

What does a right to family planning mean?

By Susan Yoshihara, Ph.D. and Rebecca Oas, Ph.D.

INTRODUCTION

For more than half a century, advocates have asserted that couples have a human right to family planning— the knowledge and means to determine the timing and spacing of their pregnancies and births. Yet in practice, nearly half of all pregnancies are classified as unintended, despite near-universal knowledge of and access to family planning methods.

How did the idea of a right to family planning emerge in the first place, and how is such a right realized in light of human behavior and biology, without coercive measures that would infringe on other rights?

When nations adopted the Sustainable Development Goals in 2017, and pledged to spend billions implementing them, this right was included. However, confusion about what this right is, and how it should be recognized, persists decades after nations first considered it a priority. Translating the aspirational language of UN resolutions about family planning into scientifically measurable terms has been difficult, if not impossible. That is because of a much more fundamental confusion about the nature of the right and how it was established.

Confusion about what this right is, and how it should be recognized, persists decades after nations said they considered it a priority.



EMERGENCE OF A RIGHT TO FAMILY PLANNING

According to the United Nations Population Fund (UNFPA), on May 13, 1968, “the world declared family planning to be a basic human right.”¹ In fact only eighty-four countries gathered at the International Conference on Human Rights in Tehran and adopted the phrase, “Couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect.”² The word “responsibly” was included because of rising concerns about population growth, and was regarded as a necessary counterpoint to the word “freely.”³ As Jonathan Lieberson points out, “depending on how one interprets this formulation, it can mean well nigh what one wishes it to mean,”⁴ a frequent frustration arising from documents agreed at the UN. On the one hand, it could be seen as justifying the couple who choose to have twelve children; on the other hand, Lieberson points out, it could be taken to mean “they may have only as many children as are compatible with a socially desirable population size.”

Nations did not “establish” a new right in Tehran, they simply used rights language to endorse a contemporary foreign aid agenda for limiting population growth.

The following year, in 1969, the UN General Assembly adopted a resolution reaffirming the Tehran standard and expanding it to include the provision of the “knowledge and means necessary” for families to determine the number and spacing of their children.⁵

At UN conferences on population, held in Bucharest in 1974, Mexico City in 1984, and Cairo in 1994, nations reiterated a commitment to a right to family planning. Notably, when the World Population Plan of Action was adopted at the 1974 Bucharest conference, it expanded the right to “decide freely and responsibly the number and spacing of their children” to “couples *and individuals*” despite reservations from countries disapproving of distributing contraceptives to the unmarried. This new language, not present in the original draft, was voted upon and passed with 48 votes in favor, 41 against and six abstentions.⁶ Also notable was the fact that in Cairo in 1994, language was included specifying that abortion should “in no circumstances” be promoted as a family planning method.

When the Millennium Development Goals were adopted in 2000, nations included a goal on maternal health and the reduction of maternal mortality, but rejected family planning explicitly. Specifically, world leaders debated, and did not agree on, any reference to “reproductive health.” Advocates failed to get nations to agree again at the 2005 summit on the goals, and then they decided to take matters into their own

hands. In 2007, another target, attendant to the maternal health goal, began to appear on UN websites that read, “Achieve, by 2015, universal access to reproductive health.” The authority for this addition appears to be its inclusion in an appendix attached to an annual report. It is unclear who included the target, though the report was generated in the UN Secretary General’s office. The UN General Assembly adopted the report in a pro forma manner, without any debate or even mention of the new “target.”⁷ The indicators for this new target included the contraceptive prevalence rate and the level of “unmet need” for family planning.⁸ Advocates declared victory and the provenance of the target—from unknown UN staff and not UN member States—has rarely surfaced.

Left unresolved, the disagreement between advocates and member states was, unsurprisingly, carried into the debates surrounding the Sustainable Development Goals (SDGs) which superseded the MDGs. Two targets pertaining to family planning under two different goals were included: goal 3 on health and goal 5 on gender equality. Their respective targets are: “By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education... (SDG 3.7)”⁹ and “Ensure universal access to sexual and reproductive health and reproductive rights... (SDG 5.6)”¹⁰ Several countries, individually and collectively as groups, made reservations to this language, including the African Group, the Gulf Cooperation Council, Iran, Ecuador, and the Holy See.

The disagreement is often cast in terms of abortion politics. That is, nations reject the term “reproductive health” because it has been used by advocates and UN staff to include abortion.¹¹ This is only part of the lack of consensus, however. There is a deeper confusion, even suspicion, about the reasons some nations promote a right to family planning.

During the decades between the Tehran conference and the adoption of the SDGs, several important things occurred. One critical development was the rise and fall of the global population control movement, and the revelation of the abusive practices that had occurred in the name of fertility reduction, particularly among the poorest people and countries. By the time delegates met in Cairo in 1994, a new paradigm had emerged, one that brought together the formerly antagonistic factions of feminists and population-oriented groups. The Cairo agreement was based on the idea that family planning is a means of women’s empowerment, and that if women and couples are given access to it, without coercion, they will go on

It is unclear who included the target [for reproductive health], though the report was generated in the UN Secretary General’s office. The UN General Assembly adopted the report in a pro forma manner, without any debate or even mention of the new “target.”

to have smaller families, with the additional promise of greater wealth, improved health, and various other benefits.

Family planning, more specifically artificial contraception, as a means of women's empowerment is not uncontroversial. For women in the developing world who remember the forced sterilizations of the 1970s, it is still viewed with an eye of suspicion. For nations that still welcome families with more than two children, there are deeper cultural reasons for suspecting their government's unbridled endorsement of the right at UN conferences.

Even if such issues have been resolved, there remains the problem of market saturation. As explained in a previous edition of *Definitions*, virtually all couples that want contraception have it, and, just as important, know how to use it.¹² Those that do not, still far too many according to advocates and UN staff, choose not to use it for their own reasons. This leads to the problem of having to find new users, either those who have already expressed disinterest, or those who are young and under parental care. It is this last category that aroused the most heated debates in UN halls. For if a child has a "right" to contraception, who decides what happens when this conflicts with the already well-established right of parents to make decisions for their children? The answer for many is that the state government must intervene, but this is fraught with problems.

[Abortion politics] is only part of the lack of consensus, however. There is a deeper confusion, even suspicion, about the reasons some nations promote a right to family planning.

UNDERLYING LEGAL CONFUSION

The notion of "affirming" a right to family planning implies that nations agree on such a right. In fact, confusion between, and even within, nations is often papered-over. This too has led to problems with implementation. In 1948, nations "recognized" a set of human rights already inherent in every man, woman, and child in the Universal Declaration on Human Rights. While they did not agree on where these rights came from, they found consensus in their preexistence to any political order. That is, no state government can give or take away fundamental rights, and they have a legal obligation to protect and promote them.

The idea of a right of access to family planning, when compared to fundamental rights such as life, security of person, or freedom of belief, seems dubious to some. One reason is the dispute among different political regimes, present in 1948 as today, that while civil and political rights are self-evident, social and economic rights are not. Family planning,

The notion that couples have a right to U.S. foreign aid is controversial at best.

There is no agreement that “knowledge” of family planning, or “access” to it is based in the human rights regime.

like a standard of health, belongs in the realm of social policy, something that the United States has never officially recognized as internationally agreed human rights. In fact, at the most recent publication of the U.S. Human Rights Report, State Department officials reaffirmed this when explaining the reason that reproductive rights were not included in the 2019 report.¹³

The fact that the United States has been the most enthusiastic promoter of a right to family planning, therefore, only adds to the confusion around the nature of such a right. The fact that the United States is the most generous provider of family planning, contraception, population commodities and other products and services aimed at reducing the world’s population, while at the same time eschewing that couples have a human right to these services is not controversial. It will become more so in the coming years as nations debate the subject of universal health coverage. The underlying reasoning behind universal health coverage, and nations’ obligations to provide it, is couched in terms of human rights. And the notion that couples have a right to U.S. foreign aid is controversial at best.

CONCLUSION

This analysis stipulates that there is widespread acceptance by nations that their domestic policies should align with commitments their countries have made in various fora, binding and non-binding. Yet there is no agreement that “knowledge” of family planning, or “access” to it is based in the human rights regime, the one that has underpinned much of multilateral negotiations in the past generation. Nations did not “establish” a new right in Tehran, they simply used rights language to endorse a contemporary foreign aid agenda for limiting population growth. The “right” of couples to plan the number and spacing of children can be “found” in the various civil and political or economic and social rights constellations such as bodily integrity. Perhaps a more thorough discussion of the nature of the right to family planning would help clear up the problem of implementing the right.

Endnotes

- 1 <https://www.unfpa.org/news/fifty-years-ago-it-became-official-family-planning-human-right>
- 2 Resolution XVIII: Human Rights Aspects of Family Planning, Final Act of the International Conference on Human Rights. U.N. Doc. A/CONF.

32/41, p.15. Available at http://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf

- 3 Kates, C. A. (2004). Reproductive Liberty and Overpopulation. *Environmental Values*, 13(1), 51–79. doi:10.3197/096327104772444776
- 4 Lieberman, J. (1987). Ethics of family planning. *Technology in Society*, 9(3-4), 481–495. doi:10.1016/0160-791x(87)90016-9
- 5 General Assembly Resolution 2542, Declaration on Social Progress and Development, U.N. Doc. A/7630.
- 6 Pizzarossa, Lucía Berro “Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in International Human Rights Law,” *Laws*, 7.3 (2018): 1-17.
- 7 <https://digitallibrary.un.org/record/607104?ln=en>
- 8 <http://mdgs.un.org/unsd/mdg/Resources/Attach/Indicators/OfficialList2008.pdf>
- 9 <https://www.un.org/sustainabledevelopment/health/>
- 10 <https://www.un.org/sustainabledevelopment/gender-equality/>
- 11 Yoshihara, Susan “Lost in Translation: The Failure of the International Reproductive Rights Norm,” *Ave Maria Law Review*, Vol. 11, No. 2 (2013).
- 12 <https://c-fam.org/definitions/why-confusion-about-family-planning-terminology-could-be-costing-us-billions/>
- 13 *Country Reports on Human Rights*, U.S. Department of State (2019) <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>

ABOUT THE AUTHORS

Dr. Yoshihara is Senior Vice President for Research at C-Fam.

Dr. Oas is Associate Director of Research at C-Fam. She earned her doctorate in genetics and molecular biology from Emory University.

Susan Yoshihara Ph.D.
Editor

Rebecca Oas Ph.D.
Managing Editor

© C-Fam (Center for Family & Human Rights) Permission granted for unlimited use. Credit required.

DEFINITIONS is published monthly by the Center for Family & Human Rights (C-Fam).

805 3rd Avenue, Suite 1440
New York, New York 10022

info@c-fam.org
www.c-fam.org