refers not only to the full exercise of citizenship in the public sphere, but also to everyday life relations, in the workplace, in the family, in health, in education.[61]

In view of this, how did the feminist movement manage to bring its demand for reproductive and sexual rights into the realm of law? The formulation of reproductive rights, and their subsequent positivization, occurred after their association with the right to health. As a human right, health first appeared in the UDHR of 1948 and it later acquired more specific definitions in countless other international human rights protection documents. Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966, for example, phrases the right to health as "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", and it goes on to exemplify the steps to be taken to achieve its full realization.

CEDAW, from 1979, in article 12, also establishes the right to health as a right of women, emphasizing the importance to "ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning". Paragraph 2 of the same article stipulates that States Parties must provide women appropriate and free services during pregnancy, confinement and the post-natal period. These are examples of the conceptual evolution of the right to health on the international stage.

Drawing on these provisions, the feminist movement began to fight in the 1970s for reproductive rights, calling for the decriminalization of abortion. Abortion, as an obstacle to women's exercise of human freedom,[62] is a public health problem. This is because many are performed unsafely, putting the

health of women at risk and sometimes even causing their death. According to Rebecca Cook, "the WHO estimates that 500,000 women die each year from pregnancy-related causes, between 25% and 50% of which result from unsafe abortion".[63] From a healthcare point of view, these are clearly avoidable deaths.

To demonstrate the negligence of the state in relation to women, the feminist movement used statistical data to help bring into the public debate the need for recognition of the reproductive rights and of the positive duty of states to provide full healthcare assistance to women – which requires the formulation and execution of public policies.

Nevertheless, at the time, the same connection between health and sexual rights was not possible. Associated instead with sexual freedom, privacy and the right to not suffer discrimination, coercion and violence, the state declined to regulate sexual rights to safeguard the private life of the individual, primarily from its own interference.

Note once again that sexuality was absent from international human rights discourse until 1993.[64] Moreover, human rights discourse accepts sexual life only implicitly and, even then, when it is restricted to reproduction and, therefore, heterosexual marriage. Suffice to say that not even CEDAW mentions the sexual freedom or rights of lesbians. As Wilza Villela and Margareth Arilha remind us, there is no point isolating a category for "lesbians" in the political discussion on the sexual oppression that all women suffer, regardless of their sexual orientation.[65]

But as history has shown, there are "dimensions to the private autonomy of the human person that are so important to their dignity that they need to be protected even from the lawmaker, the incarnation of the will of the majorities".[66] Sexual rights, although primarily negative in character – as state abstention – require positive action by the state to guarantee their realization.

This claim, however, has not been enough to bring about the regulation of sexual rights. It was only with the outbreak of the AIDS epidemic, in the 1980s, that for health reasons sexuality was incorporated into the international public debate. This association with the right to health was, once again, decisive in achieving rights, in this case for gays and lesbians.

In developing countries, the connection with the right to health is still very important. It is through an efficient public healthcare system that women, gays and lesbians "manage" to fully exercise their citizenship, provided that their freedom and autonomy is protected.[67]

It is clear, therefore, that the connection with the right to health has prompted the formulation and positivization of reproductive rights and, eventually, and still only in a preliminary way, sexual rights.

VI. Conclusion

In this paper, we have seen that the formulation and legal recognition of sexual rights is less developed than the formulation and recognition of reproductive rights. It has presented the motives for this imbalance: (i) the historical perspective, which demonstrated a connection between population concerns and reproductive rights, causing these rights to be discussed earlier on the international stage; (ii) the Catholic moral perspective, which attempted to conceal sexual diversity, presenting it as amoral; and, finally, (iii) the legal perspective, which identified the "masculine" formulation of international human rights law and the distinction between the application of the law in the public and private spheres. Furthermore, it has presented the strategy of both the feminist movement and the gay and lesbian movement to link these rights to the right to health, with a view to securing their legal recognition. Now it is necessary to illustrate the importance of this recognition for democracy and for the citizenship of homosexuals and women.

According to Lima Lopes, the rights of recognition are based on some presumptions: (a) that there are groups in society that are stigmatized; (b) that stigmas[68] are institutional and historical products; (c) that stigmas do not necessarily have any scientific, rational or functional grounding for society; (d) that people belonging to stigmatized groups suffer from the "usurpation" or denial of an asset that is immaterial, which is respect and self-respect; (e) that the social perpetuation of stigmas is, therefore, an injustice, causing unnecessary pain, suffering, violence and disrespect; and (f) that members of a society have the right to have their demeaning stigmas removed.[69]

In this context, homosexuals are clearly not recognized in our societies. The consequences of this denial, as Lima Lopes goes on to say, are manifold. The first is physical violence, i.e. the prevention of someone being physically safe in the world. Then there is non-physical violence, which can be split into two forms: the first – and the most important here – is exclusion from the sphere of rights, denying a person social autonomy and the possibility to interact; and, second, the negation of respect for a way of life or a way of being, which can explain the degrading and insulting treatment of people and groups.[70]

Based on Lima Lopes' point of view that the denial of rights, coupled with the traditionalism of the "status quo", is what maintains and fuels the most evident forms of physical violence, and that this in itself is an offence against the democratic regime of equal liberties, we should not be surprised by his conclusion that "under the silence of the legal system [...] an intolerance is cultivated".[71]

Accordingly, non-regulation by the law – the rules in place – helps

naturalize the differences and inequalities common in the culture. Regulation by the law, claims Lima Lopes, can promote change and remove historically consolidated injustices against stigmatized groups, namely homosexuals.[72] Added to this is the fact that these groups will start to fully exercise their citizenship and to feel like they belong to a society that values diversity and plurality instead of simply tolerating it.

In the words of Maria Betânia Ávila, "[s]exual rights, by placing sexual relations on a par with social relations in the realm of citizenship and allowing their needs to be mediated and guaranteed through rights, establish heterosexuality and homosexuality as sexual practices that are equally free".[73] The value of legal recognition for the sexual rights of homosexuals, in fact, signs the importance of the sexual dimension in human life[74] and in the protection of human dignity. Only through such recognition, everyone will enjoy the rights and fundamental freedoms that characterize democracy.

However, legal recognition for sexual rights also has important consequences for the daily life of women, especially heterosexual women. This is because, besides suffering from sexual repression, they also experience the abuse and violence rooted in a culture that still does not recognize their sexual freedom. In this vein, the recognition of reproductive rights for women, as opposed to sexual rights, was possible since they are linked to the supposed feminine "function" or "nature", which is reproduction. But, what about sexual pleasure? Does a woman have the right to enjoy her own body?

With legal recognition of sexual rights, it is finally possible to say yes. This recognition consolidates the separation of sex from reproduction, making it definitively clear that women are indeed sexual beings, not just reproductive beings. To put it another way, legal recognition of the sexual rights of women comes with an emancipatory and libertarian perspective, since it accepts the sexual pleasure of women as positive and desirable. Making a "safe and satisfactory sex life" a right of everyone, but especially women (and homosexuals), represents an enormous step forward in their quality of life, since they can freely seek and experience sexual pleasure with the partner of their choice, exercising their citizenship both in the public sphere and, also, in the private, intimate, domestic context.

It should be emphasized, however, as stated earlier, that the mere positivization of rights is no guarantee of their enforcement. Much reflection is still needed on how to enforce human rights with a view to their enjoyment by everyone and their social and cultural acceptance and recognition. Whatever the case may be, the current panorama points to the importance of expanding the frontiers of the debate on human rights, including new rights, such as sexual rights, that guarantee, at least formally, the human dignity of vulnerable groups, such as women and homosexuals.

NOTES

1. It is not only sex that has detached itself from reproduction. Reproduction nowadays is also separate from sex, considering the scientific progress that has led to *in vitro* fertilization, among the other methods currently available.

2. The relationship between positivization of rights and their implementation as public policies is not automatic. We know that positivized rights may have no social efficacy, nor even cause the State to earmark the resources for their enforcement. Nevertheless, this paper works on the premise that positivization is a significant step in the process of implementing and enforcing rights. This is because, specifically in the case of sexual rights, as we shall see in this paper, positivization to some extent removes the moral considerations that represent obstacles to the recognition of homosexuals and transsexuals, for example, as individuals with rights.

3. Signalization (*sinalização*) is the term used by Miriam Ventura for the incipient formulation and recognition of sexual rights (VENTURA, M. (org.). *Direitos Sexuais e Direitos Reprodutivos na Perspectiva dos Direitos Humanos: síntese para gestores, legisladores e operadores do direito.* Rio de Janeiro: ADVOCACI, 2003, p. 14.)

4. CORRÊA, S. and ÁVILA, M.B. Direitos Sexuais e Reprodutivos – Pauta Global e Percursos Brasileiros. In: BERQUÓ, E. (org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil.* Campinas, SP: Editora da UNICAMP, p. 17-78, 2003, p. 23.

5. Nevertheless, we should not fail to mention the frequent difficulties transferring the consensus to the domestic arena.

6. PIOVESAN, F. Os Direitos Humanos da Mulher na Ordem Internacional. In: PIOVESAN, F. *Temas de Direitos Humanos*, 2nd ed., São Paulo: Max Limonad, p. 205-219, 2003, p. 205-206.

7. PITANGUY, J. O Movimento Nacional e Internacional de Saúde e Direitos Reprodutivos. In: GIFFIN, Karen and COSTA, Sarah H. (orgs.). *Questões da Saúde Reprodutiva.* Rio de Janeiro: FIOCRUZ, p. 19-38, 1999, p. 37.

8. CORRÊA, S. and ÁVILA, M.B., op. cit., p. 20.

9. CORRÊA, S. Saúde Reprodutiva, Gênero e Sexualidade: legitimação e novas interrogações. In: GIFFIN, K. and COSTA, S.H. (orgs.). *Questões da Saúde Reprodutiva.* Rio de Janeiro: FIOCRUZ, p. 39-50, 1999, p. 41.

10. FREEDMAN, L.P. and ISAACS, S.L. Human Rights and Reproductive Choice. *Studies in Family Planning*, v. 24, n. 1 p. 18-30, 1993.

11. COOK, R. International Human Rights and Women's Reproductive Health. *Studies in Family Planning*, v. 24, n. 2, p. 73-86, Mar-Apr. 1993.

12. The segment of the feminist movement that joined in the fight for the sexual rights of gays and lesbians (who suffer oppression for being women like any other) is the part that considers sexuality a crucial realm for understanding and transforming gender inequality (CORRÊA, S. and ÁVILA, M.B., op. cit., p. 21).

13. CORRÊA, S. and ÁVILA, M.B., op. cit., p. 21.

14. PETCHESKY, R.P. Direitos Sexuais: um novo conceito na prática política internacional. In:

BARBOSA, Regina M. and PARKER, Richard (orgs.). *Sexualidades pelo Avesso: direitos, identidades e poder.* Rio de Janeiro: IMS/UERJ; São Paulo: Ed. 34, p. 15-38, 1999, p. 16, 24-25.

15. VILLELA, W.V. and ARILHA, M. Sexualidade, Gênero e Direitos Sexuais e Reprodutivos. In: BERQUÓ, Elza. (org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil.* Campinas, SP: Editora da UNICAMP, p. 95-150, 2003, p. 95 and 102.

16. Ibid, p. 102-103.

17. ROHDEN, F. A Construção da Diferença Sexual na Medicina. In: *Cadernos de Saúde Pública,* Rio de Janeiro, 19(Sup. 2):S201-S212, 2003, S206.

18. Ibid.

19. VILLELA, W.V. and ARILHA, M., op. cit., p. 95.

20. ROHDEN, F., op. cit.,nS205-S206.

21. VILLELA, W.V. and ARILHA, M., op. cit., p. 103.

22. VILLELA, W.V. *Mulher e Saúde Mental.* Thesis (doctorate in preventative medicine), FMUSP, USP, São Paulo, 1992, *apud* VILLELA, W.V. and ARILHA, M., op. cit., p. 104.

23. It is precisely this moral view of what is natural that the gay and lesbian movement is fighting against, since this is a central issue in configuring their citizenship.

24. ÁVILA, M. B. Direitos Sexuais e Reprodutivos: desafios para as políticas de saúde. In: *Cadernos de Saúde Pública*, Rio de Janeiro, 19 (Sup.2):S465-S469, 2003, S466.

25. VILLELA, W.V. and ARILHA, M., op. cit., p. 98.

26. FREEDMAN, L.P. and ISAACS, S.L., op. cit., p. 21.

27. Thomas R. Malthus (1766-1834), a 19th century British economist, defended in his treatise "*An Essay on the Principle of Population*" his theory that while populations grow at geometric rates, food supplies to sustain these populations tend to increase at an arithmetic rate. Therefore, Malthus predicted the collapse of the human population if birth rates were not voluntarily reduced.

28. ÁVILA, M.B. Direitos Reprodutivos: o Caos e a Ação Governamental. In: SOS CORPO – Grupo de Saúde da Mulher. *Os Direitos Reprodutivos e a Condição Feminina.* Recife, PE: SOS CORPO, p.17-25, 1989, p. 18.

29. FREEDMAN, L.P. and ISAACS, S.L., op. cit., p. 20.

30. Ibid, p. 22.

31. CORRÊA, S. and ÁVILA, M.B., op. cit., p. 19.

32. Note, as Freedman and Isaacs observe, the contrast between this declaration and those of Tehran and Bucarest, which resolved nothing concerning women's integrity and control of their body.

33. PIOVESAN, F. Integrando a Perspectiva de Gênero na Doutrina Jurídica Brasileira: Desafios e Perspectivas. In: PIOVESAN, F. *Temas de Direitos Humanos*, 2nd ed., São Paulo: Max Limonad, p. 221-235, 2003, p. 207.

34. BARSTED, L.L. As Conferências das Nações unidas influenciando a mudança legislativa e as decisões do Poder Judiciário. In: *Seminar: Human Rights: Towards a Jurisprudence of Equality*, Belo Horizonte, 14-17 May 1998, *apud* PIOVESAN, F. and PIROTTA, W.R.B. A Proteção dos Direitos Reprodutivos no Direito Internacional e no Direito Interno. In: PIOVESAN, F. *Temas de Direitos Humanos*, 2ª ed., São Paulo: Max Limonad, p. 237-276, 2003, p. 241-242.

35. PETCHESKY, R.P., op. cit., p. 19.

36. Ibid, p. 21.

37. BOBBIO, Norberto. *A era dos direitos*. Rio de Janeiro: Campus, 1992, p. 5.

38. KISSLING, F. Perspectivas Católicas Progressistas em Saúde e Direitos Reprodutivos: o desafio político da ortodoxia. *Cadernos de Saúde Pública*, Rio de Janeiro, 14 (Supl.1), 1998, p. 135-137.

39. CORRÊA, S. and ÁVILA, M.B., op. cit., p. 58.

40. COPELON, R. and PETCHESKY, R.P. Toward and Interdependent Approach to Reproductive and Sexual Rights as Human Rights: Reflection on the ICPD and beyond. In: SCHULER, M.A. (ed.). *From Basic Needs to Basic Rights.* Washington D.C.: Women, Law and Development International, p. 343-368, p. 1995, p. 348-349.

41. Ibid, p. 355-356.

42. According to the Report on the International Conference on Population and Development. United Nations, 1994, Cairo, 5-13 September.

43. PETCHESKY, R.P., op. cit., p. 22.

44. COPELON, R. and PETCHESKY, R.P., op. cit., p. 355.

45. PETCHESKY, R.P., op. cit., p. 23.

46. Ibid, p. 20-21.

47. WEEKS, J. *Sexuality and its discontents: meaning, myths and modern sexualities.* London: Routledge & Keagan Paul, 1985, *apud* VILLELA, W.V. and ARILHA, M., op. cit., p.105.

48. BUTEGWA, F. International Human Rights Law and Practice: Implication for Women. In: SCHULER, M.A. (ed.). *From Basic Needs to Basic Rights.* Washington D.C.: Women, Law and Development International, p. 27-39, 1995, p. 33.

49. LIMA LOPES, J.R. de. The Right to Recognition for Gays and Lesbians. In: *Sur – International Journal on Human Rights*, v. 2, p. 61-91, 2005.

50. STEINER, H.J. and ALSTON, P. *International Human Rights in Context: law, politics, morals. Text and Materials*, 2nd Edition. New York: Oxford University Press Inc., 2000, p. 158.

51. BARTLETT, K. Feminist Legal Methods. *Harvard Law Review*. Cambridge: The Harvard Law Review Association, v. 103, n. 4, p. 829-888, Feb. 1990, *apud* COOK, R. International Human Rights and Women's Reproductive Health. *Studies in Family Planning*, v. 24, n. 2, p. 73-86, Mar-Apr. 1993, p. 76.

52. COOK, R., op. cit., p. 76.

53. As mentioned by Margaret SchulerÇ SCHULER, M. Introduction. *In*: SCHULER, M. (editor.)

From basic needs to basic rights. Women´s claim to human rights. Washington D.C.: Women, Law and Development International, p. 1-24, 1995, p. 10.

54. The same occurred with the rights of lesbians and homosexuals.

55. BUTEGWA, F., op. cit., p. 31.

56. SCHULER, M.A. From Basic Needs to Basic Rights (Introduction). In: SCHULER, M.A. (ed.). *From Basic Needs to Basic Rights.* Washington D.C.: Women, Law and Development International, p. 01-24, 1995, p. 10.

57. COOK, R. *Women's Health and Human Rights*. Geneva: World Health Organization, 1994, p. 24.

58. SCHULER, M., op. cit., p. 3.

59. ENGLE, K. After the Collapse of the Public/Private Distinction: Strategizing Women's Rights. In: DALLMEYER, DORINDA G. (Ed.). *Reconceiving reality: women and International Law.* Washington D.C.: American Society of International Law, 1993, p. 143.

60. CORRÊA, S. and ÁVILA, M.B., op. cit., p. 60-61.

61. PITANGUY, J., op. cit., p. 21.

62. CORRÊA, S. and ÁVILA, M.B., op. cit., p. 38.

63. Safe Motherhood Conference Conclusions. 1987. *Lancet* I:670 (COOK, R., op. cit., p. 83).

64. PETCHESKY, R.P., op. cit., p. 17-18.

65. VILLELA, W.V. and ARILHA, M., op. cit., p. 131.

66. SARMENTO, D. *Direitos Fundamentais e Relações Privadas*. Rio de Janeiro: Editora Lúmen Júris, p. 173-220, 2004, Capítulo V, p. 190.

67. According to General Comment No. 14 of the ICESCR committee, item 8: "The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements". CESCR, *General Comment 14*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4.

68. The term stigma, according to Goofman, is used in reference to a significantly discrediting attribute. GOOFMAN, E. *Estigma: Notas sobre a Manipulação da Identidade Deteriorada*. Rio de Janeiro: LTC Editora, 4a. Ed., 1988, p. 13-14.

69. LIMA LOPES, J.R. de. The Right to Recognition for Gays and Lesbians. In: *Sur – International Journal on Human Rights*, v. 2, p. 61-91, 2005, p. 69.

70. Ibid, p. 70-71.

71. Ibid, p. 74.

72. Ibid, p. 69.

73. ÁVILA, M.B., op. cit., S467.

74. VILLELA, W.V. and ARILHA, M., op. cit., p. 136.

RESUMO

Este artigo sistematiza as razões que levaram a um descompasso entre o reconhecimento jurídico dos direitos sexuais e dos direitos reprodutivos, por meio da análise de três perspectivas: a da História, a da moral religiosa, especialmente a Católica Romana e, por fim, a do Direito. O artigo conclui apresentando os ganhos para a democracia e a cidadania pública de homossexuais (gays e lésbicas) e mulheres heterossexuais caso haja o reconhecimento jurídico dos direitos sexuais.

PALAVRAS-CHAVE

Direitos humanos – Direitos reprodutivos – Direitos sexuais – Gênero – Sexualidade

RESUMEN

Este artículo sistematiza las razones que condujeron a un descompás entre el reconocimiento jurídico de los derechos sexuales y el de los derechos reproductivos mediante el análisis de tres perspectivas: la de la historia, la de la moral religiosa, especialmente la Católica, y por último, la del derecho. El artículo concluye presentando los beneficios para la democracia y la ciudadanía pública de homosexuales (gays y lesbianas) y mujeres heterosexuales del reconocimiento jurídico de los derechos sexuales.

PALABRAS CLAVES

Derechos humanos – Derechos reproductivos – Derechos sexuales – Género – Sexualidad

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