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## Sexual and Reproductive Rights

An essay by Christa Wichterich

Edited by the Heinrich Böll Foundation





# **SEXUAL AND REPRODUCTIVE RIGHTS**



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VOLUME 11**

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**An essay by Christa Wichterich**

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Sexual and Reproductive Rights

An essay by Christa Wichterich

Edited by the Heinrich Böll Foundation 2015

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## FOREWORD

The slogan «My body belongs to me!» is a recurring central demand that has been made during various feminist struggles. It is self-confident and articulate, but also a defensive stance. These aspects are essential, because control over women's bodies is a historical experience of all women that manifests itself in various political, religious, colonial, racist and masculine forms. Women's bodies have regularly been – and still are – the central target of conservative and fundamentalist ideology and praxis. Although the individual right to self-determination has always been shaped by social and cultural norms and legal frameworks, it is currently being determined more than ever by reproductive technologies and medical issues.

In March 2015, on the day after International Women's Day, the European Parliament adopted a report calling for the right to abortion on request. This was met with uproar among Christian lobbyists and media. Does my body belong to me? Numerous newspaper headlines over the last few years have pointed to a very different narrative: «German government adopts mandatory health checks for sex workers»; «Thailand prohibits surrogacy business»; «Increasing attacks on gays and lesbians in Kyrgyzstan»; «Texas forces majority of abortion clinics to close»; «Kenyan politicians call for homosexuals to be stoned»; «Anti-abortionists organise annual March for Life through Berlin in September».

Christa Wichterich, a sociologist and publicist, begins her analysis with similar reports. She reminds us about the ways in which women's movements have discussed and fought for sexual and reproductive rights over recent decades, and that many such demands have since been institutionalised by the UN.

An understanding of a particular society's stance on sexual and reproductive rights also requires that we take into account its specific national, political, legal, institutional and normative context. This involves asking questions such as: Which social actors shape a society's norms and laws? Which policies govern women's bodies? In which social and political contexts of power – including transnational contexts – are reproductive technologies and medical issues relevant?

Wichterich does not attempt to provide all-encompassing answers to these questions. Instead, she outlines three central axes that can influence sexual and reproductive rights in different ways: social norms, values and rights; population and demographic policies; and the power of reproductive technologies and biotechnology – the «bio-economy». This focus enables her to address the interactions and dynamics of various power-regimes and provide an understanding of the different influences currently affecting sexual and reproductive rights. Her analytical approach is rooted in the hope that political understanding across borders is possible, despite differences between nation-states. In publishing this study, we aim to revive the worldwide

debate on women's sexual and reproductive rights. Strategies and approaches that strengthen these rights are currently more important than ever, precisely because women's sexual and reproductive rights are under attack from political, religious and fundamentalist forces.

The year 2015 provides a special opportunity for debate and reflection on sexual and reproductive rights: the Platform for Action, which was adopted at the Fourth World Conference on Women in Beijing in 1995, will mark its 20th anniversary this year. The Platform was the first to set out how the paradigm that «women's rights are human rights» could be implemented and applied in various contexts. To mark this anniversary, we will be publishing detailed reports from various regions of the world about the past and current importance of the Platform on our website: [www.gunda-werner-institut.de/](http://www.gunda-werner-institut.de/).

Reproductive health and reproductive rights are central to the Platform's chapter on «Women and Health». This chapter focuses on individual rights to self-determination, physical integrity and freedom from discrimination. The conference in Beijing constituted a landmark for diverse feminist struggles, including those against population policy and for women's health. At the same time, the comprehensive legal concept devised at the conference is relevant for all genders as well as for struggles for self-determination by lesbian, bisexual, gay, transgender and intersex people (LGBTI). These struggles are also apparent in this essay, if only in passing, but we intend to focus on them elsewhere. In addition, the specific historical feminist focus of this essay also means that it lacks men's emancipatory political perspectives.

Despite its success, the Platform provides an ambivalent point of reference: since the 1990s, discourses of self-determination have developed into new forms of control. On the one hand, these discourses link individual needs and rights to bio-political strategies of power; on the other, «empowerment» in developmental programs is often a euphemism for «consulting and care needs». Since the Beijing conference, feminists have criticised the medicalisation of population policy objectives, and a critical reflection on the development and role played by human rights is also a focus of this essay.

In addition to its ambivalence, one significant issue is missing from the Platform: abortion is still not recognised as a human right. Instead, the right to abortion is only secured in places where it is already legal. However, the right to abortion is a human right, even if this fact continues to go unheard in many societies. In Germany, for example, abortion is still listed in the criminal code.

Struggles for the right to sexual and reproductive self-determination must continue. Although progress has been made over the last 20 years (maternal mortality has declined in some areas, and legislation against domestic violence has been implemented in others), there is no linear trend towards progress. Moreover, the gains that have been made are anything but secure. As such, sexual and reproductive rights remain controversial and contested, just as they were 20 years ago, and any achievements that have been made can be called into question once again.

This brochure is aimed at sparking debate and providing useful tools for people who are working on these issues either within their organisations or together with us,

as well as for people who are attempting to further develop these issues in other ways, or who are searching for new means of accessing the diverse and contradictory discourses that determine the field. We hope this essay makes for rewarding reading and are certainly looking forward to your responses.

Berlin, June 2015

Barbara Unmüßig  
Board, Heinrich-Böll-Stiftung

Susanne Diehr  
Consultant, Gunda Werner Institute  
for Feminism and Gender Democracy

# 1. Introduction

- Apple and Facebook have announced that they offer egg freezing to their female employees as a career- and family-friendly policy.
- President Erdogan demands that every Turkish woman should bear at least three children «to support the nation».
- Due to the resistance of conservative forces, the EU parliament rejected the Estrela Report, which demanded consistent policies in the EU for sexual and reproductive health and rights including a right to choice and to sex education for all citizens in EU member states.
- In India, at least 14 women died after a laparoscopy in a sterilisation camp.
- After an anti-homosexuality act was first passed in parliament, and then annulled by the constitutional court, another anti-gay legislation is prepared in Uganda.
- In El Salvador, where abortion is banned and hundreds of women are jailed after miscarriages and stillbirths, feminist organisations have succeeded in getting one woman pardoned by parliament. At the same time, the US state of Indiana sentenced a woman to 20 years in prison after a miscarriage on charges of feticide.
- The Russian LGBT propaganda law pretends to protect children against information on LGBT people and non-traditional family forms. Surrogate motherhood is legal in Russia except for same-sex couples.
- After the abduction of 276 school girls, the Islamist group Boko Haram announced that the girls would be forced to convert to Islam, marry, and bear children.

One could easily extend this list of headlines that signal that sexual and reproductive rights (SRR) are highly contested around the world. Gender orders are considered to be at the heart of socio-cultural, religious and value systems, and sexual and reproductive regimes form the core of gender orders. As such, they are located at the intersection of individual, collective, ethical, political, scientific and commercial interests, and mark the interface of various, interwoven and complex power regimes.

The following review of discourses, dynamics and perspectives assumes that the agenda of sexual and reproductive rights as a set of normative principles is a highly contested and controversial arena. This essay aims to unbundle the interacting power regimes that inform current perceptions, implementations and blockages of sexual and reproductive rights. In doing so, it discerns three main axes of power and influences on sexual and reproductive rights that could act as a framework of reference for discussions in various regions and countries: values and social norms, biopolitics and bioeconomy. In each of these regimes, gender as a category of social inequality is deeply inscribed along and intertwined with other categories of social inequality, in particular class/caste, race/ethnicity and colonialism/imperialism.

This complex interplay indicates that sexual and reproductive rights are at any time an issue of gender justice and social justice.

This essay provides analytical background information for critical and controversial debates, continues the politicisation of seemingly personal issues, aims to open space for the clarification of positions and provide motivation to explore political intervention. Therefore, it raises questions rather than simply providing answers.

## 1.1. Brief Chronology

The paradigm of sexual and reproductive rights as human rights is rooted in international political discourses on global problems after the end of the bipolar world order. This paradigm goes back to the 1994 UN Conference on Population and Development in Cairo where it was embedded and defined within the concept of sexual and reproductive health. At the Cairo Conference, the concept of sexual and reproductive health was particularly driven by resistance against coercive demographic and birth control policies in countries in the Global South. One year later, the concept was confirmed at the famous 4<sup>th</sup> World Conference on Women in Beijing.

The articulation of the sexual and reproductive rights paradigm was a reaction to women's movements around the world, which were struggling for freedom from male violence against women's bodies and from patriarchal control over their sexuality, ranging from marital rape, sexual violence in war, and so-called «honour» killings to female genital mutilation, humiliating practices such as virginity and pregnancy tests; prenatal sex-selection and femicide.

After the inclusion of sexual and reproductive health and rights into the Cairo Programme of Action, the paradigm was celebrated as an international consensus that was to be implemented by all governments. It was phrased in the spirit of global governance, meaning that the normative principles it articulated were to govern national policies with regard to population, and sexual and reproductive health. Civil society organisations welcomed the normative principles it enshrined particularly as a policy shift from population control to women's empowerment and as a big step forward in terms of the acknowledgement of women's human rights. However, a newly formed coalition of conservative religious forces led by the Vatican – an «unholy alliance» – had already begun articulating strong reservations against the concept of SRR, in particular against abortion, same-sex sexuality and sex education for young people.

### Reproductive Rights and Reproductive Health

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when

and how often to do so. Implicit in this last condition are the rights of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. [...]

Bearing in mind the above definition, reproductive 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. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.

UNFPA: Programme of Action of the International Conference on Population and Development, Cairo, 5-13 Sept 1994, para 7.2., 7.3.<sup>1</sup>

## **Women and Health**

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 behaviour and its consequences.

UN: 4<sup>th</sup> World Conference on Women 1995, Beijing Platform for Action, 4-15 Sept 1995, para 92<sup>2</sup>

Within the UN framework, member states are duty bearers and obliged to respect, protect and enforce the human rights they have agreed to and the treaties they have ratified. Against the backdrop of the growing influence of civil society in the 1990s, women's organisations hoped that the women's human rights agenda would be an

1 <http://www.unfpa.org/sites/default/files/pub-pdf/ICPD%20PoA%20English.pdf>  
2 <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

instrument for influencing national and international governance and would lead to a steady process of the implementation of sexual and reproductive rights at the national and local level.

## 1.2. Brief Review

Since the landmark conferences of Cairo and Beijing, the actual implementation of sexual and reproductive rights has been driven by many factors and dynamics: political power play, population policy and biopolitics, medical and life sciences, reproductive technologies, transnational business, and civic pro- and anti-choice groups that mediate individual and collective interests. Instead of a slow, linear process of recognition and the enforcement of sexual and reproductive rights, the past 20 years have seen a back and forth between progress and backlashes against policy measures and discourses. The much-lauded Cairo consensus became a discursive battleground that divided the international community, public opinion in nation states, civil societies and feminists.

The sexual and reproductive rights paradigm, which initially was very much driven by women's movements and their emancipatory perspective in terms of liberation from violence, coercion and discrimination, became a pawn between two global dynamics: neoliberal transnational marketization, and authoritarian political and fundamentalist religious regimes. Whereas the transnationalisation and commodification of reproduction advanced fast alongside the development of reproductive technologies and the biosciences, an expanding neo-conservative bloc of political and religious forces orchestrated a backlash at the level of international negotiations and in a growing number of countries. At the CSW59 Beijing+20<sup>3</sup> meeting in March 2015 in New York, NGOs, feminist and LGBTI-activists from all over the world reported about recent massive abuses of and attacks on their rights due to the mounting strength of authoritarian, nationalist, neoconservative and fundamentalist forces. They contribute to the «shrinking spaces, shrinking funds» liberal and progressive rights-based and women's NGOs face everywhere.

Interestingly, the Millennium Development Goals (MDGs), which were launched in 2000, did not include reproductive health and rights. Target 5 only called for the reduction of maternal mortality, and target 6 to combat HIV/AIDS. However, in 2005, target 5B was added, and it demanded universal access to reproductive health care. In the present draft of the forthcoming Sustainable Development Goals sexual and reproductive health is referred to twice; whereas reproductive rights are referred to once.<sup>4</sup>

In general, human rights, when institutionalised in UN programmes and action plans, are considered to be normative principles and soft law. However, if they are

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3 CSW: Commission on the Status of Women. The CSW meets every year in March at the UN headquarters in New York. Since 1995, it has monitored the implementation of the Beijing Platform for Action, in: March 2015, CSW59 dedicated itself to the Beijing+20 review.

4 SDGs zero draft: <http://www.endpoverty2015.org/en/2014/06/04/zero-draft-sustainable-development-goals/>

covered by a legally binding international convention, they become justiciable. This happened with regard to SRR in 2011 with a ground-breaking gesture by the CEDAW<sup>5</sup> Committee which condemned Peru for violating the human rights of a young girl who had been raped and denied an abortion.<sup>6</sup>

Reviewing 20 years of implementation of sexual and reproductive health care and rights, the most significant feature are the ambivalences and contradictions between facts and figures.

### **Review of the ICPD Programme of Action 1994–2014**

Between 1990 and 2010 the number of people living in extreme poverty in developing countries fell by half as a share of the total population (from 47% in 1990 to 22% in 2010), a reduction of 700 million people. Women gained parity in primary education in a majority of countries, maternal mortality fell by 47%, and the global fertility rate fell by 23%. The review also makes clear, however, that progress has been unequal and fragmented [...] While important gains in health and longevity have been made, they are not equally shared or accessible to many. [...] Research suggests a significant correlation between the education of girls, healthier families and stronger gross domestic product (GDP) growth.

Despite considerable advances in maternal and child health and family planning in the past two decades, 800 women died each day from causes related to pregnancy or childbirth in 2010, and an estimated 8.7 million young women aged 15 to 24 in developing countries underwent unsafe abortions in 2008. The advent of antiretroviral drugs has averted 6.6 million deaths from HIV and AIDS, including 5.5 million in low- and middle-income countries, but in far too many countries the number of new infections continues to rise, or declines have stalled. In general, fewer and fewer gains can be expected from technical «silver bullets» without making serious improvements to the health systems of poor countries and addressing structural poverty and human rights violations.

UNFPA (2014): Framework of Actions for the follow up to the Programme of Action of the International Conference on Population and Development Beyond 2014, New York, 1f<sup>7</sup>

- 5 CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women. CEDAW was adopted in 1979 by the UN and is legally binding.
- 6 Bates, Charlotte (2013): Abortion and a right to international law: L.C. versus Peru, in: Cambridge Journal of International and Comparative Law (2)3: 640–656
- 7 [http://www.usnfpa.org/sites/default/files/pub-pdf/ICPD\\_beyond2014\\_EN.pdf](http://www.usnfpa.org/sites/default/files/pub-pdf/ICPD_beyond2014_EN.pdf)



Data in the national Beijing+20 reviews confirm the unevenness and often countervailing developments in the sexual and reproductive health sector, due to various reasons.

- The official report by the Philippine government, for example, states that – despite its Plan for Gender-responsive Development from 1995 – in 2011 maternal mortality was higher than 1990, teenage pregnancy rose by 64,000 between 2005 and 2010. However, finally after 15 years of controversies, a law on «responsible parenthood and reproductive health» was passed in April 2014; the law guarantees universal access to all methods of family planning and to sex education – a goal that still seems unattainable for poor women.<sup>8</sup>
- Uganda has been very successful in bringing down its HIV prevalence from 18.5% to 6.4% in 2004; however, from 2005 onwards the HIV prevalence increased again to 8.3% among women and 6.1% among men. In Kenya, the gender gap in HIV infection is even 8 to 4.3%. It seems men are still being left out when it comes to reproductive health services. In Tanzania, the level of female genital mutilation has been reduced in five regions but it increased in four other regions between 2005 and 2010. A total of 44% of married women experienced sexual violence at the hands of their husbands; 54% of women and 34% of men believe that a husband has a right to beat his wife.<sup>9</sup>
- In Latin America, maternal mortality has remained unchanged. One reason for this is the complete ban on abortion by laws backed by an alliance of government (including some left-wing governments) and the Catholic church in seven countries that criminalise abortion and imprison women for violating these laws, namely El Salvador, the Dominican Republic, Nicaragua, Honduras, Haiti, Suriname and Chile. In Chile, twelve bills to decriminalise abortion have been rejected, risking the life of thousands of women.<sup>10</sup>
- Many countries in Eastern Europe, the Caucasus and Central Asia lack comprehensive sex education. This is reflected in a low rate of contraceptive usage (in Armenia and Azerbaijan the usage rate is below 20%), high teenage pregnancy rates and high HIV/AIDS prevalence among young people.<sup>11</sup>

These contradictions, contested discourses and countervailing political forces strongly influence negotiations at the UN level. At the Rio+20 conference in 2012, and two decades after the famous UN Conference on Environment and Development, which was held in 1992, conservative forces prevented sexual and reproductive rights being

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8 [http://www.pcw.gov.ph/sites/default/files/documents/resources/BPFA%2B20\\_progresss\\_report.pdf](http://www.pcw.gov.ph/sites/default/files/documents/resources/BPFA%2B20_progresss_report.pdf)

9 <http://www.uneca.org/pages/beijing20-national-reviews>

10 ECLAC (2015): Regional Review and Appraisal of the Implementation of the Beijing Platform of Action, Montevideo, [http://www.cepal.org/mujer/noticias/paginas/9/53409/C1421041\\_Beijing20\\_WEB.pdf](http://www.cepal.org/mujer/noticias/paginas/9/53409/C1421041_Beijing20_WEB.pdf)

11 Astra Network (2014): Sexual and reproductive health and rights in Central and Eastern Europe, [http://www.astra.org.pl/pdf/publications/ASTRA\\_Factsheet\\_2014.pdf](http://www.astra.org.pl/pdf/publications/ASTRA_Factsheet_2014.pdf)

mentioned as an element of sustainability in the final document. The declaration of the CSW59-Beijing+20 in March 2015 in New York also makes no reference to sexual and reproductive rights. This is currently stoking fears among women's transnational networks of a mounting backlash at the UN with UN- and government documents speaking of «unfinished business» and giving the impression that if governments would merely renew their commitments, the enforcement of sexual and reproductive rights would only be a question of time.

Contrary to this overly simplistic and optimistic perception, this essay suggests that the reluctance to enforce sexual and reproductive rights is mainly a question of power. Therefore, it deals with the underlying structures and causal powers at the micro, mezzo and macro level of gendered rights and governance:

- How is a social order of reproduction, of reproductive norms, values and rights negotiated and constructed?
- Who or which institutions are the drivers behind sexual and reproductive rights?
- Why is progress in a specific country or region slow or even impossible?
- Which particular forces in society block the advancement of sexual and reproductive rights?
- How do different power regimes interact, converge or clash in particular places?

# 2. Social Norms, Values and Rights

The focus of this power regime is civil society, its institutions and the various forces that shape value systems, symbolic orders and social norms, including religion, family, ethnic communities, political ideologies, state-citizen relations, social movements, customs, traditions, culture, laws and legal frameworks etc. Sexual and reproductive rights are a controversial field located between the claim of individual self-determination and the collective norms of a society or community. They are contested because they aim at social change and challenge traditional practices, beliefs and norms. Therefore, they are prone to multiple definitions and meanings ranging from 'want' and 'must' to 'right' and 'wrong'.

Although they have different cultural and regional focuses, women's movements all over the world articulate resistance against violence, discrimination, and outside control over their bodies, sexuality and reproductive capacities. The language of sexual and reproductive rights was phrased by women's networks to counter century-old and modern forms of the subordination and control of women's bodies and sexuality by patriarchal institutions, the family, medical systems, religious communities, legal systems and states. The SRR paradigm was seen as instrumental in articulating the personal as political. At the same time, it was viewed as going beyond the stereotype of women as victims and instead constructing them as rights bearers who could hold state and non-state actors accountable for the protection and enforcement of human rights.

In past decades, the most sensitive and contested issues over reproductive rights and choice have been for ethical reasons abortion, the rights of people with non-hegemonic sexual orientations, sex education for young people, and assisted reproductive technologies (ART). The claim to freedom from violence and to autonomy regarding childbearing also challenged authoritarian and coercive demographic and eugenic policies. The critical essence of human rights is its potential to articulate and politicise injustice, subjugation and oppression.

## 2.1. Human Rights: between Universalism and Cultural Relativism

Liberation and emancipation have different meanings in different regions of the world and for different people. This causes many debates among women from the North and South. In the West, the concepts of human rights and emancipation are strongly influenced by the concept of individualism, which developed in western

societies along with the philosophy of the Enlightenment, capitalist markets and democratic citizenship. Additionally, overcoming the fateful mercy of nature is one of the central postulates of modernity. This is true for the economy but also for the relationship between individuals and their body. Based on individualism, women's movements and feminisms in the West focused on autonomy and self-determination in terms of freedom from male coercion, and independence from patriarchal oppression. Control over one's own body and sexuality as well as choice regarding reproduction was key to this. In many countries, women's struggles for the right to abortion became highly symbolic of liberation from male control over childbearing.

Many post-colonial scholars and activists from the Global South reject western claims and those articulated by their self-declared «sisters» about universal rights. They place great emphasis on collective rights such as the right to the development and reproduction of a community. Post-colonial scholar Gayatri Spivak claims that social practices of responsibility are much more relevant for women in cultures of the Global South than individual women's human rights.<sup>12</sup> For Yoruba women, for example, the idea of women's individual rights seems a strange concept due to their pro-natalist culture where women's fertility is perceived as instrumental to the welfare of the community. Additionally, women's movements in the Global South are often rooted in a history of identifying themselves with national liberation movements, collective freedom and independence.

Due to continuous neo-colonialism, racism and imperialism, post-colonial critics challenge the universalism of the women's human rights agenda because of the built-in hierarchy of women regarding the achievement of individual rights and autonomy. The claim to universal application of women's rights implies the construction of western or westernised women from the global middle classes as rational and superior vis-à-vis the «others» – women from the Global South, migrants, minorities, Muslims and indigenous people – who are constructed as backward and irrational.<sup>13</sup> In this framework, women's human rights are used as instruments in the mission to develop and civilise those who are homogenised as victims and subalterns.

As a counterpart to this western form of «othering» and claims to universalism, objections to women's human rights are defended with reference to a particular culture, religion or ethnicity. However, claiming cultural relativism or religious and ethnic sovereignty in decisions about women's bodies, dress codes and mobility often means that women's rights are sacrificed to male dominance and patriarchal control in the name of culture. Notions of honour, dignity and protection garnish symbolic orders, which perpetuate gender hierarchies and deny gender equality. However, in many public and populist discourses, a relativistic turn and a claim to sovereignty have become hegemonic and in some African countries it is used to provide legitimacy to female genital mutilation, dominant «rape culture», and an openly sexist, heteronormative and gender-hierarchical way of living.

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<sup>12</sup> Spivak, Gayatri (2005): Use and Abuse of Human Rights, in: *boundary 2*, vol 32 no1, 131-189

<sup>13</sup> Mohanty, Chandra Talpade (1986): Under Western Eyes: Feminist Scholarship and Colonial Discourses, in: *Feminist Review* 30, Autumn 1988, 61-88

On the other hand, the military intervention in Afghanistan, which was legitimised in the US by the ostensible protection of women's rights, is an obvious example of how women's human rights can be instrumentalised and turned into a vehicle of domination and geopolitical hegemony, a mechanism known as «embedded feminism» by critical scholars.<sup>14</sup>

## 2.2. Sexual and Reproductive Rights: between Liberation and Authoritarianism

Women's movements have demanded states to provide a right to choose. «No forced maternity! No forced sterilisation!» were key demands in the black women's movement in the US.<sup>15</sup> Choice, self-determination and reproductive options expanded considerably in many countries and cultures during the last decades of the 20th century. However, current demands for the enforcement of sexual and reproductive rights and struggles by women's and LGBTI-movements are faced with a resurgence of fundamentalist religious regimes and a trend towards neoconservative and authoritarian governments. Across borders, conservative forces have gained ground, built civic networks and orchestrated a massive strategic if not aggressive backlash, sometimes involving new unholy alliances and, in a populist manner, claim that they represent the silent majority.

Anti-gender movements driven by right-wing, masculinist, and anti-egalitarian ideologies are on the rise in Central and Eastern Europe, and they are forming alliances with different religious denominations.<sup>16</sup> In Russia, these groups collaborate with the Russian Orthodox church and the Putin government; this adds a strong nationalist tone to the promotion of the Russian family with at least three children, and distances itself from Europe calling it «gayrope». With the help of their own TV stations, ultra-conservative and fundamentalist groups organise a strategic and well-funded family-focused backlash: they glorify motherhood through the naturalisation of femininity, reproduction, and heterosexual norms; campaign for the rolling back of abortion rights; organise referendums against gay marriage, and advocate pro-life activism and familiarism.

Furthermore, conservative, anti-gender forces have built a new bloc in the European parliament against feminist demands for gender equality, and sexual and reproductive rights, and these views are also spreading among women's organisations. The European Women's Lobby, a confederation of European women's organisations in Brussels, is currently being challenged by the network New Women For Europe whose concerns are the «real needs of the family», «monitoring the best interests of

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14 Hunt, Krista (2006): «Embedded Feminism» and the War on Terror, in: Hunt, K. and Rygiel (Hg.): (En)Gendering the War on Terror. War Stories and Camouflaged Politics. Hampshire & Burlington

15 Nelson, Jennifer (2003): Women of Color and the Reproductive Rights Movement, New York/London

16 Heinrich Böll Foundation (ed) (2015): Anti-Gender Movements on the Rise? Strategising for Gender Equality in Central and Eastern Europe, Berlin

the child», «free choice for parents» and «investments in human capital within the framework of the family».<sup>17</sup> Feminist scholars and feminist members of the EU parliament face outrage, hate attacks and death threats.

While at the international level, conservative christian governments often build an anti-feminist «unholy alliance» with islamist states, conservative groups from Germany to Russia mix racist, islamophobic and anti-migrant arguments with anti-feminist and homophobic reasoning. In Myanmar, the nationalist buddhist leadership intermingles sexism with racist and anti-muslim ideologies. A standard element in their hate speech as well as in that of hindu nationalists in India and sinhala buddhists, who claim supremacy in Sri Lanka, is that muslims have too many children. In Switzerland, the so-called Ecopop movement links xenophobia and demographics: it claims that the country would become overpopulated and its resources overused if more immigrants and refugees were to be allowed in. In France, catholics and the extreme right wing Front National join hands against the legalisation of same-sex marriages and adoption. A little later, the protagonists of these reactionary movements travelled to Germany to support «worried» parents who were protesting against the «early sexualisation» of their children through sex education in schools. Many of these «worried» German parents are affiliated with the new German neoconservative party AfD (Alternative für Deutschland) and take part in anti-refugee and islamophobic demonstrations by PEGIDA (Patriotic Europeans against the Islamisation of the Occident).

These neoconservative patriarchal forces challenge any new meaning given to the social entity of the family or parenthood on ethical grounds. Starting from Latin America and the US, a catholic and protestant «neo-evangelisation» is occurring on all continents, and is leading to the propagation of an anti-egalitarian doctrine that links the protection of tradition to that of the family and private property.<sup>18</sup>

Political regimes from the Russian to the Spanish and Ugandan government use issues such as homosexuality and abortion to evoke a moral crisis in society in order to distract attention from economic and political problems. This creates a climate of authoritarianism and insecurity that is unfavourable to sexual and reproductive rights and leads to shrinking spaces for the enforcement of rights and gender emancipation. At the same time, it opens alleys for the conservative backlash: Backed by the Catholic Church in Poland and Croatia, a «conscience clause» permits doctors to refuse particular health services such as abortion even if they are legal in a specific country.

### 2.3. Desire, Self-determination and Labour

Individualistic thinking and desires regarding sexual and reproductive needs and interests are influenced, constructed and changed by multiple factors: the interaction

<sup>17</sup> Quoted in: Kemper, Andreas (2014): Keimzelle der Nation. Teil 2. Wie sich in Europa Parteien und Bewegungen für konservative Familienwerte, gegen Toleranz und Vielfalt und gegen eine progressive Geschlechterpolitik radikalieren, Friedrich-Ebert-Stiftung, Berlin

<sup>18</sup> In 1960, when land reform was up for discussion in Brazil, the catholic politician Plinio Correa de Oliveira founded the Sociedade Brasileira de Defesa da Tradição, Família e Propriedade.

of social norms, rules and laws produced by nation states; developments in biomedicine, reproductive technologies, and the bio-medical and pharmaceutical industries; as well as civic struggles and social movements such as the women's, gay and queer movements. Thus, the development of individual desire and choice is shaped at any given time by particular contexts, social relations and the interplay between political and economic power structures. For example, starting in the 1970s, bio-medical research and sciences interacting with pharmaceutical and reproductive industries opened new options and desires to manage fertility and to overcome infertility.<sup>19</sup> In South and East Asia, sex selection practices have become more widespread along with the advancement of biomedical technologies and cheaper prices in the reproductive market. This has resulted in a technical normalisation of sex determination, femicide and a distorted sex ratio in countries with preferences for sons. In Amartya Sen's words: 117 million women are missing in Asia today.

On the other hand, reproductive technologies carry many ambivalences or even contradictory options. Career women can postpone their reproduction with the help of egg freezing or by outsourcing pregnancy and birth by hiring another woman's womb. This can be seen as a chance for more gender equality in the labour market and with to regard executive positions. Research on supposedly carcinogenic genes resulted in some women «freely choosing» a prophylactic removal of their ovaries or breasts meaning that medical prevention is stretched under the heading of self-determination and self-responsibility. Among the global middle classes, the body is no longer viewed as an unchangeable biological entity, but as part of individual subjectivity that can be shaped and transformed by cosmetic and reproductive surgery according to particular desires and needs. Liberation from the fateful mercy of the body is not only a manifestation of western modernity, but an element of modernisation in countries such as South Korea and China, obsessed with performance orientation. Presently, Rio de Janeiro is the world capital of cosmetic surgery.

For transgender persons, pharmaceutical and surgery intervention open chances to change their sex, to choose and define their particular gender identity. However, the ambivalence enshrined in the technologies is evident in the treatments and surgery of intersex persons, where similar hormones have been used to adjust them in accordance with hegemonic binary norms and enable them to be determined as belonging to one of the two standard sexes. The key question here is the use of force and coercion vis-à-vis the freedom not to be subjugated to norms, standards and intervention from outside and to remain and live a self-determined identity in a modified or unmodified body.

Angela McRobbie has shown how the freedom of young women to shape, rule and optimise their «insufficient» body, sexuality and beauty is a new form of subjugation to outside norms and to corporate-led control: the seemingly empowering «Yes, you can!» turns into «Yes, you must».<sup>20</sup> In the process of the neoliberal transformation

**19** Inhorn, Marcia C./Balen, Frank v. (2002): *Infertility around the Globe. New Thinking around Childlessness, Gender and Reproductive Technologies*, Berkeley/London

**20** McRobbie, Angela (2009): *The aftermath of feminism: gender, culture and social change*. Los Angeles/London



of the welfare state as well as of the developmental state, individuals take over the responsibility for their health, nutrition, bodily and mental fitness, and adjustments to new environments. As Nancy Fraser argues, in post-Fordist capitalism, this results in a bizarre «uncanny congruence» between neoliberal market-driven and feminist emancipatory-driven objectives of self-determination, autonomy and independence.<sup>21</sup>

Women's movements and feminist discourses are still divided about the paradigms of self-determination and choice with regard to body, sexuality and reproduction. Freedom from violence, coercion and oppression represents a consensus. However, currently, critical gender discourses focus much more on ambivalences and contradictions, and new subject formations:

- To what extent are women victims of male control and patriarchal subordination, and at the same time agents who choose and decide for themselves?
- As each human being exists in a nexus of social relations and is entangled in material structures and feelings of belonging, dependencies, symbolic orders and normative regimes, to what extent is it possible to speak about free choice, autonomy and self-determination?
- What is the relation to one's own body? Does a woman own her body? Or is she her body?<sup>22</sup>

The principle of free choice to exercise sexual and reproductive rights is based on the assumption of the body as individual property. «My belly belongs to me!» was a key slogan of European women's movements in their struggle for the legalisation of abortion. The concept of private property implies that the owner can choose, has decision-making power over the use – in this case – of her own body, and has capacities to negotiate a contract about donating, renting or selling parts of her body based on «informed consent».<sup>23</sup> Accordingly, women are constructed as agents who take their life into their own hands and gain control: this includes women who decide to use reproductive technologies and/or hire a surrogate mother to have a child, provide eggs or her uterus for carrying a child for somebody else, or offer sexual services.

However, the concept of individual choice and autonomy covers up the unequal social relations in which such decisions are taken. Access to commercial services in reproductive industries depends on the purchasing power of the global middle and consumer classes. Contracts between unequal partners tend to reinforce rather than overcome structural inequalities. To counter the accusation of exploitation of surrogate mothers, reproductive clinics in India use the notion of informed consent, meaning that surrogate mothers and their husbands are informed by the doctors about the

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21 Fraser, Nancy (2009): *Feminism, Capitalism and the Cunning of History*, in: *New Left Review* 56, 97-117

22 Gupta, Jyotsna Agnihotri/ Richters, Annemiek (2008): *Embodied Subjects and Fragmented Objects: Women's Bodies, Assisted Reproduction Technologies and the Right to Self-Determination*, in: *Bioethical Inquiry* (2008) 5, 239-249

23 Petchesky, Rosalind (1995): *The body as property: A feminist revision*, in: Ginsburg, F./Rapp, R. (eds): *Conceiving the New World Order*, Berkeley, 387-406



procedure so that they can choose whether to make a contract. However, given the knowledge gap between the surrogate mother and the doctor as well as the surrogate mother's poverty, freedom of choice is a rather abstract concept. Similarly, the idea of gaining control over one's own body evaporates when tissues and cells are stored in fridges or banks outside of the donor's control, when a surrogate mother suffers from a miscarriage, or when a sex worker experiences violence by her client. Is free choice not just an illusion and self-determination a fetish of modern capitalist societies?

Labour is one way of describing women's agency and an attempt to bridge the gap between exploitation and self-determination in reproductive industries. Waldby and Cooper call the agency of providing eggs and other biological material to biomedical research or the reproductive industries «clinical» and «regenerative» labour.<sup>24</sup> Arlie Hochschild describes the efforts of surrogate mothers to produce a healthy baby and to accept separation from it immediately after giving birth «emotional labour».<sup>25</sup> Using the concept of productive labour in this context enables demands to be made for the rights and social security of reproductive workers. Doing so, however, is morally charged with the dilemma that this form of women's agency and labour is placed and perceived between the long-standing opposite stereotypes of the saint and the whore. The work of a surrogate mother is associated with sacrifice, the gift economy and «helping» another woman; but it also has strong connotations of prostitution.

Additionally, the concept of labour acknowledges the new subjectivities that emerged recently in changed reproductive relations and their reconfigured needs, interests and dreams. Some surrogate mothers in India are proud of the productive power of their body, and decide to use it a second or even third time as a resource to generate income, thus escaping from their reproductive role in the despotic patriarchal family system. Although this does not constitute a breakup of the hierarchical gender division of labour or an «undoing gender», many of them partly gain recognition from their family and some empowerment in terms of agency due to their role as a breadwinner. Another example for new subject formations are young couples in Chinese megacities who are not following the government's latest request to opt for two children as the urban population have been disciplined for three decades to set up one-child-families.

## 2.4. Universal but not Uniform; Contextualised but Critical

In order to become effective, sexual and reproductive rights as articulated in the human rights paradigm have to be translated into national laws and policies, and turned from soft law into legally binding rules. Nation states bear the responsibility for facilitating a political and legal environment in which the rights of all citizens, as

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- <sup>24</sup> Waldby, Catherine/Cooper, Melinda (2008): The Biopolitics of Reproduction. Post-Fordist Biotechnology and Women's Clinical labour, in: *Australian Feminist Studies* 23(55), 57-74; Waldby, C/ Cooper, M (2010): From Reproductive Work to Regenerative Labour: The Female Body and the Stem Cell Industries, in: *Feminist Theory*, Vol 11 No 1, 3-22
- <sup>25</sup> Hochschild, Arlie (2012): The Back Stage of a Global Free Market: Nannies and Surrogates, <http://www.havenscenter.org/files/backstage.global.free.market.pdf>

right bearers, are respected, protected and enforced. However, the process of «traveling, transplanting, translating» (Edward Said) human rights as normative principles is conflictual and confrontational.<sup>26</sup> In particular, human rights enter into multiple tensions with various existing governance regimes based on state laws, religious rules, customs, traditional jurisdictions, symbolic orders and community-based morals. They have to take into account that the meaning of sexes and sexuality is different in different cultures; in South East Asia the construction of the two sexes is fluid; in South Asia a third sex exists, the hijras, and is socially accepted albeit discriminated against. However, these border zones are characterised by distinction in social and economic terms, and by violence.

Therefore, from a perspective of justice, human rights – while claiming a certain universal normative validity – cannot be enforced in a uniform manner. The enforcement of sexual and reproductive rights has to be part and parcel of a social justice agenda which attempts to reduce and overcome inequalities. Thus human rights have to be translated into rules and measures that do justice to special needs and aim to balance social inequalities in terms of providing specific protection and treatment to poor, vulnerable and minority groups instead of providing equal treatment to everybody.

Well aware of the long-standing controversy between universalism and cultural relativism, and with a focus on the articulation of the global and the local, feminists from the North and the South have identified four ethical principles that can be used as guidance for sexual and reproductive health and rights: bodily integrity; personal dignity; equality; and diversity.<sup>27</sup> In order to bridge the gaps between plural positions and perspectives, these ethical and normative principles have to be contextualised without stripping them of their potential to critique power relations, hierarchy and subjugation.

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26 Ehrmann, Jeanette (2009): Travelling, Translating and Transplanting Human Rights. Zur Kritik der Menschenrechte aus postkolonial-feministischer Perspektive, in: *Femina Politica*, 2/2009, 84-95

27 Correa, Sonia/Petchesky, Rosalind (1993): Reproductive and sexual rights: a feminist perspective. In: Sen, Gita/Germain, Adrienne/Chen, Lincoln (eds): *Population policies reconsidered: health empowerment and rights*, Boston, 107-123

# 3. Biopolitics and Biopower

Nation states have an interest in controlling and governing the population of a specific territory. At the same time, governments are accountable as duty bearers to respect, protect and enforce the sexual and reproductive rights of these citizens as right bearers. Biopolitics are techniques and strategies of governance aimed at building power that guide and control bodies, and the health and life of a whole population through the regulation of reproduction, fertility and mortality. They regulate habitation and mobility through housing and resettlement schemes, urbanisation programmes, ethnic cleansing, and asylum and migration policies. Biopower exercised as demographic policies, and as health, social or tax policies is a form of governance that deeply intervenes into social practices, into the symbolic order and value systems as well as into the intimacy of reproduction. It constructs and reframes the social order – while interacting with various social, religious and political forces – by changing the «nature» of population and reproduction, value systems and citizens' rights. Biopower intervenes in and effects individual needs, desires and ways of living.

The French philosopher, Michel Foucault, who coined both of these notions, stressed that biopolitics and biopower work through disciplinary politics and self-discipline including practices of self-optimization, meaning they work due to the combination of a social consensus, and additional coercion and violence. Biopolitics always reflects the balance of power or power struggles in societies, and mediates between interests and value systems. Therefore, questions of democracy and justice are critical in shaping and exercising biopower.

From the perspective of individuals as rights bearers, respect, protection and enforcement of sexual and reproductive rights by the state form a crucial component of the citizen-state-relationship and the public good. For social justice and the overall goal of a good life for everybody, the question is how legal provisions and public policies facilitate individual and collective entitlements and organise the respective resources and whether they take into account gender, class and other social differences.

## 3.1. Biopolitics and Population Control

The concepts of reproductive health and reproductive rights were developed in the 1980s as a countervailing agenda against the backdrop of a neo-Malthusian discourse of the «overpopulation» of the Global South. The thread of a «population bomb» was conceived in the US at the peak of the Cold War when fear of social or communist uprisings, particularly in Latin America, was mounting. Population growth and the uncontrolled fertility of women were made responsible for «underdevelopment»,

poverty, hunger, environmental degradation and resource scarcity. This resulted in widespread target-driven coercive population control policies by the «population establishment» led by UN organisations, in particular its population fund UNFPA, the World Bank and USAID, which was backed by the Ford and Rockefeller Foundation, and implemented by many national governments and international agencies. Pharmaceutical companies became significant actors in the development of birth control methods.

Women's bodies were the main target of «family planning». In the logic of population control, women in the Global South are stereotyped as passive and oppressed, and uncontrolled fertility is taken as an indicator of traditional, «backward» societies. Whether run by foreign donors as part of development aid or as domestic programmes, demographic goals are always informed by quantitative (statistically defined) and qualitative objectives that are directed towards eugenic selection and patterns of exclusion and inclusion. In the demographic logic of «too many/too few», it is always the «others» whose reproduction needs to be controlled. Family planning programmes mainly target poor, lower class and caste, indigenous and minority women, thus leading demographic goals to be prioritised over social and cultural norms as well as over the health and rights of women. These selective strategies result in a stratification of reproduction.<sup>28</sup>

The indifference towards women's bodily integrity and specific needs became evident in permanent or long-lasting, provider-dependant methods of fertility control like sterilisation, injections and implants – most of which are accompanied by high risks to women's health. The development of contraceptives was informed more by political and commercial interests than by women's needs. Pharmaceutical multinationals, in particular the market leaders Pfizer, Merck, Johnson & Johnson and Teva, made huge profits.

In the 1990s, coercive and violent forms of population and fertility control policies, whether in the form of sterilisation camps in India, the one-child-family in China, conditionalities attached to lending, and pressure imposed by the World Bank or the International Monetary Fund (IMF) increasingly faced critique and resistance.<sup>29</sup> Critical, anti-imperialist and feminist civil society organisations challenged the discourse on overpopulation with a counter-discourse of overconsumption in the Global North with its massive detrimental effects on the planet and its resources.

In the wake of this critique, the population establishment changed its strategies and concepts towards reproductive health. Family planning programmes were legitimised through concepts such as «safe motherhood», the assumption of women's «unmet needs» for contraception and a «cafeteria approach» aimed at enabling women and couples to choose between different methods and contraceptive

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28 The notion was first used by Colin for the transnational care chain of migrant workers. Colin, S. (1995): «Like a mother to them»: stratified reproduction and West Indian childcare workers and employees in New York, in: Ginsburg, F./Rapp, R. (eds.): *Conceiving the new world order: the global politics of reproduction*, Berkeley, 78-102

29 Hartmann, Betsy (1995): *Reproductive Rights and Wrongs. The Global Politics of Population Control*, Boston

devices as if they were in a supermarket. Additionally, some programmes also tried to include men. This new focus on women's needs in reproductive health was taken up by women's organisations from the Global North and South and linked to the women's rights paradigm.<sup>30</sup> Before the Cairo Conference, this had resulted in a newly established consensus on reproductive rights.

After the Cairo Conference, the language in development, population and health policies moved towards the human rights and women's empowerment paradigm, and was nurtured by hope for a change in direction from top-down to bottom-up programmes. However in many countries, the narrow focus on pregnancy and birth control has largely been resumed, additional to HIV/AIDS treatment with retroviral drugs. Top-down family planning programmes continued to be imposed, thus «prioritizing family planning over reproductive health, and reproductive health over primary health care.»<sup>31</sup> In addition, the principles of choice and informed consent continued to be disregarded repeatedly: India, for example, never stopped its target- and incentive-driven measures such as laparoscopy camps; under the instruction of the IMF, the Fujimori government in Peru sterilised 300,000 mainly indigenous women between 1996 and 1998 causing the death of at least 20 women.<sup>32</sup>

However, population control policies have always been controversial and contradictory, reflecting competing moral positions and social norms. One example is the Global Gag Rule, which has been imposed twice by US governments: once in 1984 by the Reagan administration at the population conference in Mexico; and once by the Bush administration in 2001. The Global Gag Rule means that funding is provided to development organisations on the condition that they do not support, provide or lobby for abortion. This restriction indicates that a topic of domestic politics – anti-abortionism and pro-life-activism by neoconservative and religious forces – overruled the foreign and geopolitical issue of population control in the Global South.

As neoliberal trends are leading to declining public expenditures on health services, the philanthropic sector and private development aid, in particular the Bill and Melinda Gates Foundation, play an increasingly important role as funder. Together with the British government, this foundation organised the London summit on family planning in 2012 with a focus on women's right «to decide freely». Celebrated as a breakthrough, the Foundation committed US\$ 1 billion, which was mainly to be spent on a new generation of injectables (Depo Provera) that can easily be used by village health workers or the women themselves, and on the implant

- 30 German, Adrienne/Chen, Lincoln (1994): *Population Policies Reconsidered*. Health, Empowerment and Rights, Boston; Correa, Sonia/DAWN (1994): *Population and Reproductive Rights. Feminist Perspectives from the South*, London/ New Jersey/ New Delhi; LACWHN (Latin American and Caribbean Women's Health Network) (1993): *Women and Population Policies*, Mexico
- 31 Hartmann, Betsy (2002): *The Changing Faces of Population Control*, in: Silliman, Jael/Bhattacharjee, Anannya (eds.): *Policing the National Body. Race, Gender and Criminalization*, Cambridge, 231-258; Nair, Sumati/Sexton, Sarah/Kirbat, Preeti (2006): *A Decade after Cairo. Women's Health in a Free Market Economy*, in: *Indian Journal of Gender Studies*, vol. 13 no. 2, 171-193
- 32 Schultz, Susanne (2010): *Redefining and Medicalizing: NGOs and their Innovative Contributions to the Post-Cairo-Agenda* in: Mohan Rao/Sarah Sexton (eds), *Markets and Malthus. Population, Gender, and Health in Neo-liberal Times*, Los Angeles/London/New Delhi, 173-215

Jadelle, previously known as Norplant II, which is produced by Bayer HealthCare. The side effects of both products are well known. Bayer HealthCare is already facing thousands of court cases because of the thrombosis caused by its anti-baby-pills Yasmin and Yaz. In 2012, these drugs had a turnover of more than US\$ 1.3 billion. Anti-baby-pills are often advertised as a life-style product that also reduce weight and combat acne. At the same time, Bayer claims that its drugs help reduce maternal and child mortality and that they thereby contribute towards achieving the MDGs.

The 20-year review of the ICPD Programme of Action from Cairo sums up the achievements of population programmes and the challenges they faced. The review still assumes a positive correlation between controlled fertility, health and growth in GDP. Since the 1960s, birth rates have declined faster than expected, from an average of five to 2.5 children in 2010. The Sub-Saharan African countries constitute a regional exception as they continue to have unabated high fertility rates of between 4 and 6 children. In 75 countries, among others in East Asia and Eastern Europe, fertility has fallen below replacement level. Some developing countries are also facing the same problems of an ageing population as faced by developed countries. However, world population is still growing. Since the Cairo Conference, it has increased by more than 2 billion people to 7.2 billion.<sup>33</sup>

The narratives of population growth as the root cause of unemployment, a lack of economic growth, resource depletion, food scarcity, greenhouse gas emissions and lately migration resurface again and again. Recently, high birth rates were made responsible for the failure of the MDGs, and proponents of neo-Malthusian thinking claim that references to population data should be included in the SDGs.<sup>34</sup>

Within the rationale of population control policies, the crucial question is still how to govern fertility and people's desire to have children. Women's fertility is seen as both the root of various complex problems and the key solution. This logic has now become more of an obstacle to a women's rights agenda than a means of promoting it. References to women's rights are mostly coupled with education, and women are more likely to be acknowledged as human capital than as agents of their life.

Apart from the politicisation of religion in islamistic regimes, a number of governments ranging from the Philippines to Nicaragua have formed alliances with conservative and fundamentalist christians to prevent the liberalisation of anti-abortion laws and access to contraceptives. In a number of countries, increases in teenage pregnancies and HIV infections signal the lack of sexual education resulting from these power plays. This leads women's rights to become squeezed between rising fundamentalisms and neo-Malthusian thinking.

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33 UNWomen(2014):TheWorldSurveyontheroleofwomenindevelopment2014:Genderequalityandsustainabledevelopment, New York, 77-90, [http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/unwomen\\_surveyreport\\_advance\\_16oct.pdf](http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/unwomen_surveyreport_advance_16oct.pdf)  
UN (2014): Framework of Actions for the follow up to the Programme of Action of the International Conference on Population and Development Beyond 2014, New York, [http://icpdbe-yond2014.org/uploads/browser/files/93632\\_unfpa\\_eng\\_web.pdf](http://icpdbe-yond2014.org/uploads/browser/files/93632_unfpa_eng_web.pdf)

34 Herrmann, Michael (2015): Consequential Omissions, Berlin, <http://www.berlin-institut.org/publikationen/studien/consequential-omissions.html>

## 3.2. Biopolitics, Pronatalistic and Heteronormative Policies

While a key feature of biopolitics in the Global South are antinatalistic policies, in the Global North pronatalistic policies prevail.<sup>35</sup> In the OECD countries, a demographic shift with falling birth rates, increased life expectancy and an ageing population has fuelled the fear of a shortage of labour, a decline in economically productive taxpayers and a growing proportion of elderly people in the population. On top of this, an alarmist discourse often garnished with nationalist and racist undercurrents has developed around the ostensible threat that the white majority population might slowly die out or be outnumbered by migrants from the Global South.

These discourses have triggered pronatalistic family, social and tax policies in various countries in the Global North. While biopolitics in the Global South defines women's responsibility in terms of a free choice to use contraceptives and control their own fertility, in the Global North responsibility has been defined as a responsibility to increase the birth rate. A broad range of policy measures have been put in place to influence reproductive practices: monetary incentives and subsidies for children; the promise or provision of more public facilities for children and day care centres to facilitate the harmonisation of work and family life; parental, in particular, paternal leave alongside maternity leave; free health care, positive discrimination measures and tax credits. In some EU countries, pro-birth protagonists campaign for special taxes to sanction childless couples.<sup>36</sup>

In France, pro-birth policies have been quite successful in increasing fertility rates; and parents who bring up several children are symbolically honoured with a *medaille de la famille*. In Germany, however, pronatalist policy measures have not been successful. Similarly, demographic growth in Sweden is mainly due to immigration despite the country's long-standing family- and child-friendly policies.

Biopolitics construct (or denies) rights and social norms: the support of prenatal diagnostics acknowledges the socially constructed norm of a «healthy» child and a respective right to a healthy child. By legalising and supporting access to forms of ART such as in vitro fertilisation (IVF), a state constructs a right for a couple to have their «own» biological child.

Throughout history, pro-birth measures, the penalisation of childless people and a ban on abortion have been used regularly to establish biopower, and to selectively control reproductive behaviour and mobility as well as enforce eugenic measures and «social hygiene». That women's fertility and sexuality represents the core of these biopolitics becomes apparent in times of conflict and war or in a context of strong nationalism when women are regularly expected to give birth to future soldiers for the sake of the nation or a particular community.

The targeting of professional and academic women who decide to remain childless, indicates that demographic policies always link quantitative to qualitative

<sup>35</sup> Ginsberg, Faye/Rapp, Rayna (eds.) (1995): *Conceiving the New World Order*. Berkeley

<sup>36</sup> King, Leslie (2002): Demographic trends, pronatalism, and nationalist ideologies in the late twentieth century, in: *Ethnic and Racial Studies*, Vol 25, No 3, 367-389



targets, and involve criteria of exclusion and inclusion. Biopolitical selection becomes most apparent in border regimes like fortress Europe that aim to keep out migrants, refugees and asylum seekers.<sup>37</sup> Due to selective mechanisms, both antinatalistic and pronatalistic measures are at risk of repressing or promoting the rights and freedoms of some groups in society and implicitly construct a particular social stratification.<sup>38</sup>

Although states as duty bearers have to take care of all citizens and their sexual and reproductive rights, including the rights of vulnerable people who constantly encounter threats of discrimination or of being called «deviant» such as intersex and transgender individuals. The same applies to disabled citizens whose rights are codified in the UN Convention on People with Disabilities. However, most states – like religious institutions – tend to reaffirm the heterosexual patriarchal family as the central building block of the social order. In most countries, family laws are strongly influenced by religion-based norms. Their heteronormative order implies specific definitions of masculinity and femininity to become hegemonic, while homosexuality, intersex and transgender people are considered a threat to this order.<sup>39</sup> For the sake of social order and stability, biopower as rule by law or expressed in violence and coercion attempts to regulate and control sexual orientation and gender identities.

An example of the draconic execution of biopower occurred during the 1950s in the UK, with the chemical castration of homosexuals.<sup>40</sup> Nowadays, it is the punishment of adultery by lashes executed by police forces such as the religious police in Saudi Arabia and Iran. The allegation of deviant behaviour, which endangers security and order is also used in political power plays. Recently, the accusation of homosexuality has been used in Malaysia even in the high court to discredit and criminalise Anwar Ibrahim, an opponent of the governing party.

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37 Keyzers, Loes (1999): The Politics of Inclusion and Exclusion: Fortress Europe and the reproductive rights agenda, In: Development, Vol. 42, No 1, 18-24

38 See for Brazil: Werneck, Jurema (2004): The beautiful and the pure? Racism, eugenics and new (bio)technologies, in Rotania, Alejandra/Werneck, J (eds.): Under the Sign of Biopolitics. Critical Voices from Civil Society, Rio de Janeiro, 51-65

39 Ghattas, Dan Christian (2013): Human Rights between the Sexes. A preliminary study on the life situations of inter\* individuals, HBS, Berlin

40 Recently, in Great Britain this was retroactively debated when a posthumous pardon was granted to the British mathematician and computer scientist Alan Mathison Turing. Although Turing's outstanding scientific performance during second world war, - Turing managed to crack German coded messages and thereby shortened the war -, in 1952 he was prosecuted for homosexuality, and chemically castrated.



# 4. Reproductive Technologies and Bioeconomy

In 1978, the birth of Louise Brown, the first test tube baby, marked a new age in how people organise human reproduction. It marked a breakthrough in biomedical research and reproductive technologies, and kicked off a transnational industry associated with the reproduction and production of children, meaning the production of life. In 2014, artificial insemination was a global business worth US\$ 9.3 billion. Presently, the commercial reproductive industries are spreading, for example, in West Africa, IVF has recently been welcomed as a cure to the stigma of childlessness while earlier in many African cultures fostering and adoption was a widespread social answer to infertility.

Biomedical research, the development of reproductive technologies and the rise of a commercial reproductive-medical-pharmaceutical complex went hand in hand. The manifold interaction between the sciences, business, and politics has reconfigured individual needs, societal norms and reproduction in the context of neoliberal globalisation.

Research and clinical tests, in particular in vitro fertilisation, prenatal screening and pre-implantation genetic diagnosis were legitimised primarily by the desire of infertile couples to have a child, and secondly to have a healthy child, meaning a child without disabilities. Biotechnologies managed to separate, divide and isolate biological material, egg cells and sperm, and re-organise and re-assemble it in vitro. In the laboratory situation, the bodily process of reproduction, which in human history has always been socially and culturally constructed, is reduced to a mere medical and technical procedure that has been disentangled from the human body and social relations. The separation of bodily substances from the body and their decomposition into microscopic parts is a prerequisite for their commodification, marketization, and the development of a transnational bioeconomy with a specific division of labour and services.<sup>41</sup> The bioeconomy is another example of the expansion of market logic into areas that have been outside of value production chains, the commodity trade and accumulation until recently. This on-going economisation and financialisation of reproduction, social relations and nature is specific to the present period of capitalism.

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**41** Waldby, Catherine/Cooper, Melinda (2008): The Biopolitics of Reproduction. Post-Fordist Biotechnology and Women's Clinical labour, in: Australian Feminist Studies 23(55), 57-74

## 4.1. Biomedicine, Reproductive Technologies and Life Science

Increasingly, biomedical knowledge and technologies pushed ahead the medicalization and technological facilitation of reproduction and production of human life. Along with organ transplantation, genetic research, DNA-analysis by the Human Genome Project and research on cloning, research on reproductive and regenerative medicine – using self-regenerating tissues such as stem cells and cord blood to treat diseases – are intertwined. The initial objective of reproductive technologies to treat infertility was extended to a range of biomedical strategies – amongst them the freezing of sperm, eggs cells and embryos, and surrogate motherhood – that reconfigure reproduction and the production of human life independent of (hetero)sexuality and the reproductive cycle of a woman.

Recently, clinical tests and the first uterine transplantations were ethically justified by overcoming the biological handicap of infertility after a hysterectomy in particular in pronatalistic societies such as Pakistan where infertility is highly stigmatised.<sup>42</sup> Whereas prenatal genetic diagnosis as part of prenatal health care in pregnancy was articulated as a new social norm to ensure a «healthy» baby; nowadays, young couples are encouraged to undergo genetic screening for inheritable diseases before they marry. These are examples of how biomedicine and biotechnologies are stretching the boundaries of nature and culture further. They become the drivers behind the reconfiguration of social norms, interests and individual desires for whatever is technically possible related to reproduction and health. Thus, they co-construct the social order and value systems, while standardising social and biological processes and optimising human capital.

Regenerative and reproductive medicine always depend on biological material and substances, in particular from the female reproductive body. This raises ethical and legal questions about the ownership of the body and of biological material separated from the body. These questions are also applicable to the ownership of research data, knowledge and technologies.<sup>43</sup> Should research be allowed to push beyond its initial purposes without the consent of the donors who provided the biological material? What should happen with surplus material such as unused frozen cells, oocytes and embryos? Are they commons to be used by medical sciences and clinics for the common good? Or are there ethical limitations to the biomedical production of life that should be reflected by political and legal regulation?

Life sciences, biomedicines and reproductive technologies, which are providing knowledge and a techno-medical reconfiguration of reproduction and life, constitute powerful instruments of biopower. Based on controversies about ethical questions and power constellations in different societies, states articulate rules and regulations

42 Mumtaz, Zubia/Levay, Adrienne (2012): Ethics Criteria for Uterine Transplants: Relevance for Low-Income, Pronatalistic Societies? In: *Clinical Research & Bioethics*, <http://omicsonline.org/ethics-criteria-for-uterine-transplants-relevance-for-low-income%20pronatalistic-societies-2155-9627.S1-004.pdf>

43 Mies, Maria (1988): From the Individual to the Dividual: in the supermarket of «reproductive alternatives», in: *Reproductive and Genetic Engineering* 1(3), 225-237

for research, clinical tests and the development of biomedical sciences as a means to secure their biopower. Some states, such as India promote biomedical science as a matter of prestige; similarly, the US has supported research on embryonic stem cells, but such research is prohibited in Germany.

From the beginning, feminists have viewed this new interface between biomedical and technological production and socio-biological reproduction as highly controversial. Many feminists criticised biotechnology because it is based on a concept of the body as a machine that can be dismantled, and with replaceable parts that can be detached from the body and manipulated. Genovefa Corea feared that women would be turned into «mother machines»,<sup>44</sup> their bodies and sexuality taken under control by male scientists and medical engineers, which would further sideline and devalue women's practical knowledge about the female body and reproduction. Many liberal feminists, however, tend towards a general optimism about technology, which leads them to welcome reproductive technologies as an emancipatory means of gaining more control over their body and fertility, to advance self-determination and choice, and thus enforce reproductive rights. The main assumption was that one's body and all its organs and substances are the property of that individual.<sup>45</sup>

## 4.2. Transnational Reproductive Markets and Fertility Industries

As legislation regarding sexual and reproductive rights and biomedical research differs from country to country, these laws and regulations generate a geopolitical landscape of bids and bans, a legal framework for reproductive industries and reproductive tourism which is marked by social inequalities between classes, colour, north, south and east. Based on reproductive and regenerative medicine, over the past decades a transnational reproductive business, and trade in biological substances and organs has been set up. This bioeconomy<sup>46</sup> seemingly reacts to people's unmet needs, diseases and their reproductive rights. However, the Indian biologist Sunder Rajan has shown in his research on genomics that current biotechnology needs to be understood in the framework of global markets, in particular in the framework of pharmaceutical companies and drug development. What scientists and researchers produce in biotechnological labs and reproductive value chains is actually biocapital, and this constitutes a techno-scientific form of capitalism.<sup>47</sup>

This market sector, including reproductive clinics and agencies in specific countries, makes use of three comparative advantages. First, it focuses on services that are in high demand due to particular socio-cultural norms such as sex determination in South and East Asia. Second, in the wake of global competition and the race to the

44 Corea, Genovefa (1985): *The mother machine: Reproductive technologies from artificial insemination to artificial wombs*, New York

45 Andrews, Lori/Nelkin, Dorothy (1998): *Wose body is it anyway? Disputes over body tissues in a biotechnology age*, in: *Lancet* 351: 53-57

46 Waldby, Catherine/ Mitchell, Robert (eds.) (2006): *Tissue Economics. Blood, Organs, and Cell Lines in Late Capitalism*. Durham/London

47 Rajan, Kaushik Sunder (2006): *Biocapital. The Constitution of Postgenomic Life*, Chicago

bottom in every sector of the globalised economy, medical service providers in the Global South or Eastern Europe offer cheaper services than in the Global North (for example, Hungary, the Czech Republic, Poland, and Ukraine compared to Central and Northern Europe). Third, they focus on medical and reproductive services that are banned in many countries but in high demand internationally such as surrogacy in Russia, Ukraine and India.

An agency from Australia might offer to link gay Israeli couples with egg donors in the US and with a surrogate mother in India. This increasingly diversified industry exploits social inequalities, international competition and legal differences. It largely depends on the supply of biological material necessary for reproductive technologies. Until recently, an international consensus seemed to exist that meant biological material ranging from stem cells to organs was not to be surrendered to the rationale of the market and commodification. Therefore, egg cells and sperm had to be «donated» and not sold, bought or priced like a commodity.

However, this expansion of markets is part and parcel of the on-going process of the commodification and financialisation of nature and social relations. Notions like donation and compensation mystify the realities of the market and assume that a gift economy is at work. In the Netherlands, the pharmaceutical multinational AKZO asked women in the early stages of pregnancy to «donate» their urine in order to «help» other women. This urine contains substances that can be used for pregnancy tests and for the development of fertility hormones.

Commercial agencies for reproductive technologies offer clients access to biological substances from egg cells to surrogate wombs and selection according to qualitative criteria in the global market. This includes egg cells from a woman with a particular skin, eye and hair colour, IQ and education. Although there is a narrative of donation, sharing and altruism, the compensation paid to the women for ovarian hormone stimulation and surgical retrieval of eggs demonstrate the trend towards commercialisation and further stratification of reproduction. In the US costs start at about US\$ 750 and range from between US\$ 5,000 to US\$ 8,000 for «high quality» eggs.<sup>48</sup> During the economic crisis in Spain, many students «donated» their eggs and so payment went up to € 1,000; in India «diva donors» receive US\$ 850.

In the case of surrogacy, agencies and clinics advertise the comparative advantage of the Global South: in India prices range from US\$ 25,000 to US\$ 50,000 compared to US\$ 80,000 to US\$ 100,000 in the US. The deal between the wealthy commissioning parents from the Global North and the poor surrogate mother is mystified by the typical win-win concept of globalisation: both sides supposedly benefit. In the leading clinics in India, surrogate mothers receive between US\$ 6,000 and US\$ 7,500. However, due to international competition and the absence of regulation, prices are becoming informalised. Just as in other precarious outsourced forms of labour, under neoliberal conditions, women carry the full risk – in this case – of a miscarriage or still

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48 ASRM Ethics Committee Report (2007): Financial compensation of oocyte donors, [http://www.smru.org/uploadedFiles/ASRM\\_Content/News\\_and\\_Publications/Ethics\\_Committee\\_Reports\\_and\\_Statements/financial\\_incentives.pdf](http://www.smru.org/uploadedFiles/ASRM_Content/News_and_Publications/Ethics_Committee_Reports_and_Statements/financial_incentives.pdf)

birth, which means they are not insured, and receive no payment. Arlie Hochschild calls surrogacy in India a «backstage of the global free market»; Sharmila Rudrappa coins it a «reproductive assembly line».<sup>49</sup>

In India with 3,000 registered reproductive clinics, surrogacy produces an annual turnover of US\$ 450 million. Half of the 25,000 babies produced are ordered from abroad. The Indian state supports the industry for medical tourism with tax and tariff reductions just as it does with other export industries. The reproductive-medical process is subject to the market rationale of efficiency: in order to multiply the chances of an embryo implanting in a surrogate mother's uterus, five embryos are normally transferred. Therefore, a pregnancy resulting in twins or triplets is quite common. If the parents-to-be only want one child or twins, the other embryos are aborted. The surrogate mother is required to live under permanent clinical control in a hostel within the clinic's compound, in a similar manner to export workers in China who live in dormitories next to the factory. Her body and her mind are disciplined to produce a successful pregnancy and a high quality product for somebody else without emotional bonds to the baby.<sup>50</sup> Amrita Pande, who conducted ethnographic research for eight years on surrogacy in India, calls this outsourcing and neoliberal transnational reorganising of reproduction «neo-eugenics». Women from the Global South serve the reproduction of white people from the Global North and enable the transnational reproductive business to make huge profits, while at the same time inequalities among women and the stratification of reproduction are growing. Thus, couples from the global middle class can realise their reproductive rights as part of their «imperialistic» mode of living,<sup>51</sup> while at the same time, a new world order of reproduction is created.

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**49** Hochschild, Arlie (2012): *The Back Stage of Global Free Market Nannies and Surrogates*, <http://www.havenscenter.org/files/backstage.global.free.market.pdf>; Rudrappa, Sharmila (2014): *India's Reproductive Assembly Line*, <http://contexts.org/articles/spring-2012/indias-reproductive-assembly-line/>

**50** Vora, Kalindi (2013): *Potential, Risk, and Return in Transnational Indian Gestational Surrogacy*, in: *Current Anthropology*, Vol. 54/7, S97-S106; Pande, Amrita (2014): *Wombs in Labour. Transnational Commercial Surrogacy in India*, New York, 104-128

**51** Brand, Ulrich/Wissen, Marcus (2012): *Global Environmental Politics and the Imperial Mode of Living. Articulations of State-Capital Relations in the Multiple Crisis*, in: *Globalizations*, Vol. 9 No. 4, 547-560

# 5. Which Way Forward?

The hope among international civil society and social movements that the human rights paradigm would become a universal driver for justice in all countries and cultures has been shattered in the recent past. The concept of sexual and reproductive rights, initially forwarded by women's movements, has been introduced into UN policies and enshrined in the universal health care paradigm. However, contraception and abortion, HIV/AIDS and female genital mutilation as health issues are clearly inseparable from rights, needs and desires. Strikingly, the language of UN documents has been reduced to health rather than rights, and to reproductive rather than sexual health care and rights. In fact, sexual rights have often been completely ignored, and this has narrowed down the initial agenda.

Outside of the UN-arena, sexual rights have been spelled out further in the Yogyakarta Principles by a group of human rights experts.<sup>52</sup> This document calls for the application of international human rights law in relation to sexual orientation and gender identity (SOGI). Additionally, decisions such as the recent referendum on gay marriage in Ireland with its 80 percent catholic population represent – beyond symbolic politics – a democratic vote for social change and the restructuring of biopower.

Respect, protection and the fulfilment of sexual and reproductive rights is met with many constraints and forms of resistance on the international, national and local level. Rights and entitlements face a squeeze between neoliberal markets on the one hand, and political and religious regimes with an increasingly conservative and authoritarian style of governance on the other. Although some progress in terms of policy measures and laws (such as against marital rape, female genital mutilation and so-called honour killings) has been achieved, the enforcement of entitlements and rights with regard to sexuality and reproduction cannot be considered a slow but linear process.<sup>53</sup> Today it is even more a highly contested area than 20 years before. In particular, it is a question of power or of intersecting and interwoven regimes of social, political and economic power.

In many places, commercial reproductive industries have taken the lead in the transnational reconfiguration of reproduction, and states lag behind with regulation. A spiral of supply and demand is increasing fast and stretching biological as well as ethical boundaries; at the same time, conservative resistance against autonomy, gender equality and diversity is on the rise. Feminists and post-colonial critics continue the debates on how to define autonomy and reproductive justice. Is everything

<sup>52</sup> <http://www.yogyakartaprinciples.org>

<sup>53</sup> Htun, Mala/Weldon, S. Laurel (2010): When and Why do Governments Promote Sex Equality? Violence Against Women, Reproductive Rights, and Parental Leave in Cross-National Perspective, [http://government.arts.cornell.edu/assets/psac/sp10/Htun\\_PSAC\\_Feb12.pdf](http://government.arts.cornell.edu/assets/psac/sp10/Htun_PSAC_Feb12.pdf)

that is technically possible also socially feasible and good for individual well-being? Which institutions regulate the markets and prevent the market rationale from governing social relations and the individual relation to one's body?

Over time, it has become clear that respect for sexual and reproductive rights necessitates negotiations and new social contracts on various political levels, from household and local communities to international deliberations at the UN. As issues of social justice, these rights cannot be separated from social and economic rights or from the reconfiguration of masculinities and femininities. In the 1990s, the period characterised by the Cairo and Beijing UN-conferences, international and national governance seemed to become more intertwined in the face of growing global problems, neoliberal politics and economic globalisation. However, more recently, multilateralism and regimes of global governance have run into crisis. Due to the rise of authoritarian political regimes, and conservative and fundamentalist religious forces in many countries the question arises whether global governance of sexual and reproductive rights still makes sense.

Due to the changed political, economic and discursive frameworks, it has become necessary to map progress and setbacks, and to reflect on and reframe the agenda of sexual and reproductive rights. What are the most burning issues in different places? Who are the key actors and driving forces in the background? What are the most heated controversies? How are feminists, LGBTI-people, queer and other critical civic forces positioning themselves in the new scenarios between the global and the local, between the claim of universal, gendered human rights and cultural relativism, and against the instrumentalisation of women's human rights by markets, neoliberal politics, biopower and neo-conservative forces?

A key question for all critical civic forces is whether the envisioned potential of the human rights paradigm is still valid as a universal instrument to critique power relations, violence and oppression. How can this paradigm be instrumental in struggles against tendencies that make women's bodies, reproductive capacities and sexualities a pawn of biopolitics and bioeconomy, be it through population control, domestic power struggles or transnational business strategies? During the post-2015 era, women's and gender rights networks will have to explore whether and how the sexual and reproductive rights paradigm can still be used as a vehicle for local struggles and for transnational solidarity.





# LIST OF ABBREVIATIONS

ART	Assisted Reproductive Technologies
BPfA	Beijing Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSW	Commission on the Status of Women
DNA	Deoxyribonucleic acid
ICPD	International Conference on Population and Development
IMF	International Monetary Fund
IVF	In Vitro Fertilisation
HIV/AIDS	Human immunodeficiency virus/acquired immune deficiency syndrome
MDGs	Millennium Development Goals
LGBTI	Lesbian, gay, bisexual, transgender, intersex
SDGs	Sustainable Development Goals
SRHR	Sexual and reproductive health and rights
SRR	Sexual and reproductive rights
SOGI	Sexual orientation, gender identity
UNFPA	United Nations Family Planning Association





**GUNDA WERNER INSTITUT**  
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## **Sexual and Reproductive Rights**

An essay by Christa Wichterich

Women's bodies have regularly been – and still are – the central target of conservative and fundamentalist ideology and praxis. Although the individual right to self-determination has always been shaped by social and cultural norms and legal frameworks, it is currently being determined more than ever by reproductive technologies and medical issues.

This essay provides analytical background information for critical and controversial debates, continues the politicisation of seemingly personal issues, aims to open space for the clarification of positions and provide motivation to explore political intervention. Therefore, it raises questions rather than simply providing answers.

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