Recognition of sexual pleasure as a human right: A critical analysis of the Maputo Protocol

by

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Abstract

This research examines why women are having bad sex and the role that human rights law can play in acknowledging, challenging and potentially changing it. This paper argues that sexuality is political and that it is affected by societal structures and systems of power. Sexual pleasure is seen as a fundamental human right that these gendered systems of power threaten. The evolution of sexual health, sexual rights and sexual pleasure is studied to ascertain the connections between the three concepts. International and regional human rights documents are analysed to argue that sexual pleasure is a human right. The African Charter on Human and Peoples' Rights on the Rights of Women in Africa, otherwise known as the Maputo Protocol, is analysed in greater detail to determine whether sexual pleasure as a human right can be read into it. Although there is no express mention of the right to sexual pleasure in international or regional human rights instruments, we can infer the right to sexual pleasure through the rights to equality and non-discrimination, autonomy and bodily integrity, the highest attainable standard of health, and freedom of expression. Obstacles to the realisation of sexual pleasure as a human right are also explored.

Keywords: human rights, sexual rights, sexual pleasure, Maputo Protocol, women’s rights

Declaration of originality

I, Dalaine Krige, student number: 14101468, declare as follows:

1. I understand what plagiarism is and am aware of the University's policy in this regard.

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Chapter 1: Background of the study

The catalyst of this research is to examine why women are having bad sex – sex that is worse than the sex men are having – and the role that human rights law can play in acknowledging, challenging and potentially changing it. The bad sex that women have throughout their lifetimes deserves to be subjected to sustained scrutiny. This bad sex does not take place in a vacuum, and it should not be seen as inevitable. It emerges from unequal gender norms that prevent women from being equal agents of sexual pursuit, and in which men hold more power and have greater access to sexual gratification. This inequality manifests in unequal access to sexual health services, sex education and sexual literacy. Access to pleasure, self-determination, bodily autonomy and bodily integrity are but a few rights that this inequality threatens. Unequal power dynamics mean that bad sex is a political and a legal issue. However, this inequality does not only stem from unequal gender norms. It is also rooted in problematic notions of consent, desire, and religion and is exacerbated by the lack of legal will to affect change. All of these concepts are interconnected, yet distinct.

Sexual pleasure, or the lack thereof, is a gendered experience. Among heterosexual people, complaints are more common from women than men. Additionally, women's pleasure is often subordinated to men's pleasure.[1] Certain religious and conventional social norms demonise, dismiss or consider unimportant the sexual fulfilment of women.[2] This is likely due to the physiological importance of male orgasm for reproduction, thereby prioritising male pleasure and side-lining female pleasure as less important.

The other side of sexual pleasure is sexual violence, often manifesting as gender-based violence and intimate partner violence. It is estimated by the World Health Organisation (WHO) that one in three women have experienced sexual intimate partner violence or non-partner sexual violence in their lifetime.[3] These estimates are highest in sub-Saharan Africa.[4] The gendered dimensions of such violence should not be discounted, given statistics showing women more frequently report feeling fearful during intercourse. Across all sexual orientations, women describe frightening sexual encounters involving behaviours like strangulation, intimidation, restraint, assault, and men disregarding requests to cease.[5] These differ dramatically for men, who describe scary sexual experiences as having sex with a woman who is menstruating or feeling jealous of other sexual partners while receiving oral sex. Therefore, women, especially heterosexual women, engage in sex at a greater risk to themselves and are less likely to experience sexual pleasure than men.

[1] WL Gianotten et al 'The health benefits of sexual expression' (2021) 33 *International Journal of Sexual Health* 518.
[2] Gianotten et al (n 1) 518.
[3] World Health Organisation 'Violence against women' 9 March 2021 https://www.who.int/news-room/fact-sheets/detail/violence-against-women (accessed 17 January 2023).
[4] ETM Laan et al 'In pursuit of pleasure: a biopsychosocial perspective on sexual pleasure and gender' (2021) 33 *International Journal of Sexual Health* 520.
[5] Laan et al (n 4) 521.

An absence of pleasure does not derive solely from overt acts of violence. Studies reveal a greater prevalence of penile-vaginal intercourse induced pain or discomfort, termed dyspareunia, in women compared to men.[6] The gendered dynamic of this issue comes to the fore once more, when assessing the reason women provide for persisting with painful penile-vaginal penetration. Heterosexual women express fear that their partner will leave them after expressing that the sexual act is painful.[7] When talking about pleasure, it is necessary to mention desire, as sexual pleasure teaches us what kind of sex is worth desiring. In principle, men and women are equally arousable when one approaches their 'genital design' in an appropriate and educated manner, stimulating in a way that leaves room to learn and adapt. The current pleasure gaps represent, not a fundamental absence of sexual desire in women but rather, a severe neglect of female erotic potential.[8] For too long, sexual pleasure has been relegated to the private realm, leaving governments with no obligation to address the obstacles that will be explored below. If sexual pleasure is recognised as a human right, as it ought to be, this will change.

In contrast, the definition provided by the World Association for Sexual Health (WAS) is the 'physical and/or psychological satisfaction and enjoyment derived from shared or solitary erotic experiences, including thoughts, fantasies, dreams, emotions and feelings.'[9] It offers the factors of 'self-determination, consent, safety, privacy, confidence and the ability to communicate and negotiate sexual relations'[10]as facilitative of sexual pleasure.

The current study will recognise sexual pleasure as a fundamental human right that is 'essential to the promotion of sexual health and overall health and wellbeing.'[11] The World Association for Sexual Health (WAS) defines sexual pleasure as the 'physical and/or psychological satisfaction and enjoyment derived from shared or solitary erotic experiences, including thoughts, fantasies, dreams, emotions and feelings.' Enabling factors for pleasure include the ability to communicate and negotiate sexual relations, consent, confidence, privacy, self-determination, and safety.

1.1. Statement of the problem

The African Charter on Human and Peoples' Rights (the African Charter) is accompanied by the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also known as the Maputo Protocol, is a progressive regional treaty, which recognises women's sexual and reproductive health.[12] However, it does not explicitly recognise sexual pleasure as a fundamental human

[6] BL Harlow and others 'Prevalence of symptoms consistent with a diagnosis of vulvodynia: population-based estimates from 2 geographic regions' (2014) 210 *American Journal of Obstetrics and Gynecology* 40. e1.
[7] Laan et al (n 4) 520.
[8] Laan et al (n 4) 526-527.
[9] World Association for Sexual Heath (2019) 'Mexico City World Congress of Sexual Health Declaration on Sexual Pleasure' https://worldsexualhealth.net/ (accessed 9 January 2023).
[10] World Association for Sexual Heath (n 16).
[11] World Association for Sexual Heath (n 16).
[12] African Union, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 July 2003.

right that is essential to the promotion of sexual health and overall health and wellbeing.[13] Pleasure is a key component of sexual health and rights, and recognising it as such, helps to move away from conceptualising sex and sexuality solely in terms of reproduction and freedom from sexually transmitted infections (STIs).[14]

While it is understandable that many laws and policies have focused on preventing sexually transmitted infections, unintended pregnancies and sexual violence, 'the absence of dysfunction is not the same as the presence of thriving.'[15] Sexual health (as defined by the WHO) is a 'state of physical, emotional, mental and social well-being about sexuality; it is not merely the absence of disease, dysfunction or infirmity.'[16] The definition notes that 'a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence' are needed to ensure sexual health.[17] The Maputo Protocol obligates governments to combat discriminatory cultural practices that harm women (Article 5). It tasks governments with the responsibility to eliminate discrimination against women (Article 2), to provide health and reproductive rights, including sexual rights (Article 14) and provide a positive cultural context (Article 17).

The current study will recognise sexual pleasure as a fundamental human right that is 'essential to the promotion of sexual health and overall health and wellbeing.' [18] The World Association for Sexual Health (WAS) defines sexual pleasure as the 'physical and/or psychological satisfaction and enjoyment derived from shared or solitary erotic experiences, including thoughts, fantasies, dreams, emotions and feelings.'[19] It offers the factors of consent, confidence, the ability to communicate and negotiate sexual relations, self-determination, safety, and privacy as facilitative of sexual pleasure. [20] Sexual pleasure is recognised implicitly throughout sexual and reproductive health rights (SRHR) instruments. This work will show why explicitly recognising sexual pleasure as an important aspect of SRHR is essential for promoting sexual health and wellbeing. In doing so, African countries are encouraged to adopt measures explicitly addressing sexual pleasure and its significance regarding sexual health.

[13] E Coleman et al 'Advancing sexual pleasure as a fundamental human right and essential for sexual health, overall health and well-being: an introduction to the special issue on sexual pleasure' (2021) 33 *International Journal of Sexual Health* 473.

[14] Coleman et al (n 10) 473.

[15] Gianotten et al (n 1) 478.

[16] World Health Organisation 'Sexual Health' https://www.who.int/health-topics/sexual-health (accessed 22 December 2022).

[17] World Health Organisation (n 13).

[18] World Association for Sexual Heath (n 9).

[19] World Association for Sexual Heath (2019) 'Mexico City World Congress of Sexual Health Declaration on Sexual Pleasure' https://worldsexualhealth.net/ (accessed 9 January 2023).

[20] World Association for Sexual Heath (n 9).

1.2. Objectives

The overall objective of this study is to demonstrate how the right to sexual pleasure can be read into the Maputo Protocol. The sub-objectives include:

1. Exploring the evolution of the concept of sexual consent.
2. Identifying he particular needs of women. The nature of the research means my focus will be primarily on cis-gender heterosexual women, but examples of women with disabilities and transgender women will also be highlighted.
3. Exploring the recognition of sexual pleasure as a right under domestic law.
4. Exploring the recognition of sexual pleasure as a right under international human rights.
5. Exploring the recognition of sexual pleasure as a right under soft laws and consensus statements (e.g. statements by WHO) and the role played by different stakeholders such as non-governmental organisations (NGOs) and civil society organisations (CSOs).
6. Identifying the obstacles to creating an environment that enables the promotion of sexual rights such as sexual pleasure.
7. Make recommendations for state parties.

1.3. Research questions

The main research question is how the Maputo Protocol guarantees a right to sexual pleasure.

The following sub-research questions have been identified:

1. How is sexual pleasure linked to broader sexual and reproductive rights?
2. What obligations do governments have regarding sexual pleasure?
3. What obstacles are inhibiting the realisation of sexual pleasure as a right?

1.4. Research methodology

This research will be conducted primarily through desktop research. First, the existing literature around sexual rights and sexual pleasure will be explored through a feminist lens. Next, legal doctrinal methodology will be used to review the international and regional human rights instruments that set norms and standards on sexual rights in Africa. Last, obstacles to the realisation of this right will be explored to assess what may hinder compliance with the norms and standards on sexual pleasure. Academic sources such as journals and handbooks will be considered, as well as news and online media. Conceptualisations emerging from organisations that focus on sexual pleasure, such as the World Association for Sexual Health (WAS) and the Global Advisory Board (GAB) for Sexual Health and Wellbeing will be used to guide the study. WAS is an international organisation founded in 1978 that focuses on promoting sexual health worldwide. Its mission is to bring together professionals and experts in the field of sexual health to advance the understanding and advocacy of sexual rights and well-being.

GAB is an independent group that recognises the lack of attention paid by research, education, training, policies and programmes to sexual health, sexual rights and sexual pleasure.

1.5. Significance

This research utilises an interdisciplinary lens to examine sexual pleasure, synthesising perspectives from law, sociology, and psychology. It aims to further academic discourse on the relationship between sexuality and human rights, probing whether sexual rights should fall under the umbrella of fundamental human rights, and specifically assessing the case for sexual pleasure as an innate human right. By adopting a socio-legal approach, the inequality of sexual pleasure and the repercussions that translate from this are transferred into a legal context that renders them justiciable. This creates the possibility for structural change through state accountability to the Maputo Protocol and the mechanisms of the human rights framework.

1.6. Theoretical approach

This research will primarily make use of a feminist theoretical framework. This is not an easily reducible theory, as many forms and perspectives of feminism exist therein. I will draw on liberal and intersectional feminism and situate my arguments within a human rights framework. Liberal feminism works within the current system to push for legal and policy change.[21] This makes it an ideal theory to utilise when researching human rights documents like the Maputo Protocol.

In contrast, intersectional feminism provides a useful theory to apply when examining domination and oppression related to legal discrimination. This perspective prevents over-generalising or stereotyping African women's experiences with sexual pleasure and human rights. Instead, it allows the researcher to analyse the interconnected systems of domination that work to oppress women in context-specific ways.[22] Notably, there is a distinction made between structural and political intersectionality. The former applies to how positionality affects women of colour's actual experiences of abuse, and how this differs from white women.[23] The latter refers to how politics that focus only on gender or only on race have further marginalised the issue of violence against women of colour.

1.7. Literature review

Sexual pleasure and desire are innately human. It is the reason that so many people partake in sexual acts and what so many people yearn for but are unable to access. Therefore, pleasure is not only a benefit of sexual behaviour, but it is also a motivation for said behaviour.[24] Pleasure and the positive emotions associated with it result in a 'beneficial cycle' as the emotions reinforce sexual behaviour and enhance

[21] AR Baehr 'Liberal feminism' in The Stanford Encyclopedia of Philosophy (Fall 2018 Edition) https://plato.stanford.edu/archives/fall2018/entries/feminism-liberal/ (accessed 16 March 2023).

[22] A Gouws 'Feminist intersectionality and the matrix of domination in South Africa' 31 (2017) *Agenda* 19.

[23] K Crenshaw 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' 43 (1991) *Stanford Law Review* 1245.

[24] Gianotten et al (n 1) 480.

self-esteem.[25] Therefore, it is necessary to discuss the role sexual pleasure plays as a motivator for engaging in sexual acts as pleasure may play a role in reinforcing certain sexual behaviours.[26]

Important players and instruments in the human rights arena that have articulated sexual and reproductive health, sexual rights and sexual pleasure are the WHO, the United Nations (UN), the International Conference on Population and Development (ICPD), the International Planned Parenthood Federation (IPPF).[27]

Just before the turn of the twentieth century, WAS published the Valencia Declaration on Sexual Rights, which acknowledged sexual pleasure as a fundamental human right.[28] In 2008, the WAS Declaration: Sexual Health for the Millennium was published. The Declaration of Sexual Pleasure was signed in 2019, and then ratified by the WAS General Assembly in 2021. This declaration asserts the importance of sexual pleasure to our overall wellbeing. The Declaration of Sexual Rights states that 'sexual rights are universal human rights based on the inherent freedom, dignity, and equality of all human beings.'[29] The Declaration of Sexual Health for the Millennium, which was aligned with the Millennium Development Goals and the Declaration of Sexual Rights is built upon by WAS Declaration on Sexual Pleasure.[30]

The International Planned Parenthood Foundation has a statement on sexual rights that is based in international human rights instruments and agreements.[31] It identifies seven guiding principles that provide a framework for the ten sexual rights later outlined. The fourth principle states that: 'Sexuality, and pleasure deriving from it, is a central aspect of being human, whether or not a person chooses to reproduce'.[32] It further asserts that sexual health spans a lifetime and is regardless of the decision to reproduce or not. Furthermore, it urges those in the policy arena to safeguard the entitlement to experience and enjoy sexuality independent of reproduction as well as reproduction independent of sexuality. The statement goes on to advise policy makers and others involved to pay particular attention to those who, historically and in the present, have been denied the entitlements mentioned.[33] As pleasure is based on individual and relational autonomy, it is imperative that 'public policies on sexuality education, health services, freedom from coercion and violence, as well as the development of a field of ethics on issues of justice, equality and liberty' are ensured.[34]

Several international human rights treaties have been important in the recognition of sexual health. One such treaty is the Convention on the Elimination of Discrimination against Women

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[25] Gianotten et al (n 1) 480.
[26] Gianotten et al (n1) 480.
[27] S Gruskin et al 'Sexual health, sexual rights and sexual pleasure: meaningfully engaging the perfect triangle' (2019) 27 *Sexual and Reproductive Health Matters* 30.
[28] Coleman et al (n 10) 474.
[29] World Association for Sexual Heath (n 16).
[30] Coleman et al (n 10) 473.
[31] International Planned Parenthood Foundation 'Sexual Rights: An IPPF Declaration' 25 May 2011 https://www.ippf.org/resource/sexual-rights-ippf-declaration (accessed 2 March 2023).
[32] IPPF (n 28) 13.
[33] IPPF (n 28) 13.
[34] IPPF (n 28) 13.

(CEDAW), which guarantees women equal rights in deciding 'freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights'.[35] While it does not mention sexual rights or sexual pleasure, it has been instrumental in getting states to recognise sexual and reproductive rights as human rights. Regionally, the African Charter and the Maputo Protocol have been influential on the continent. Scholars have argued the Maputo Protocol includes and protects the right to sexual health.[36] Notions of sexual health and sexual rights should for women should "transcend the traditionally held notions of reproduction and heterosexuality".[37]

1.8. Outline of the chapters

This study comprises five chapters. The present chapter explores the background; the problem; the objectives of the study and the research questions and methodology; explains the research methodology and the theoretical approach; reviews the literature available on the subject; outlines the study's structure; and points out to the study's limitations and relevance. Chapter 2 explores the current literature on sexual pleasure as a human right and how it is linked to broader sexual and reproductive rights. Chapter 3 sets out the international and regional legal, policy and judicial frameworks, with special focus on the Maputo Protocol. It explores the obligations of African governments in addressing this right. Chapter 4 analyses the various obstacles that impede the realisation of this right at an international and continental level. It explores the nuances of gender inequality and different ways intersectionality can impact on a woman's ability to engage in pleasurable sex. Chapter 5 provides the conclusions and recommends legal, judicial and administrative channels towards the realisation of the right to sexual pleasure.

1.9. Limitations

The researcher is aware that by focusing on the sexual pleasure of women, other groups may be excluded. I am particularly cognisant that not all people desire sex, such as asexual people, and that others may have trouble accessing pleasure for a myriad of other reasons.

[35] United Nations Office of the High Commissioner for Human Rights 'Sexual and reproductive health and rights' https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights (accessed 28 March 2023).

[36] E Durojaye and LN Murungi 'The African Women's Protocol and sexual rights' (2014) 18 The International Journal of Human Rights 882.

[37] Durojaye and Murungi (n 36) 885.

Chapter 2: Interconnections between sexual health, sexual rights and sexual pleasure

2.1. Introduction

Sexual pleasure is one of the newer formulations of human rights, and one of the most contested. Sexual pleasure is an aspect of sexual rights, which flow from the broader concept of health rights and are often grouped with reproductive rights. Over time, sexual rights have become more accepted and have been linked to sexual health. Sexual health is recognised as something separate from reproductive health in Article 14 of the Maputo Protocol and will be discussed in greater depth in chapter 3. However, sexual rights and sexual pleasure are not yet recognised in formal human rights documents as human rights essential to the promotion of sexual health and the overall wellbeing of the individual.[38] This chapter will explore the interconnections between sexual health, sexual rights and sexual pleasure as something that stands apart from reproduction. This chapter will first explore sexual health and its definitions, then the evolution of sexual rights, and arguments for sexual pleasure as a human right. Last, the interconnections between the three concepts will be explored.

2.2. Sexual health

The WHO gave one of the first definitions of sexual rights in a 1975 Technical Report. They defined sexual rights as 'the integration of the somatic, emotional, intellectual and social aspects of sexual being, in ways that are positively enriching and that enhance personality, communication and love'.[39] When the International Conference on Population and Development adopted its seminal Programme of Action in 1994, it was significant in that it encapsulated sexual health within reproductive health, focusing rather on women's right to "decide freely and responsibly rather than focusing on sexually-transmitted infections and the act of reproduction.[40] The adoption of this definition has been widespread adopted and has had implications for the approach taken by governments and civil society organisations (CSOs) when approaching sexual health policies.[41] Arguably, the most significant articulation of sexual rights comes from the 1995 Beijing Platform for Action, adopted at the Fourth World Conference on Women.[42] It states that 'the human rights of women include their right to decide freely and responsibly on all matters related to their sexuality, free of coercion, discrimination and violence'.[43] The importance of this definition comes from its obligation that focuses on women's reproductive and sexual health beyond fertility. This was a shift away from the previous demographic-focused agenda and was

[38] Coleman et al (n 10) 473.

[39] World Health Organisation 'Education and treatment in human sexuality: the training of health professionals, report of a WHO meeting' 1975 https://apps.who.int/iris/handle/10665/38247 (accessed 27 March 2023).

[40] UN Population Fund (UNFPA) 'Report of the International Conference on Population and Development, Cairo, 5-13 September 1994' https://www.refworld.org/docid/4a54bc080.html (accessed 27 March 2023).

[41] Gruskin et al (n 27) 30.

[42] Gruskin et al (n 27) 30.

[43] UN Women 'Beijing Declaration and Platform of Action' adopted at the Fourth World Conference on Women 1995 https://www.un.org/womenwatch/daw/beijing/platform/ (accessed 28 March 2023).

grounded in a human rights framework.[44] A more recent definition from the WHO [45] states that sexual health is:

> A state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.

In their Declaration of Sexual Rights, the World Association for Sexual Health (WAS) echoes the WHO's definition and emphasises that sexual health is not merely the absence of disease, dysfunction or infirmity, and that it includes the possibility of having enjoyable and safe sex, free of coercion, prejudice and violence.[46]

2.3. Sexual rights

To understand sexual pleasure, it is important to explore what is meant by sexual rights. The term 'sexual rights' has been fiercely contested by governments and interested organisations over the past decades, and a consensus has yet to be reached. Countries have radically different interpretations of what the category 'sexual rights' includes and what it commits them to do.[47] How we understand human rights is constantly changing and evolving, and sexual rights are no exception. These rights are constrained inasmuch as they are recognised but are also free to evolve in ways to ensure all of our rights in freedom and dignity.[48]

The notion of sexual rights first gained the attention of the world in 1993 at the World Conference on Human Rights in Vienna, where it was agreed that acts of violence against women may impair and nullify the enjoyment of their fundamental rights and freedoms.[49] The outcome of this conference was the influential Vienna Declaration and Programme of Action. Until this point, the international community had shied away from discussions relating to sexuality. The Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) movement, along with aspects of the feminist movement, like those focused on population control, women's reproductive health, health as a human right, sexual violence, unwanted pregnancy, female genital mutilation/cutting (FGM/FGC) and HIV/AIDS, helped to popularise the notion of sexual rights.

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[44] Gruskin et al (n 27) 30.

[45] World Health Organisation 'Defining sexual health' https://www.who.int/teams/sexual-and-reproductive-health-and-research/key-areas-of-work/sexual-health/defining-sexual-health (accessed 30 March 2023).

[46] World Association for Sexual Health 'Declaration of Sexual Rights' 2014 https://worldsexualhealth.net/resources/declaration-of-sexual-rights/ (accessed 12 April 2023).

[47] AM Miller et al 'Sexual rights as human rights: a guide to authoritative sources and principles for applying human rights to sexuality and sexual health' (2015) 23 *Reproductive Health Matters* 16.

[48] Miller et al (n 42) 27.

[49] Durojaye and Murungi (n 36) 882.

The WHO has developed a working definition of sexual rights. [50] This definition states that:

> The application of existing human rights to sexuality and sexual health constitutes sexual rights. Sexual rights protect all people's rights to fulfil and express their sexuality and enjoy sexual health, with due regard for the rights of others and within a framework of protection against discrimination.

Sexual rights encompass certain human rights, which are already recognised in international and regional human rights documents, as well as national laws.[51] The recognition of these rights means that they are applicable to sexuality and sexual relations. This definition by the WHO is useful as all of the rights highlighted have already been codified in international and regional treaties, with many also incorporated in national constitutions and laws.

The Declaration on Sexual Rights issued by the IPPF contends that numerous global guidelines, rules and benchmarks acknowledge key concepts related to sexuality.[52] Sexual rights operate within a context of equality, aiming to safeguard everyone's ability to fully experience and articulate their sexuality. This definition builds on the WHO's definition and further outlines how each right is linked to sexuality. Many of the rights outlined above are similar to the ones highlighted by the WHO.

In their Declaration of Sexual Rights, the World Association for Sexual Health (WAS) states that 'sexual rights are grounded in universal human rights that are already recognised in international and regional human rights documents, in national constitutions and laws, human rights standards and principles, and in scientific knowledge related to human sexuality and sexual health'.[53] The first iteration of this declaration is found in the Valencia Declaration, adopted at the XIII World Congress of Sexology in Valencia, Spain.[54] However, in 2014, WAS revised its Declaration on Sexual Rights to emphasise links between 'sexuality, sexual health and sexual rights'. Notably, this declaration acknowledges the growing trend of applying recognised human rights standards to sexual health by human rights bodies at the globally, regionally and nationally. WAS's Sexual Rights Declaration builds upon the progress made to highlight the central role that recognition of human rights plays in supporting sexual health, including sexual pleasure. It incorporates all the rights included by the WHO and the IPPF and shows how they can be linked to sexuality.

The Guttmacher-Lancet Commission (GLC) on Sexual and Reproductive Health and Rights[55] developed a comprehensive and evidence-based programme for key sexual and reproductive health and rights (SRHR) priorities globally. In their document, they demand that sexual health and rights

[50] World Association for Sexual Health (n 41).
[51] World Health Organisation (n 13).
[52] IPPF (n 28) 16.
[53] World Association for Sexual Health (n 41).
[54] E Kismödi et al 'Sexual rights as human rights: a guide for the WAS Declaration of Sexual Rights' (2017) 29 *International Journal of Sexual Health* 2.
[55] AM Starrs et al 'Accelerate progress—sexual and reproductive health and rights for all: report of the Guttmacher–Lancet Commission' (2018) 391 *The Lancet* 2646.

information be made accessible to all.[56] They provide the following integrated definition of sexual health and sexual rights:

> A state of physical, emotional, mental, and social wellbeing in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction, or infirmity. Therefore, a positive approach to sexuality and reproduction should recognise the part played by pleasurable sexual relationships, trust, and communication in the promotion of self-esteem and overall wellbeing.

This integrated definition draws from various UN and regionally negotiated pronouncements, and WHO technical publications. Notably, the authors argue that the definition applies to everyone, but that 'the issues are especially relevant for women because of 'biological factors and because of socially defined gender roles that discriminate against them'.[57]

There are four rights that all four organisations highlight. First, all four are rooted in the principle of non-discrimination and recognition of the importance of ensuring equal treatment for all individuals, regardless of their sex, sexuality, gender identity, or other factors. Second, each organisation acknowledges the importance of protecting an individual's right to privacy. Third, all four recognise the importance of allowing individuals to make their own decisions about when and whether to have children. The wording differs, with WAS and GLC separating the two rights and placing more emphasis on the choice involved. Fourth, each organisation acknowledges the need for an effective system of remedies for violations of fundamental rights, and redress.

However, there are rights that are mentioned in only some of these documents and left off others. The WAS, IPPF and GLC recognise the right to bodily integrity and bodily autonomy. The WHO, IPPF and WAS recognise the right to freedom of thought and expression, and the importance of access to information and education. The WHO and WAS acknowledge the right to be free from torture or to cruel, inhuman or degrading treatment, as well as the right to the highest attainable standard of health, including sexual health and social security. The IPPF and WAS recognise the right to life, liberty and security of the person, as well as the right to health and to the benefits of scientific progress. WAS and GLC include the right to the possibility of having pleasurable, safe and satisfying sexual experiences. WAS includes rights that none of the other organisations include, such as the right to freedom of association and peaceful assembly, the right to participation in public and political life and the right to comprehensive sexuality education. The GLC also includes its own rights, such as the right to freely define your own sexuality, including sexual orientation and gender identity and expression, the right to decide when to be sexually active and the right to choose your sexual partners. Additionally, there are

[56] JV Ford et al 'Why pleasure matters: its global relevance for sexual health, sexual rights and wellbeing' (2019) 31 *International Journal of Sexual Health* 217.

[57] Starrs et al (n 55) 2646.

differences in the specific language and emphasis used in each document, such as the WHO's emphasis on sexual health and the IPPF's emphasis on the benefits of scientific progress.

While these definitions are thorough, Gruskin et al [58] argue that the most influential articulation of sexual rights is found in the 1995 Beijing Platform for Action from the Fourth World Conference on Women. Paragraph 96 of the document states that[59]:

> 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.

This articulation is located within the health section of the document and is the first articulation of an international mandate to 'focus on, and invest in, women's reproductive and sexual health beyond the need to control women's fertility'.[60] It grounds the mandate within the internationally agreed legal human rights framework and remains the strongest statement agreed to by governments of the world.

Klugman[61] argues that a commitment to the language of sexual rights emerged from this conference but interpretations of their meaning differed. For example, 'African ministers had accepted the terminology of sexual rights on the basis of its importance in the context of HIV/AIDS and violence on the continent.'[62] The European position supported the language of sexual rights because it implied freedom from discrimination based on sexual orientation. This position was not supported by the majority of delegates at the conference, and South Africa was the only African country to ask for its inclusion.[63] On the other hand, countries with fundamental religious governments tended to interpret this right as meaning the right to sex and promiscuity. These countries held a conservative doctrinal view of sex and sexuality and therefore tried to ensure that documents only referred to sexual health or care.[64] They feared that sexual rights might undermine family values and warp the traditional family system.

2.4. Sexual pleasure as a human right

It is important to acknowledge that pleasure, and specifically sexual pleasure, is not a homogenous or static concept. It is variable and dependent on context. Different individuals experience sexual pleasure differently in certain settings and throughout their lives. This allows for heterogeneity and diversity of

[58] Gruskin et al (n 27) 30.
[59] UN Women 'Fourth World Conference on Women Beijing 1995' September 1995 https://www.un.org/womenwatch/daw/beijing/platform/ (accessed 28 March 2023).
[60] Gruskin et al (n 27) 30.
[61] B Klugman 'Sexual rights in Southern Africa: a Beijing discourse or a strategic necessity?' (2000) 4 *Health and Human Rights* 144.
[62] Klugman (n 56) 152.
[63] Klugman (n 56) 153.
[64] Klugman (n 56) 150.

sexual pleasure among different individuals over their lifetime.[65] Sexual pleasure comprises physical, cognitive, emotional, social and psychophysiological aspects.[66]

The GAB first conceptualised sexual pleasure as a human right in 2016.[67] The GAB links sexual pleasure to the globally accepted definition of sexuality, sexual health, and sexual rights:

> Sexual pleasure is the physical and/or psychological satisfaction and enjoyment derived from solitary or shared erotic experiences, including thoughts, dreams and autoeroticism. Self-determination, consent, safety, privacy, confidence and the ability to communicate and negotiate sexual relations are key enabling factors for pleasure to contribute to sexual health and wellbeing.

It outlines the rights to equality and non-discrimination, autonomy and bodily integrity, the right to the highest attainable standard of health, and freedom of expression, and argues that sexual pleasure should be exercised within the context of sexual rights. It stresses the diversity of human sexual pleasure and that sexual rights help to ensure that pleasure is 'a positive experience for all concerned and not obtained by violating other people's human rights and wellbeing'. [68] This definition is important because it emphasises that sexual pleasure can be experienced differently in each person's context and that sexual pleasure experiences differ in meaning and importance over the lifespan.[69] It highlights that there is an evolving capacity for pleasure over a person's lifespan.[70]

The WAS[71] used this same definition, with slight changes, to define sexual pleasure in their Declaration on Sexual Pleasure. Factors, such as personal autonomy, consent, privacy, security, the freedom to discuss and arrange and arranging sexual interactions, are highlighted as enabling for pleasure to contribute to health and wellbeing.

As discussed in chapter 1, the other side of pleasure is pain and violence. In many traditional cultures, a high level of importance is attributed to the concept of virginity. This is almost always directed only at women. Sexual pleasure is a right accorded to men worldwide, while being deemed as irrelevant or dangerous for women in sexually conservative or traditional societies. This attitude is often used to explain the prevalence of sexual pain and vaginismus faced by women.[72] Sexual function, or 'the ability to participate in a sexual relationship as one would wish', is central to the fulfilment of sexual health.[73] Problems with sexual function can cause significant distress both for individuals and

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[65] Ford et al (n 56) 218

[66] J Reis et al 'Psychosocial and behavioral aspects of women's sexual pleasure: a scoping review' (2021) 33 *International Journal of Sexual Health* 494.

[67] Global Advisory Board for Sexual Health and Wellbeing 'Working definition of sexual pleasure' 2016 https://www.gab-shw.org/our-work/working-definition-of-sexual-pleasure/ (accessed 30 March 2023).

[68] Global Advisory Board for Sexual Health and Wellbeing (n 62).

[69] Ford et al (n 56) 218.

[70] Global Advisory Board for Sexual Health and Wellbeing (n 62).

[71] World Association for Sexual Health (n 48).

[72] KSK Hall 'Cultural differences in the treatment of sex problems' (2019) 11 *Current Sexual Health Reports* 31.

[73] K Mitchell 'Sexual function, pleasure, and satisfaction' in Wellings, K et al (eds) *Sexual health: A public health perspective* (2012) 60.

their partners, often resulting in emotions such as a sense of inadequacy, embarrassment, anxiety and exasperation due to the inability to enjoy intimacy.[74] Problems with sexual function are often overlooked as an element of sexual health, but as inconsequential as it just relates to the unimportant factor of sexual pleasure. This is especially true as conservative countries do not discuss sexual pleasure in official circles and developing countries face myriad of competing spending priorities.[75]

Klugman argues that the 'dominant discourse on sexuality within southern Africa attempts to deny it, avoid it, cover it in latex, or protect women from coercion' instead of recognising it as a dimension of human experience.[76] If states were to recognise that sexuality could support overall wellbeing and fulfil a function outside of reproduction and health, sexual enjoyment could replace the anti-sex morality that has long acted as the entry point for addressing HIV prevention. However, there is a critique of the current conceptualisation of sexual pleasure as a human right that emerged from feminist scholars who worry that sexual pleasure as a concept relies on the gender-blind definition of sexual rights. The absence of a feminist perspective on gender in principles related to sexual rights makes it challenging to implement them in a political context.[77]

2.5. Interconnections between sexual rights, sexual health and sexual pleasure

Figure 1 The sexual health, rights and pleasure triangle for sexual health and wellbeing. Source: The Global Advisory Board for Sexual Health and Wellbeing.

The GAB proposes that all efforts must be made to support 'a perfect triangle of sexual health, sexual rights and sexual pleasure for all people everywhere in the world'.[78] Sexual health is used as an entry point to encourage engagement and is seen as a legitimate way to address sexual rights and sexual pleasure.[79] Following this, the GAB utilised a 'triangle' framework to connect sexual health, rights, and pleasure, highlighting that all three elements are essential for complete sexual wellbeing.

[74] Mitchell (n 68) 67.
[75] Mitchell (n 68) 60.
[76] Klugman (n 56) 165.
[77] J Oriel 'Sexual pleasure as a human right: Harmful or helpful to women in the context of HIV/AIDS?' (2005) 28 *Women's Studies International Forum* 392.
[78] Gruskin et al (n 27).
[79] Ford et al (n 56).

Mitchell[80] and others, on the other hand, propose a four-pillar approach to comprehensive public health. This perspective locates sexual wellbeing in relation to sexual health, sexual justice and sexual pleasure, noting that each is needed to address structural determinants of sexual inequities. Sexual wellbeing is often regarded as a sub-category, and the authors argue that it should be recognised as a 'distinct and revolutionary concept that challenges our accepted thinking and has far-reaching global applications in public health that have been neglected to date.'[81]

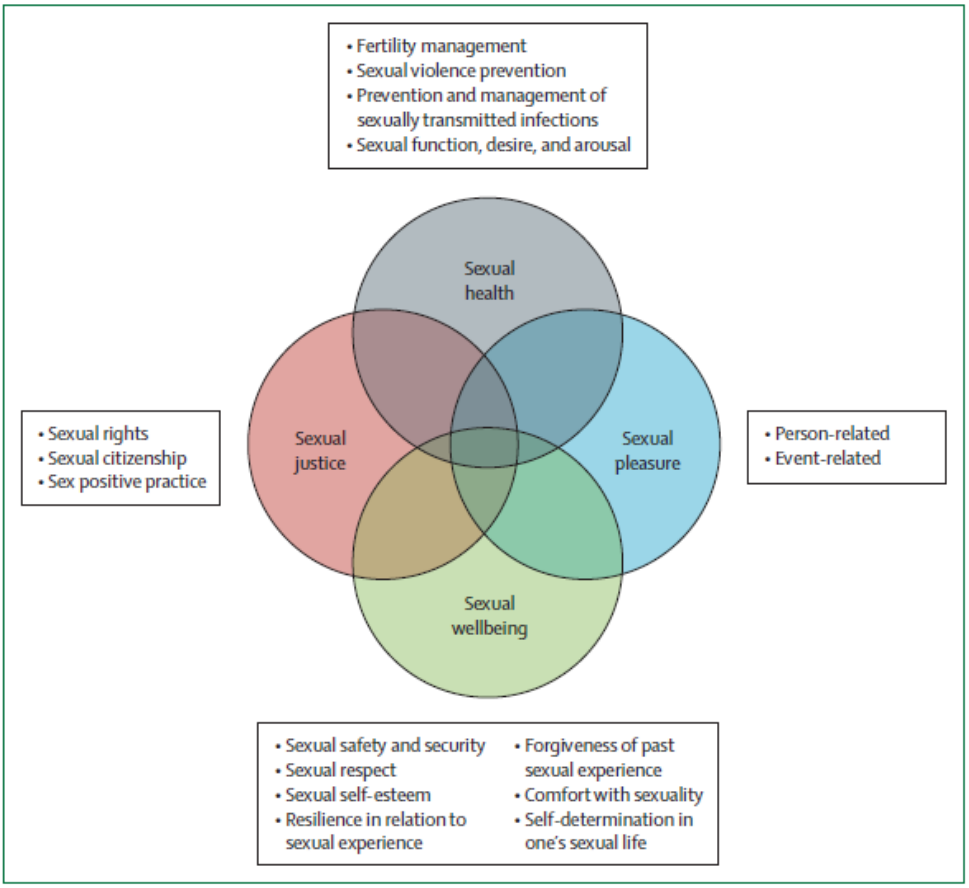

Figure 2 Four pillars of comprehensive public health focused inquiry and intervention in relation to sexuality. Source: Mitchell et al.

The first pillar of sexual health follows the WHO definition as outlined earlier in this chapter. It encompasses the prevention and management of sexually transmitted infections (including HIV), fertility regulation, sexual violence prevention, and sexual functions (including sexual desire and arousal).[82]

The second pillar is sexual pleasure. It is related to sexual health and sexual wellbeing but is considered an issue in its own right. Both the GAB and the WAS definitions are helpful. It considers

[80] KR Mitchell et al 'What is sexual wellbeing and why does it matter for public health?' (2021) 6 *The Lancet Public Health* e608.
[81] Mitchell et al (n 75) e608.
[82] Mitchell et al (n 75) e609.

the physical and psychological diversity regarding sexual satisfaction, as well as key enabling factors such as 'self-determination, consent, safety, privacy, confidence, and the ability to communicate and negotiate sexual relations.'[83] Pleasure is not privileged above the other pillars or turned into the cornerstone of sexual wellbeing. Mitchell and others argue that the operationalisation of sexual pleasure can be improved upon by including two key elements, namely events and people.[84] Events comprise of 'a sexual occasion, such as the repertoire, timing, and spacing of different sexual practices, occurrence of orgasm, use of a condom or contraception'.[85] People can be understood as part of the 'interactional elements of sexual pleasure, encompassing interpersonal dynamics, such as communication, negotiation, and trust'.[86]

The third pillar is sexual justice. This represents larger global efforts to ensure social, cultural, and legal supports for equitable, person-centred sexual and reproductive experiences. 'Sex positivity is central to a public health-relevant concept of sexual wellbeing.' Here, trauma-informed, sex positive practices are included. They 'refer to perspectives and approaches that emphasise contributions of sexuality and sexual expression to overall wellbeing.'[87]

The fourth and final pillar is sexual wellbeing. Several different conceptualisations of sexual wellbeing have been put forth. Mitchell and others conceptualise it as comprising of 'sexual safety and security, sexual respect, sexual self-esteem, resilience in relation to past sexual experiences, forgiveness of past sexual events, self-determination in one's sex life, and comfort with one's sexuality'.[88]

2.6. Conclusion

This chapter has discussed the interconnections between sexual health, sexual rights and sexual pleasure. It has been argued that sexual health is more than simply the absence of disease and that sexual pleasure is an integral component of an individual's overall wellbeing. The missing link in sexual health work has been an acknowledgement of the motivations behind engaging in sexual activities. Defining sex and sexuality in reproductive terms leaves little room to discuss sexual pleasure as a human right. It is important to broaden this definition because sexual pleasure is the primary reason many people engage in sexual behaviour.[89] It is an element of overall wellbeing, and should therefore be integrated into health education, promotion and policy. Ignoring the role of sexual pleasure in sexual health activism leads to an unrealistic conceptualisation of sexual health that is disconnected from people's lived experiences. Therefore, it is essential to centre sexual pleasure within the contexts of sexual rights and sexual health. Sexual pleasure should be included in public health policy, programme

[83] Mitchell et al (n 75) e609.
[84] Mitchell et al (n 75) e609.
[85] Mitchell et al (n 75) e609.
[86] Mitchell et al (n 75) e609.
[87] Mitchell et al (n 75) e609.
[88] Mitchell et al (n 75) e610.
[89] Ford et al (n 56) 217.

implementation, and sexual and reproductive health services delivery.[90] By including the role of sexual pleasure in this work, it is expected that sexual health and wellbeing will improve. The rights linked to sexual pleasure are the right to equality, non-discrimination, autonomy, bodily integrity, health and freedom of expression. However, an awareness of equal rights for women and sexual rights for people is not enough. These rights cannot be aspirational. They must be realistic. The role that international and regional law can play in this endeavour will be discussed in the following chapter.

[90] Ford et al (n 56) 218.

Chapter 3: Centring sexual pleasure in international and regional human rights law

3.1. Introduction

The majority of governments around the world have committed to the protection of human rights. As explored in the previous chapter, sexual pleasure as a human right is still contentious and the topic of much debate among scholars and different countries. From the outset, it is imperative to concede the enormous difficulty of translating sexual pleasure into a human right. This is because issues related to sexuality are often sensitive and are viewed with suspicion and disapproval.[91] However, rights related to sexuality and sexual pleasure can be read into several international and regional human rights documents, and sexual health will be used as an entry point into the conversation. This chapter will examine the legal framework for the obligations of governments regarding sexual pleasure as a human right, as well as the implications of this obligation for policy, law, and practice. First, human rights documents relevant to sexuality and sexual pleasure in the international arena will be examined, and then the African human rights context will be considered. The Maputo Protocol will be central to this analysis as it is the most progressive human rights document regarding the sexual and reproductive rights of women. Statements by NGOs and CSOs will also be considered.

3.2. The recognition of sexual pleasure as a right under international human rights

Women's rights relating to sexuality have been recognised and guaranteed in several international human rights instruments, including the Universal Declaration of Human Rights (UNHCR)[92], the International Covenant on Civil and Political Rights[93], the International Covenant on Economic, Social and Cultural Rights[94], the Convention on the Elimination of All Forms of Discrimination Against Women[95], the African Charter on the Rights and Welfare of the Child[96], The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa[97] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[98].

International and regional conventions and covenants relating to the rights of women bolster the acceptance of women's rights as inalienable, interdependent and indivisible human rights. All of these documents recognise, at the very least, the right to be free from discrimination on the basis of sex and

[91] Durojaye and Murungi (n 36).
[92] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948.
[93] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.
[94] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.
[95] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979.
[96] Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990.
[97] UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006.
[98] Maputo Protocol (n 9).

gender. Chapter 2 examined sexual health, sexual rights and sexual pleasure as distinct, but related human rights. Several different rights can be interpreted to relate to sexual pleasure. To briefly recapitulate, there is some both agreement and divergence on the rights associated with sexual rights by different agencies. The rights to non-discrimination and equality, privacy, deciding the number and spacing of children, and an effective remedy for violations of fundamental rights are the rights found across the WHO, the IPPF, the WAS and GLC conceptualisations of sexual rights. Regarding sexual pleasure, the rights highlighted by the GAB and WAS are the rights to equality and non-discrimination, autonomy and bodily integrity, the highest attainable standard of health, and freedom of expression. These are the rights that will be identified in the various international and regional human rights documents.

In the current chapter, different international and regional treaties, as well as general comments linked to them, will be analysed to determine to what extent they can be used to bolster sexual pleasure as a human right.

3.2.1. The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (CESCR) recognises the right of everyone to the highest attainable standard of physical and mental health in Article 12.[99] The right to sexual and reproductive health is an integral part of the right to health and entails freedoms and entitlements.[100] The United Nations Committee on Economic, Social and Cultural Rights (Committee on ESCR) elaborates on Article 12 from CESCR, namely the right to the highest attainable standard of health, in General Comment 14.[101] It elaborates on the various freedoms that the right provides for, namely the right to control one's health and body, including sexual and reproductive freedom.[102] This mention of sexual freedom hints at sexual rights through the right to bodily autonomy and integrity, which are rights connected to the realisation of sexual pleasure.

The general comment notes that there are several aspects surrounding health that cannot be addressed by the state and that the right to health must be understood as the right to enjoy a variety of 'facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health'.[103] When discussing women and the right to health, the comment differentiates between sexual and reproductive health and services.[104] This wording is important. It also calls on states to undertake different forms of action to protect women from harmful cultural and traditional practices and norms that deny them their full reproductive rights. The wording here is again important as the

[99] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.
[100] Starrs et al (n 55) 2644.
[101] CESCR Committee General Comment No 14 (2000) The right to the highest attainable standard of health (article 12 of the CESCR) (E/C.12/GC/22).
[102] CESCR Committee General Comment No 14 (n 96) para 8.
[103] CESCR Committee General Comment No 14 (n 96) para 9.
[104] CESCR Committee General Comment No 14 (n 96) para 21.

general comment goes far enough to acknowledge the difference between sexual and reproductive health and services but does not mention sexual rights.

In General Comment 22, the Committee on ESCR states that the right to sexual and reproductive health is an integral part of the right to health enshrined in Article 12 of CESCR.[105] It takes general comment 14 further and explicitly focuses on sexual and reproductive health. It notes the evolution of sexual and reproductive health since the adoption of the Programme of Action of the ICPD in 1994. It echoes general comment 14 when discussing the freedoms associated with the right to sexual and reproductive health. These include the right to make 'free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health.'[106] This once again differentiates between sexual and reproductive health.

On the interdependence of rights, the comment shows how by combining the right to sexual and reproductive health with the right to education (Articles 13 and 14) and the right to non-discrimination and equality between men and women (Articles 2(2) and 3), one gets a right to education on sexuality and reproduction that is 'comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate'.[107] This supports the sexual health, rights and pleasure triangle for sexual health and wellbeing outlined in chapter 2.

The General Comment further acknowledges how laws, policies and practices may appear neutral while perpetuating gender inequalities and discrimination against women.[108] This serves to instruct states parties on substantive equality – a concept that requires laws, policies and practices to alleviate disadvantages that women experience when exercising their right to sexual and reproductive health. Therefore, laws that do not acknowledge the power discrepancies at play run the risk of maintaining and perpetuating gender-based stereotypes and expectations. These assumptions are obstacles to substantive equality and must be eliminated to shift the balance of power between men and women. This comment recommends that states repeal or eliminate any laws, policies and practices that hinder access to sexual and reproductive health facilities, services, goods and information.[109] Such power imbalances and gender inequality maintains a social order in which sexual pleasure is not equally distributed.

3.2.2. CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a widely ratified human rights treaty and can be seen as pre-empting the Maputo Protocol. It lay much of

[105] CESCR Committee General Comment No 22 (2016) on the rights to sexual and reproductive health (article 12 of the CESCR) (E/C.12/GC/22).
[106] CESCR Committee General Comment No 22 (n 100) para 5.
[107] CESCR Committee General Comment No 22 (n 100) para 10.
[108] CESCR Committee General Comment No 22 (n 100) para 27.
[109] CESCR Committee General Comment No 22 (n 100) para 49a

the basis for human rights specific to women.[110] The purpose of CEDAW is to promote and protect women's human rights, and to ensure that women are not discriminated against in any area of life. CEDAW requires governments to take action to eliminate discrimination against women in all spheres of life, including in the political, economic, social, and cultural spheres. This includes measures to ensure women's equal access to education, healthcare, employment, and political participation, as well as measures to address violence against women and to promote women's rights in marriage and family relationships.

Regarding rights that are applicable to sexuality, Article 10 specifies that a woman's right to education includes access to information to help to ensure the health and well-being of families, including information and advice on family planning.[111] Article 12 emphasises the importance of ensuring women's access to health care services, including sexual and reproductive health care services, and of eliminating discrimination against women in the provision of these services.[112] Article 16 guarantees women equal rights in deciding on the number and spacing of their children, and to have access to the information, education and means to enable them to exercise these rights.[113]

CEDAW Committee's General Recommendation 24 highlights the importance of ensuring women's access to health care services, including sexual and reproductive health services. It also calls for the elimination of discrimination against women in the provision of health care services. Family planning and sex education are emphasised as important to aid in the prevention of unwanted pregnancies. There is a distinction made between sexual and reproductive health that is clearer than in the treaty. When sexual health is recognised and respected by states parties, the way forward for the realisation of sexual pleasure as a right is made easier.

3.3. The recognition of sexual pleasure in regional human rights

3.3.1. The African Charter

The African Charter is a regional human rights treaty adopted by the Organisation of African Unity (now the African Union) in 1981. The Charter was created to promote and protect human rights and fundamental freedoms in Africa, and it is the primary human rights instrument in the continent. It is rooted in the principles of non-discrimination and independence. Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

[110] CEDAW (n 90).
[111] CEDAW (n 90) Article 10 h.
[112] CEDAW (n 90) Article 12.
[113] CEDAW (n 90) Article 16 e.

Article 18 of the African Charter calls on all states parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions. Articles 60 and 61 of the African Charter recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter.

3.3.2. The Maputo Protocol

Despite being a regional human rights document, the Maputo Protocol has enormous potential that extends beyond the African continent. The Protocol is one of the few significant human rights documents that recognise the sexual and reproductive health rights of women. For this reason, it continues to be one of the most revolutionary and ground-breaking human rights instruments as there is no equivalent clause in its counterpart, CEDAW. Therefore, Durojaye and others contend that Article 14 blazed a trail in terms of explicit recognition of the sexual and reproductive rights of women. [114]

However, the development of the Maputo Protocol, specifically the sections referring to sexual and reproductive rights, was fraught with complications.[115] Different concerns and objections were raised around the wording used in Article 14 of the Protocol. Article 14(2)(c) upholds women's right to choose their own sexual and reproductive practices, including the right to an abortion when a woman becomes pregnant as a result of a sexual assault, incest, rape, or when her life is in danger.[116] Every woman's right to a medical abortion is stated expressly in the Maputo Protocol, within the limitations defined. Additionally, it explicitly protects a woman's freedom to manage her fertility without being forced to take any unwanted or dangerous path of action. The inclusion of limited access to abortion led some states, such as Uganda, Kenya and Rwanda, to enter reservations to the provisions of Article 14(2)(c).[117]

Article 2 calls on state parties to eliminate all forms of discrimination against women through appropriate legislative and institutional measures, echoing CEDAW. It calls on states to introduce legislation and regulations to prohibit forms of discrimination that endanger the health and general well-being of women.[118] Overall wellbeing is understood as including sexual wellbeing, and this is connected to sexual rights and sexual pleasure. This Article calls on states parties to support the local, national, regional and continental initiatives that aim to eradicate all forms of discrimination against women.[119] This can be interpreted to include initiatives such as those carried out by WAS that urge states to recognise sexual rights and sexual pleasure. Article 2 goes on to call on states parties to commit

[114] Durojaye and Murungi (n 36) 886.
[115] Durojaye and Murungi (n 36) 886.
[116] Maputo Protocol (n 9).
[117] Durojaye and Murungi (n 36) 886.
[118] Maputo Protocol (n 9) article 2.1. b.
[119] Maputo Protocol (n 9) article 2.1.e.

themselves to changing and challenging cultural and social behaviour that perpetuates harmful cultural and traditional patterns. The kinds of behaviour highlighted are those that are rooted in stereotypes that seek to subjugate women.[120] This echoes CEDAW's substantive quality approach.[121]

Article 4 obligates states parties to actively promote peace education to 'eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women'.[122] Sexual pleasure is the inverse of sexual violence and through education aiming to eradicate violence, states parties will promote behaviours that emphasise sexual equality and embrace sexual rights and sexual pleasure. Similarly, Article 5 calls on states parties to eliminate harmful practices against women which are in opposition to the recognised international standards. The Article emphasises the prohibition of all forms of female genital mutilation as a harmful practice.[123] Article 12, similar to Article 4, affirms women's right to education and training. It specifically calls for the elimination of all stereotypes that perpetuate discrimination in educational materials and the media.[124]

The central article of the Maputo Protocol regarding sexual rights is Article 14. This article affirms the right to health of women, including sexual and reproductive rights. The Article reads as follows:

> 1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
>
> a) the right to control their fertility;
>
> b) the right to decide whether to have children, the number of children and the spacing of children;
>
> c) the right to choose any method of contraception;
>
> d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
>
> e) the right to be informed on one's health status and the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
>
> g) the right to have family planning education.
>
> 2. States Parties shall take all appropriate measures to:

[120] Maputo Protocol (n 9) article 2.2.
[121] Durojaye and Murungi (n 36) 892.
[122] Maputo Protocol (n 9) article 4.d.
[123] Maputo Protocol (n 9) article 5.b.
[124] Maputo Protocol (n 9) article 12.1. a.

a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;

b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;

c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

This article is of particular importance as it names sexual health as something separate from reproductive health. This separation makes sexual rights more explicit, making it easier to claim the right of sexual pleasure under the Protocol. While it does not name sexual rights, it names health and reproductive rights. Durojaye and others argue that while the provision of Article 14 is headed 'Health and Reproductive Rights' the provision should be interpreted purposively to protect the sexual health and rights of women.[125] The authors state that by reading this article together with other provisions in the Protocol, such as non-discrimination, dignity and violence, it gives effect to sexual rights.

Based on the understanding gained of sexual rights in chapter 2, one can interpret the right to choose any method of contraception as linked to sexual pleasure. This right obligates states to provide women with access to contraception to avoid pregnancy and practice safe sex. This empowers women to make sexual decisions that are right for them and with which they are comfortable. Realising the right to sexual pleasure can only take place in an environment in which the fear of unwanted pregnancy and STIs is managed. The right to self-protection against sexually transmitted infections links to the notion of the right to bodily autonomy and bodily integrity — rights connected to sexual pleasure. The right to have access to family planning education can also be understood as a right that will give rise to a context in which sexual pleasure can be realised. When read with the right to non-discrimination and equality, the right to family planning can be expanded on to include comprehensive sexuality education. Education is one of the single-most empowering factors and a population educated about sex and sexuality will be closer to realising sexual pleasure as a human right. Moreover, access to adequate, affordable and accessible health services fits into the right to sexual pleasure. While abortion is more closely connected to reproductive health, I would argue that sexual encounters are more likely to be pleasurable when individuals know that the option of abortion is available to them. Moreover, illegal abortions carry several risks, including complications that may affect a woman's ability to engage in pleasurable sex.

The General Comment on Article 14(1)(d) and (e) was adopted by the African Commission in October 2012.[126] This is the first time an international legally binding instrument addressed the issue

[125] Durojaye and Murungi (n 36) 881-882.
[126] General Comment (2012) on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

of HIV. The Protocol distinguishes between the right to self-protection and the right to be protected from HIV in Article 14(1)(d), and the General Comment interprets this to refer to states 'overall obligation to create an enabling, supportive, legal and social environment that empowers women to be in a position to fully and freely realise their right to self-protection and to be protected'.[127] This right links to the right to access information, education and sexual and reproductive health services. The comment also links the right to self-protection to equality and non-discrimination, life, dignity, health, self-determination, privacy and the right to be free from all forms of violence.[128]

The right to be informed on one's health status and the health status of one's partner is a crucial aspect of sexual health, and sexual pleasure. While this right includes access to information and a host of healthcare services and tests, it also ties into the right to bodily autonomy. This right enables women to make informed decisions about their own health and empowers them to create a context in which they can have pleasurable, safe sex. This requires states to take the sexual health of their citizens seriously. To fully do so, states will have to acknowledge the role that sexual pleasure plays in the overall wellbeing of people.

General Comment No. 2 on Article 14(1)(a), (b), (c) and (f) and Article 14(2) (a) and (c) was adopted by the African Commission in 2014.[129] This general comment addresses the right to sexual and reproductive health, including access to family planning services, safe and legal abortion, and the prevention and treatment of sexually transmitted infections. In the comment, the African Commission welcomes the wide ratification of the Protocol but notes that many countries have not done enough to domesticate the relevant provisions, including in the area of women's sexual and reproductive rights. Therefore, the Commission acknowledges that the Protocol does include sexual rights as separate from reproductive rights. It does so again when discussing the specific obligations of the state. States parties are instructed to provide a legal and social environment that enables women to exercise their reproductive rights, as well as their sexual rights.[130] States parties are also instructed to ensure that women whose sexual and reproductive rights have been violated have access to timely and efficient redress.[131] This general comment clarifies the right to comprehensive sexuality education that provides information on human sexuality, reproduction, and sexual and reproductive rights.[132]

Therefore, this general comment highlights the importance of recognising and protecting sexual rights as an integral part of human rights in Africa. It also guides states on how to ensure that individuals have access to sexual and reproductive health services, information, and education without discrimination or coercion. One obligation that is clarified by this comment is linked to abortion,

[127] General Comment (2012) (n 121) para 10.
[128] General Comment (2012) (n 121) para 11.
[129] General Comment No. 2 (2014) on article 14(1)(a), (b), (c) and (f) and article 14(2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
[130] General Comment No. 2 (n 124) para 46.
[131] General Comment No. 2 (n 124) para 50.
[132] General Comment No. 2 (n 124) para 51.

specifically that states should authorise safe abortion. It provides, in no unclear terms, that the failure to do so means that the state will be unable to meet their international obligations to respect, protect, promote and implement the right to non-discrimination.[133]

3.3.3. The African Disability Rights Protocol

This is one of the latest charters adopted by the African Union. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Rights Protocol) was adopted on 29 January 2018, during the 39th ordinary session of the African Union Summit that was held in Addis Ababa, Ethiopia.[134] It builds on the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.[135] While the Protocol has not yet attained the 15 ratifications required for it to come into force, it is still worth exploring.[136]

Article 6 of this Protocol guarantees the right to equality and states that 'equality includes the full and equal enjoyment of all human and people's rights'.[137] Article 17 ensures the right to health and states that 'Every person with a disability has the right to the highest attainable standard of health,' and that 'States Parties shall take all appropriate and effective measures to ensure that persons with disabilities have, on an equal basis with others, access to health services, including sexual and reproductive health'.[138] Article 26 guarantees the right to family and notes that 'persons with disabilities may decide on the number and spacing of their children, and have access to family planning, and sexual and reproductive health education and services. When read in conjunction with articles 6 and 17, this is seen as guaranteeing people with disabilities the right to sexual health and sexual pleasure. If people with disabilities are truly to be respected, their right to sexual wellbeing must be protected and fulfilled.

While the African Disability Rights Protocol is still in its nascent phase and has yet to fully come into force, the CRPD has been more widely signed and ratified.[139] Ngwena discusses how the right to health in CRPD is modelled on Committee on ESCR. Therefore, we can draw on the normative standards developed by the Committee on ESCR, such as General Comments 14 and 22.[140] Both of these have done extensive interpreting work regarding the right to health and, more specifically, the right to sexual and reproductive health. This is also true for the standards set by the Committee on CEDAW in General Recommendation 24, discussed earlier in this chapter, as it highlights the

[133] General Comment No. 2 (n 124) para 20.
[134] African Disability Protocol (n 92).
[135] United Nations 'Convention on the Rights of Persons with Disabilities (CRPD)' https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd (accessed 22 May 2023).
[136] S Khumalo '#RatifyADRP: Call on African leaders to ratify the African Disability Rights Protocol' (*Centre for Human Rights*) https://www.chr.up.ac.za/ratifyadrp-about (accessed 22 May 2023).
[137] African Disability Protocol (n 92).
[138] African Disability Protocol (n 92)
[139] CG Ngwena 'Reproductive autonomy of women and girls under the Convention on the Rights of Persons with Disabilities' (2018) 140 *International Journal of Gynecology & Obstetrics* 130.
[140] Ngwena (n 134) 130.

importance of women's equitable access to health care services. People with disabilities are entitled to the same rights.

3.4. Statements by concerned groups

3.4.1. Statements by WHO

WHO has made several statements regarding sexual health and sexual rights, as discussed in previous chapters. It provides definitions on its website and documents of sexual health and sexual rights but lacks any mention of sexual pleasure. WHO acknowledges that sexual health is critically influenced by gender norms, roles, expectations and power dynamics.[141] The organisation's focus has remained on sexual health and its relevance throughout the lifetime, an acknowledgement that sexual health encapsulates a broader demographic than reproductive health. WHO's working definition of sexual health emphasises a positive and respectful approach to sexuality and sexual relationships that is inextricably linked to sexual wellbeing.[142]

In line with changing research patterns and the latest findings, WHO has acknowledged the importance of sexual pleasure in sexual health programme design after the publication of the first systematic review of interventions incorporating pleasure beyond condom eroticisation by Zaneva and others.[143] The authors state that sexual pleasure remains insufficiently addressed in most areas of the world. They find that education and programming around sexual and reproductive health often default to ill-health prevention, reflecting an assumption that sexual decision-making is driven by rational health considerations. They argue that a possible way to ensure the effectiveness of sexual health interventions requires affirming human sexuality and the reasons why people have sex, namely the pursuit of sexual pleasure.[144] While WHO does not have a specific publication solely dedicated to sexual pleasure, it recognises the importance of addressing this aspect of human sexuality in the context of comprehensive sexual health education and services.

3.4.2. The Yogyakarta Principles

The Yogyakarta Principles are a set of 29 principles on the application of international human rights law in relation to sexual orientation and gender identity.[145] They were developed in 2006 by a group of international human rights experts and activists in Yogyakarta, Indonesia. These principles aim to provide a framework for protecting the rights of individuals who face discrimination based on their sexual orientation or gender identity. The principles affirm that all human beings are entitled to the same rights and freedoms, regardless of their sexual orientation or gender identity. The principles cover

[141] World Health Organisation (n 40).
[142] World Health Organisation 'Redefining sexual health for benefits throughout life' https://www.who.int/news/item/11-02-2022-redefining-sexual-health-for-benefits-throughout-life (accessed 1 May 2023).
[143] M Zaneva and others 'What is the added value of incorporating pleasure in sexual health interventions? A systematic review and meta-analysis' (2022) 17 *PLOS ONE* 2.
[144] Zaneva (n 138) 9.
[145] The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity' (March 2006) https://yogyakartaprinciples.org/principles-en/ (accessed 1 May 2023).

a range of issues related to sexual orientation and gender identity, including non-discrimination, the right to privacy, the right to freedom of expression, the right to education, the right to work, the right to health, and the right to participate in public life. Rights specific to sexual pleasure include the rights to equality and non-discrimination; health; freedom of opinion; and expression. The Yogyakarta Principles have been widely recognised and used by human rights advocates, governments, and international organisations as a tool for promoting and protecting the rights of LGBTI people around the world. They have been endorsed by the UN, the European Parliament, and a number of national governments and human rights organisations.

Ten years after the adoption of the Yogyakarta Principles, a drafting committee was established and tasked with developing the Yogyakarta Principles plus 10 (YP+10).[146] One of the latest additions includes the right to bodily and mental integrity, one of the rights linked to sexual pleasure. With this addition, the Yogyakarta Principles include all the rights previously listed as sexual rights necessary to support the enjoyment of sexual pleasure as a human right.

3.5. Conclusion

Governments have a legal obligation to ensure that all individuals within their jurisdiction are able to enjoy their human rights, including their sexual rights and the right to sexual pleasure. This obligation arises from various international and regional human rights instruments, which recognise the importance of sexual pleasure as an integral component of human dignity, autonomy, and well-being. In this context, governments are required to adopt measures that respect, protect, and fulfil the right to sexual pleasure, while also preventing and redressing violations of this right.

While the international human rights documents examined, such as CESCR and CEDAW, do not explicitly mention sexual and reproductive rights as distinct human rights, the general comments and recommendations released provide more clarity around the terms and their implied inclusion in the original documents. In Africa, the same is true for the African Charter and the Maputo Protocol. Regarding the latter, a number of progressive comments highlight the right to sexual rights. Sexual pleasure can be enjoyed when sexual rights are protected and fulfilled, as sexual health, rights and pleasure have been shown to be interconnected.

[146] 'Yogyakarta Principles plus 10' http://yogyakartaprinciples.org/principles-en/yp10/ (accessed 1 May 2023).

Chapter 4: The realisation of sexual pleasure as a human right

4.1. Introduction

The genesis of this research was to examine why women are having bad sex – sex that is worse than the sex men are having – and the role that human rights law can play in acknowledging, challenging and potentially changing this. It is important to note that while this chapter talks about women broadly, the arguments made are equally applicable to people living with disabilities and transgender and gender non-conforming people. The obstacles to the realisation of sexual pleasure as a right will be examined in this chapter. The main challenges that have been identified include problematic gender norms, over-reliance on consent, misunderstanding desire, the role of religion and tradition as well as a lack of political and legal will. Comprehensive sex education and the expansion of the internet are seen as potential enabling factors for the realisation of sexual pleasure as a human right.

4.2. Gender norms restrict the realisation of sexual pleasure as a human right

Gender norms, and gender inequality, have a profound impact on sexual pleasure.[147] Despite the introduction of human rights law and the liberalisation of the twentieth century, gender relations are still unequal. The patriarchy and capitalism have entrenched sexism into the institutions that make up our world. This has been centuries in the making. To assume that some legal changes in the international human rights space over the last century have undone this work is mistaken. Girls and young women still lack the information, tools and agency to discuss, negotiate or even understand their own desire and pleasure.

Women's sexuality is viewed through a dominant narrative that tends to focus on violence, sexual disease, population growth, domination, mutilation, repression and lack of choice.[148] Therefore, the more problematic and dangerous aspects are centred. Bakare-Yusuf argues that, in this narrative, inhabiting an African female body is to 'live under the daily threat of sexual fear, terror, male rage and violence, disease, psychic suffering and hypersexual reductionism by racist imaginings'.[149] Klugman argues that in Southern Africa, men are often expected to perform their masculinity by having sex with women at a young age, while women are expected to satisfy men and safeguard their sexuality.[150] In other words, men have the right to make all decisions regarding sexual relations, with women demurring to the choices of the men.[151] The economic system is skewed towards men, with women having unequal access to land and economic opportunities, which serves to reinforce their dependence on men. This, in

[147] Ford et al (n 56) 222.
[148] B Bakare-Yusuf 'Thinking with pleasure: danger, sexuality and agency' in S Jolly, A Cornwall & K Hawkins (eds) *Women, sexuality and the political power of pleasure* (2013) 28.
[149] Bakare-Yusuf (n 143) 28.
[150] Klugman (n 56) 147.
[151] Klugman (n 56) 147.

turn, increases the difficulty of refusing unsafe, or unwanted, sex. In many cases, when women are economically reliant on men, sex becomes transactional or a way to survive. This domination of women by men manifests in a lack of civil and political rights, and therefore denies them access to the full range of sexual rights, including sexual pleasure. Of course, not all individuals will have equal access to pleasurable sexual experiences in their lifetimes. Nevertheless, experiences of sexual pleasure are embedded in a gendered context that is skewed against women.

Sexual complaints are more prevalent among heterosexual women than heterosexual men, with women's sexual pleasure being subordinated to men's sexual pleasure.[152] A US survey of individuals with various sexual orientations aged 14-60 found significant differences between perceptions of arousal, pleasure and pain between the surveyed men and women.[153] This study found women and men to differ in the extent to which their last sexual encounter was "quite a bit" to "extremely" sexually arousing (66% versus 84%, respectively), sexually pleasurable (66% versus 83%, respectively), and pain free (70% versus 94,4%, respectively). Dyspareunia, or pain during sex, is therefore much less prevalent in men. A different US study found that women's lifetime estimates of vulvodynia, or chronic vulvar pain, range from 10% to 28% among reproductive-aged women.**[154]** Moreover, the study found that approximately 8% of women may experience symptoms of vulvodynia by the age of 40 years. A Dutch study reported that, among adolescents aged 12-25 years, 46% of women experienced pain during penile-vaginal intercourse, with 11% experiencing pain 'regularly' to 'always'.[155] Similar figures were found in a Swedish study, which added that only half of the women considered pain to be a problem.[156] In this study, almost two-thirds of the sexually active women reported pain during their first sexual intercourse and, for those who had been sexually active in the previous month, close to half of all women had experienced pain and/or discomfort. Half of this sample experienced pain as a problem.[157] This in a country where the government has set goals for sexual and reproductive health that 'accentuate safe and secure sexuality as fundamental for the individual experience of health and well-being'.[158]

In South Africa, a study found that young women receive contradictory messaging in their sexuality education.[159] The explicit message is that young women have agency and that they should take responsibility for their sexuality, but the implicit communication conveys that what they feel about

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[152] Laan et al (n 4) 518.

[153] D Herbenick et al 'An event-level analysis of the sexual characteristics and composition among adults ages 18 to 59: results from a national probability sample in the united states' (2010) 7 *The Journal of Sexual Medicine* 346.

[154] BL Harlow et al 'Prevalence of symptoms consistent with a diagnosis of vulvodynia: population-based estimates from 2 geographic regions' (2014) 210 *American Journal of Obstetrics and Gynecology* 40.e1.

[155] Laan et al (n 4).

[156] E Elmerstig et al 'Young Swedish women's experience of pain and discomfort during sexual intercourse' (2009) 88 *Acta Obstetricia et Gynecologica Scandinavica* 98.

[157] Elmerstig et al (n 151) 100.

[158] E Elmerstig et al. 'Why do young women continue to have sexual intercourse despite pain?' (2008) 43 *Journal of Adolescent Health* 357.

[159] LM Kruger et al '"I could have done everything and why not?": Young women's complex constructions of sexual agency in the context of sexualities education in Life Orientation in South African schools' (2015) 33 *Perspectives in Education* 30.

sex and sexuality on an individual level is not important. Sexuality education reproduces heteronormative gender roles that depict men as sexual initiators and leaders. The girl students are therefore told that they are sexual agents who can take responsibility for their sexual actions but that these actions ought to be in line with existing, heterosexual gender norms that may be in conflict with what they actually desire. They are therefore placed in the impossible situation of being told that they have agency while also receiving messages that contradict this.

The presence or absence of sexual pleasure exists within and reinforces power structures and inequalities, perpetuating current systems oppression.[160] A lack of positive, non-threatening models of masculinity and male sexuality adds to the problem as gender norms shape our understanding of sexuality. The medical and research community has traditionally adopted a narrow understanding of what encompasses sexual activity, with the focus on penile-vaginal intercourse, or penile-anal intercourse when assessing broader populations.[161] This focus is problematic as it relies on cultural assumptions of what counts as sex. In order to reflect the true diversity of human sexuality and make room for same-sex and transgender individuals, a broader range of sexual activities will have to be included. This understanding would acknowledge the full range of dyadic and solo sexual activities, from cuddling and stroking to arousal and orgasm.[162] For example, non-penetrative sexual acts (like oral and manual stimulation) are common and may be more pleasurable among sexually and gender diverse populations.

The obstacles faced by transgender people may be more nuanced than the problems faced by cisgender persons. Much of the research around transgender sexuality has focused on the medical side of gender-affirming care and its impact on sexual health and sexual function, with some more recent research starting to study other factors that influence the sexual satisfaction of transgender people.[163] However, the majority of research on transgender sexual health does not consider sexual pleasure at all and rather focuses on the capacity to have an orgasm, a reductive measure of pleasure.[164] The sexual practices of transgender persons have the potential to enhance sexual satisfaction and pleasure. They do not follow traditional, heteronormative, gendered expectations and include genital and non-genital anatomy during sexual activity.[165] Using the Amsterdam Sexual Pleasure Index, researchers found that transgender persons reported a significantly lower tendency to experience sexual pleasure when compared to data from cisgender persons.[166] In this study, a lower age, more self-reported current happiness and a better genital body image predicted the tendency to experience sexual pleasure in

[160] Ford et al (n 56) 222.
[161] Gianotten et al (n 1) 479.
[162] Gianotten et al (n 1) 479.
[163] NC Gieles et al 'Pleasure please! Sexual pleasure and influencing factors in transgender persons: An ENIGI follow-up study' (2023) 24 *International Journal of Transgender Health* 213.
[164] NJ Bradford & K Spencer 'Sexual pleasure in transgender and gender diverse individuals: an update on recent advances in the field' (2020) 12 *Current Sexual Health Reports* 315.
[165] Gieles et al (n 158) 213.
[166] Gieles et al (n 158) 218.

transgender persons. This suggests that transgender persons face specific barriers to attaining sexual pleasure.

4.3. Consent alone cannot predict sexual pleasure

Over the past few decades, requirements for what constitutes good sex have taken shape and evolved. Currently, in the post #MeToo era, consent and self-knowledge are two of the top requirements for having good sex.[167] It requires people, women in particular, to know what they want and to be able to communicate that to a partner (who, assumedly, will respect what is communicated). In this way, the burden to maintain good sexual relations is placed on the shoulders of women. Their ability to say yes or no to the kind of sex they are offered supposedly protects them from bad sex, or rape. However, consent is an inadequate measure to prevent sexual violence because it quite obviously fails to do so.[168] The idea that consent can prevent sexual harm rests on the false belief that women and men possess and are able to exercise equal rights in sexuality. Moreover, this reliance on consent and self-knowledge conflates consent with desire. It creates an expectation for women to not only know what they want but also to be able to overcome any societal hindrances that aim to shame women's sexual desire and advocate for themselves. This in a society where women are still judged more harshly for sexual behaviours and desires than men.[169]

This is not to say that we must abandon consent. Rather, we must acknowledge its limits in sustaining the weight of our emancipatory desires.[170] Talk of affirmative consent or enthusiastic consent conflates consent with sexual desire, enjoyment and enthusiasm. Consent is, and should be, the bare minimum requirement for good sex. While sexual consent is not explicitly mentioned in international or regional human rights documents, it has an established place in international and national criminal law. When read together, the rights to non-discrimination on the basis of sex and the right to life, integrity and security of the person outlined in the Maputo Protocol can be interpreted as providing protection for women against sex that is unwanted, or not consented to.[171] But consent, on its own, cannot ensure that the sex we are having is good. A broader, more nuanced ethics of sex is necessary in which the role of desire, and pleasure, is more centred. Angel argues that the kind of sexual ethics that we need will allow for obscurity and opacity in order to give room to a desire that is more realistic – more human.[172] Her premise is this: we shouldn't have to know ourselves in order to be safe from violence.

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[167] K Angel *Tomorrow sex will be good again: women and desire in the age of consent* (2021) 10.
[168] J Oriel 'Sexual pleasure as a human right: Harmful or helpful to women in the context of HIV/AIDS?' (2005) 28 *Women's Studies International Forum* 396.
[169] Ford et al (n 56).
[170] Angel (n 162).
[171] Maputo Protocol (n 9) article 2 and article 4.
[172] Angel (n 162).

4.4. Who gets to desire and be desired?

As mentioned in the previous section, desire and consent are often conflated and used interchangeably. The idea that women only consent to sex that they desire is naïve at best and harmful at worse. The nature of sexuality in a patriarchal society has been shown to be unequal. In many societies, sexuality has been subjected to distinct formal and informal controls, that have manifested in repressive sexual practices.[173] In some cases, the desiring woman becomes a transgressive figure since her sexual agency makes her a 'potentially disruptive threat to the containment of women, and to family structures built on meeting the desires of men'.[174] From gender norms to religious expectations, society moulds women to prioritise men's sexual pleasure over their own, even to the detriment of their own enjoyment.[175]

Reis and others argue that inexperienced women report less pleasure than inexperienced men, indicating that women start off their sex lives at a disadvantage.[176] This is attributed to a lack of education on the female body and suggests that sexual pleasure can be learnt. It indicates that we are not teaching women to pursue sexual pleasure effectively. Research indicates that women are more likely to consent to sexual activity that satisfies men's desires under certain circumstances. Specifically, sexual compliance is higher among women who are very young, older in age, or have low self-esteem about their bodies.[177] It is difficult to determine if older women's higher sexual compliance is linked to conservative sexual beliefs, sexual stereotypes about ageing or if it can be attributed to other aspects of long-term relationships.

A Swedish study was conducted to determine why young women continue to have sexual intercourse despite pain.[178] Sexual compliance in the face of bad sex is one thing, but compliance to sex that is painful is something else entirely. The reasons identified in the Swedish study point to the core reason of striving to be identified as an 'ideal woman', as well as resignation to pain, sacrifice of pleasure in order to be seen as an 'ideal woman' who provides pleasure for her partner, and a feeling of guilt at an inability to have 'normal' sexual experiences.[179] The ideal woman is unattainable and is understood as always willing to have sexual intercourse, being perceptive to the needs of their partner, and being able to sexually satisfy them.[180] This idea centres the experience of the man, and does not make room for the desire, or pleasure, of the woman.

Sexual compliance to men's desires negatively affects women's sexual pleasure, and can lead them to faking their orgasms to boost their partner's sexual skills or to strategically end unpleasurable

[173] G Rubin 'Thinking sex: notes for a radical theory of the politics of sexuality' in P. M. Nardi & B. E. Schneider (eds) *Culture, Society and Sexuality: A Reader* (1980) 150.
[174] S Jolly et al 'Introduction' (eds) in S Jolly, A Cornwall & K Hawkins (eds) *Women, sexuality and the political power of pleasure* (2013) 6.
[175] Reis et al (n 61) 509.
[176] Reis et al (n 61) 509.
[177] Reis et al (n 61) 509.
[178] Elmerstig et al (n 153).
[179] Elmerstig et al (n 153) 360.
[180] Elmerstig et al (n 153) 361.

sexual interactions.[181] This leads to what is known as the pleasure gap, or orgasm gap, in which the percentage of men who fake orgasms during sexual encounters is remarkedly lower than the percentage of women who fake their orgasms.[182] The pleasure gap is the manifestation of mismatched sexual rights and equity between men and women. Teaching sexual assertiveness may counteract these inequitable outcomes and enhance women's sexual pleasure.

These contemporary pressures are fuelled by the media and the pharmaceutical industry that set up expectations as to what counts as good sex and how it should be performed.[183] These constructions imply that only particular kinds of people are entitled to sexual pleasure (read: young, beautiful, able-bodied, HIV-negative) and that particular kinds of sex are superior (such as heterosexual, always hard, penis-in-vagina, easily lubricated and aroused, g-spot and clitoral stimulation, and simultaneous orgasms). These depictions of sex do not resonate with most people's experience and set up an unrealistic model that hinders the free exploration of what is sexually pleasurable.[184]

This problem is more complicated when considering people with disabilities. As discussed in the previous chapter, international human rights law states that all humans are equal, regardless of sex or disability. While the African Disability Protocol is still in its nascent phase, it does guarantee sexual and reproductive health rights to all persons with disabilities. However, stereotypes abound, and disabled people are oftentimes seen as asexual or without sexual desire. [185] Due to a number of structural and societal issues, people with disabilities tend to face 'disproportionate levels of difficulty in leading fulfilling sexual lives compared to people without disabilities, despite possessing the same sexual needs and desires'.[186] The Netherlands has introduced the concept of sexual surrogacy, where a disabled person unable to masturbate, can receive government funding for sex (10–15 times a year) through commercial companies that are often comprised of a coalition of sex workers.[187] This practice certainly raises questions around the government's obligation to provide recourse when a person is unable to experience sexual pleasure or sexual satisfaction without external intervention.

4.5. Religion, tradition and sexual pleasure

Traditional cultures are understood to be conservative, oftentimes religious, and espouse sexually conservative values.[188] These traditional cultures view women's sexuality with suspicion and see sexual pleasure as something that is undesirable or even dangerous.[189] Therefore, sexual pleasure for women

[181] Reis et al (n 61) 509.
[182] Reis et al (n 61) 509.
[183] Jolly et al (n 169) 1.
[184] Jolly et al (n 169) 1-2.
[185] MT Carew et al 'The sexual lives of people with disabilities within low- and middle-income countries: a scoping study of studies published in English' (2017) 10 *Global Health Action* 4.
[186] Carew et al (n 180) 1.
[187] L Couldrick and A Cowan 'Enabling disabled people to have and enjoy the kind of sexuality they want' in S Jolly, A Cornwall & K Hawkins (eds) *Women, sexuality and the political power of pleasure* (2013) at 135.
[188] Ford et al (n 56) 220.
[189] Laan et al (n 4) 518.

is 'defined out of existence,' with female chastity and lack of passion become the model and the norm.[190] Men's sexual pleasure, on the other hand, is viewed differently. In terms of procreation, the male orgasm plays a more important role than the female orgasm. A woman does not need to experience sexual pleasure to become pregnant, but she cannot become pregnant without ejaculation following a male orgasm. Therefore, these traditional cultures restrict sex to marriage and privilege virginity (mostly for women) and restrict access to comprehensive sex education by privileging abstinence or faith-based education and valuing duty over individual fulfilment.[191] Women generally have a lower, or subordinate, position in these societies. In some cases, women may be forced into a marriage, as an adult or as a child. [192] Child marriages, forced marriages, and rape are realities that women face around the world, despite human rights documents like the Maputo Protocol stating that 'no marriage shall take place without the free and full consent of both parties'.[193] In cases where women are forced or coerced into a marriage, it is understandable that they will have difficulties with pleasure while experiencing sex unwillingly in their marriage.

Many Western religious traditions, imported to Africa during colonisation, view sex as a 'dangerous, destructive, negative force'.[194] Rubin puts forth a 'domino theory of sexual peril' in which sex is seen as an uncontrollable biological force that has the potential to lead to societal chaos and anarchy when left unrepressed. This culture creates a hierarchy of sexual respectability in order to avoid "societal collapse", with marital, reproductive heterosexuals at the top. [195] This fear may be why risk, danger, sin and shame have, for decades, dominated the discourse around sexuality in culture, academia and medicine. [196] Sexuality has long been a site for social control and the exercise of power and authority.[197] Tamale argues that through the adoption of Christianity through colonialism, Africans were made to reject their beliefs and values in order to adopt the 'civilised ways' of the colonists. [198] The new sexual script, steeped in the 'Victorian moralistic, anti-sexual and body shame edict', was inscribed on the bodies of African women and with it an elaborate system of control.

Religious organisations are often the site for the most negative prescriptive messages about sexuality as it is often in the name of religion or tradition that pleasure remains censored, regulated, controlled and oppressed.[199] This is manifested in problematic medical attitudes, stigma and shame around sex outside of marriage and for reasons other than procreation. Sexual preference and behaviour outside of heteronormativity are particularly condemned. The narrow way in which pleasure is included

[190] Jolly et al (n 169) 9.
[191] Hall (n 67) 30.
[192] Hall (n 67) 33.
[193] Maputo Protocol (n 9) article 6.a.
[194] Rubin (n 168) 151.
[195] Rubin (n 168) 151.
[196] Gianotten et al (n 1) 479.
[197] Gianotten et al (n 1) 479.
[198] S Tamale 'Eroticism, sensuality and "women's secrets" among the Baganda' in S Jolly, A Cornwall & K Hawkins (eds) *Women, sexuality and the political power of pleasure* (2013) at 266.
[199] Jolly et al (n 169) 9; Ford et al (n 56) 222.

(and excluded from) from the narrative disregards the sexuality of transgender and gender non-conforming peoples, as well as disabled people. It creates a sanitised version of sexuality and sexual pleasure that works to ostracise people who do not conform to heteronormative sexual practices.[200] Oftentimes, a pleasure-centric approach to sexual and reproductive health rights (SRHR) is seen as an attack on morality or culture. Ford and others warn against attacks from such sectors of society, as they appropriate the language of human rights to promote their own agendas while limiting others.[201]

The use of vaginal drying agents in a number of southern African countries highlights how gender norms and traditional beliefs stop women from accessing their right to sexual pleasure.[202] The use of these agents dries the vagina to simulate 'virginity' and provide men with a tight sheath, since a wet and relaxed vagina has come to be linked with promiscuity in the region. This not only leads to painful sex for women, but also increases women's vulnerability to STIs as the vaginal walls can be damaged. This is a quintessential example of a culture in which men feel entitled to sex and the pleasure of women is disregarded, or purposefully evaded. This type of practice stems from a lack of understanding of genital arousal, and therefore a lack of education concerning sex. Sexual pain is prevalent even in societies where vaginal drying agents are not used. The high premium placed on virginity in traditional cultures is seen as a large cause of sexual pain and vaginismus.[203] Sexual encounters may generate pleasure while intersecting with structural trauma related to rigid cultural traditions, as well as complex social and legal structures, that prioritise the pleasure of some while limiting or punishing pleasure for others.[204] The reality of our world is that power, and pleasure, are not equally distributed. These cultural, societal and legal boundaries deeply embed sexual pleasure in gender, social class and in social privilege — the same structures that create sexual and reproductive health inequities.

This is why regional human rights documents like the Maputo Protocol call on states parties to challenge gendered social and cultural patterns of conduct education and communication strategies in order to eliminate harmful cultural and traditional practices 'which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men'.[205]

4.6. A lack of legal and political will to aid in the realisation of sexual pleasure as a human right

From the outset, it has been a challenge to convince governments to include sexual rights in their consensus documents.[206] At various global and regional conferences in the latter part of the twentieth century, governments refused to endorse the right of women and girls to bodily autonomy, the rights of

[200] Ford et al (n 56)222.
[201] Ford et al (n 56) 220.
[202] Klugman (n 56) 166.
[203] Hall (n 67) 32.
[204] NM Fava and JD Fortenberry 'Trauma-informed sex positive approaches to sexual pleasure' (2021) 33 *International Journal of Sexual Health* 537.
[205] Maputo Protocol (n 9) article 2.2.
[206] Starrs et al (n 55) 2645.

adolescents to make independent decisions about sexual activity, and the acceptance of diverse sexual orientations and gender identities. This points to a lack of political will to accept women's rights as fundamental human rights. This bleeds over into legal recognition and protection. As discussed in chapter 3, sexual pleasure as a human right has little chance of recognition if the more palatable sexual health and sexual rights are not endorsed.

The initial definition of reproductive rights that emerged from the ICPD and Beijing subsumed sexual health under reproductive health and rights, conflating sexual and reproductive rights. While more recent iterations of sexual health, sexual rights and sexual pleasure create distinct categories, it stands that the definition adopted in Beijing is the most influential statement of sexual rights agreed to by governments of the world, despite its shortcomings.[207] It may be argued that deliberations at the ICPD and in Beijing paid more attention to reproductive health and rights than sexual health and rights. Both conferences conflated sexual and reproductive rights while contextualising these rights within heterosexual relationships, thereby excluding those sexual relationships outside of the heteronormative framework.[208]

There have not been any cases that have used a human rights perspective to argue for sexual rights. One case that could have used a sexual rights paradigm, but chose not to, is *R (Pfizer Ltd) v Secretary of State for Health in the United Kingdom*. The case arose in 1999 when the Health Secretary controversially issued guidance that restricted the prescription of Viagra, an anti-impotence drug, to men with a specified list of disorders.[209] The generic drug is known as sildenafil. The argument put forward by the then Health Minister was based on cost and the allocation of funds to the National Health Service (NHS). To provide a brief overview of the case, the pharmaceutical company Pfizer successfully challenged the decision of the Health Secretary in the English High Court. The Court found that a breach had occurred on the basis of European law and emphasised concern about clinical freedom.[210] No mention of sexual rights was made. The ruling did little to change the restrictions, but the Health Secretary emphasised that the advice regarding the restriction was simply advisory. Despite the judgment in their favour, Pfizer challenged the ruling. In 2002, the Appeal Court ruled in favour of the Health Secretary. This Court held that the criterion of a 'treatment's affordability in the context of competing priorities' is a sufficiently objective and verifiable criterion on which to decide what should be funded.[211]

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[207] Gruskin et al (n 27) 30.
[208] Durojaye and Murungi (n 36) 883.
[209] E Mossialos and M McKee 'Rationing treatment on the NHS—still a political issue' (2003) 96 *Journal of the Royal Society of Medicine* 372.
[210] Mossialos et al (n 204) 372.
[211] *England and Wales Court of Appeal R (ex parte Pfizer Ltd) v The Secretary of State for Health Case C/2002/0860*.

The language used by the state is interesting, as they claim that the expenditure on impotence drugs was above what was expected at 25 million pounds a year.[212] By removing restrictions, they estimated that the total cost would be 125 million, or 100 million pounds extra. The argument, therefore, rested on the strain these drugs place on NHS funds. The state argues that they must find a balance between treating men with impotence and protecting NHS resources to deal with cancer, heart disease and mental health problems. The judgment analyses the extent of clinical need articulated by the Health Secretary, who accepted his department's perspective that erectile dysfunction can cause distress for affected men and their romantic partners. While the Standing Medical Advisory Committee did acknowledge the need to ensure equal availability of these therapies, they additionally pointed out that erectile dysfunction diagnoses stem from self-disclosed symptoms, with no objective or dependable means to quantify severity. The Committee also noted that some men and partners 'tolerate severe erectile dysfunction well'. In light of this counsel, Government officials determined it would prove difficult to focus treatments on the most severely impacted individuals without generating unsustainable pressures on NHS resources.

This judgment is telling. The judge does not take the opportunity to talk about sexual pleasure or sexual wellbeing. Rather, he states that men and their partners 'tolerate severe erectile dysfunction well'. The state fails to grapple with the reality of sexual rights and the impact that sexual dysfunction has on the wellbeing of the individual. Rather, in the preceding judgment, erectile dysfunction is noted as being important but not as important as other spending priorities such as cancer, heart disease or mental illness. The same argument can be made of other health problems, which can be described as well tolerated by sufferers.

Gianotten and others explore the health benefits of sexual pleasure.[213] The short-term benefits include cardiovascular relaxation, pain reduction, sleep improvement, improved immune system function, increases in oxytocin, testosterone and a decrease in cortisol. The intermediate effects include positive influences over mood and depression and sexual function self-maintenance.[214] The long-term effects include increased physical activity, as sex is seen as a form of exercise, and improved overall functioning and longevity. This is pertinent because various forms of physical activity diminish the incidence and the damage of conditions like diabetes, obesity, cardiovascular and cerebrovascular problems. So, if sexual activity could 'count' as physical activity, it would indicate that ensuring people are able to have a fulfilling sex life would lead to improved health outcomes.[215] A study conducted in Britain found that 'sexual activity, quality of sexual life, and interest in sex were positively associated with health in middle age and later life'.[216] The study found that reduced sexual activity and reduced

[212] As above.
[213] Gianotten et al (n 1) 480-482.
[214] Gianotten et al (n 1) 484.
[215] Gianotten et al (n 1) 485.
[216] Gianotten et al (n 1) 485.

sexual satisfaction were associated with 'limiting disability, depressive symptoms, chronic airway disease, and difficulty walking up the stairs because of a health problem' in both sexes.[217]

This is to say that, had the NHS considered the issue from a human rights perspective that was inclusive of sexual rights and sexual pleasure, they may have found that spending more on erectile dysfunction could lead to positive health outcomes in the areas of cancer, heart disease and mental illness. This shows the limits of the state's clinical approach to the case but would require further research. The silence around pleasure in law reinforces societal silences about sexuality. The focus on the negative aspects of sexuality is disempowering and can lead to the wrong solutions for societal challenges. Often in law, only negative representations of sexuality are stressed which, when combined with patriarchal framings from society, supports the policing of sexuality, especially regarding women.

4.7. Sex education and the internet as potentially enabling sexual pleasure as a human right

While there are several obstacles to the realisation of sexual pleasure as a human right, it would be remiss not to mention the positive changes that have taken place. Globally, there is growing evidence of the effectiveness of sex-positive or pleasure-focused education in terms of improved attitudes and health outcomes, such as condom use and other safer sexual behaviours.[218] The research points to pleasure-inclusive interventions leading to a reduction in risky sexual behaviours, which is more than can be said for abstinence-focused education programmes.

Researchers have also studied the widespread access to the internet as a potential enabling factor.[219] The proliferation of access to the internet means that people of all ages have greater access to sexual health education online. The flipside of this access is that people of all ages also have greater access to sexually explicit media. This creates an urgent need for pleasure-inclusive, comprehensive sex education if we want to ensure that pornography is not the key channel for sex education globally. The internet ought to be seen as a tool for sex educators and policy makers, not an obstacle.

4.8. Conclusion

Bad sex is a political and legal issue. It stems from unequal access to pleasure and self-determination. Focusing on women's sexual pleasure does not erase or negate the fight for social justice, equity, economic rights, political access and participation, rather it builds on these goals. If sexual pleasure can be negotiated, then almost any other pressing issue facing women in Africa can be negotiated. Expanding on the analysis of pleasure helps to 'return us to the erotic embodied agency that is a central part of women's lived experience – a part that patriarchal culture tries to muffle, circumscribe and

[217] Gianotten et al (n 1) 485.
[218] Ford et al (n 56) 223.
[219] Ford et al (n 56) 223.

reduce to passivity through a litany of violations and intrusions'.[220] It allows for an understanding of female sexuality that does not centre on victimhood and violation as foundational or inevitable. Popular discourses around women and their sexuality set them up to be always vulnerable and always responsible.[221] Privileging women's pleasure and focusing on overall wellbeing and desire enables us to flip the script about women's sex lives.[222] It shifts the focus from women as perpetual victims and allows room for sex and sexuality to be positive forces in the lives of women.

It is clear that there is an urgent need for governments to protect the rights to security, bodily integrity, and equality in relation to harmful practices that are rooted in unequal gender norms. Notions of consent are too simplistic to carry the weight of our sexual emancipatory desires, especially regarding pleasurable sexual encounters. A more nuanced understanding of desire should be incorporated into our understanding of sexuality. This will not be easy considering the oppressive role played by religion and dominant traditional assumptions surrounding sexuality. The political and legal will must also be strengthened to adopt a more substantive understanding of sexual health, sexual rights and sexual pleasure. The current system falls short of supporting women, transgender and gender non-conforming individuals and ignores disabled people. The system, and those responsible for upholding it, must do better.

[220] Bakare-Yusuf (n 143) 35-36.
[221] Kruger et al (n 12).
[222] Bakare-Yusuf (n 143) 36.

Chapter 5: Conclusion

5.1. Summary

This research was prompted by the desire to examine why women are having bad sex and the role that human rights law can play in acknowledging, challenging and potentially changing it. The research question asked how the Maputo Protocol, as a human rights instrument, can guarantee a right to sexual pleasure. This paper argues that sexuality is political and that it is affected by societal structures and systems of power, which reward and punish behaviours of different groups of people. Sexual pleasure is seen as a fundamental human right that these gendered systems of power threaten. Although there is no express mention of the right to sexual pleasure in international or regional human rights instruments, we can infer the right to sexual pleasure through the rights to equality and non-discrimination, autonomy and bodily integrity, the highest attainable standard of health, and freedom of expression as highlighted by the Global Advisory Board for Sexual Health and Wellbeing and the World Association for Sexual Heath.

5.2. Conclusion

It has been argued that, when interpreted with an intersectional feminist lens informed by legal discourse, the Protocol does guarantee a right to sexual pleasure. Articles 2 (Elimination of Discrimination Against Women), 4 (The Rights to Life, Integrity and Security of the Person), 5 (Elimination of Harmful Practices), 12 (Right to Education and Training) and 14 (health and Reproductive Rights) all provide a foundation on which the right to sexual pleasure can be bolstered.

In order to realise the right to sexual pleasure, society must embrace non-discrimination and enhance the overall wellbeing of women. In line with this, states must take steps to prevent violence against women and promote behaviour through education that emphasises sexual equality and embraces sexual rights and sexual pleasure. This includes steps to eradicate any harmful practices which act as obstacles to the realisation of sexual rights and sexual pleasure. When women are empowered to control their sexual and reproductive health, they are more likely to create contexts for themselves in which sexual pleasure will be possible. These rights laid out in the Maputo Protocol have largely been agreed upon, except for select states that have entered reservations to certain articles.

Regarding the sub-research questions, it has been shown that sexual pleasure, sexual rights and sexual health are interconnected but distinct categories. Sexual rights are seen as distinct from reproductive rights and allow for wider protection of disabled people and sexual minorities. Reproductive rights are viewed more heteronormatively.

The question regarding the obligations that governments have regarding sexual pleasure is more nuanced. Since sexual pleasure as a human right is such a contested topic, it is difficult to impose

obligations on governments. However, given that the African Commission noted in General Comment No. 2 that countries had not done enough to domesticate provisions surrounding sexual and reproductive rights, one can infer that obligations do exist. If one reads sexual pleasure into the Maputo Protocol as this paper has done, then governments are obligated to respect, protect, promote and implement the right to sexual pleasure of all persons irrespective of gender and age. This obligation arises from various international and regional human rights instruments, which recognise the importance of sexual pleasure as an integral component of human dignity, autonomy, and wellbeing.

Chapter 4 laid out the obstacles that are inhibiting the realisation of sexual pleasure as a right. They are identified as problematic gender norms, over-reliance on consent, misunderstanding desire, religion and tradition as well as a lack of political and legal will. This list is by no means exhaustive. It is important to grapple with the obstacles facing the implementation of sexual pleasure as a human right because it allows us to imagine a female sexuality that is not centred around victimhood and does not see sexual violence or violation as inevitable. To promote sexual pleasure as a human right is to privilege women's pleasure and focus on overall wellbeing and desire.

5.3. Recommendations

Several studies have shown that pleasure-inclusive messages attract more attention, are more easily remembered, and are less likely to induce counterarguments than non-sexual messages.[223] This suggests that pleasure is an effective communication path to take when releasing sexual health messaging. Since sexual pleasure is a significant motivating factor to engaging in sexual acts, it would be prudent for states parties to adopt a prescriptive model of sexuality and sexual health, a break away from the sex education campaigns which mirror harmful gendered and stereotypical cultural norms.[224] This would create health messages that protect people better than messages devoid of pleasure do. If sexual health programs incorporate sexual pleasure, it is more likely that they will meet the real needs and realities of the people they hope to support.

If the current political system is to rise and support women, transgender and gender non-conforming individuals and to make room for the sexuality of disabled people, it must recognise sexual pleasure as a human right. The system, and those responsible for upholding it, must expand on their understanding of wellbeing and the role that sexual pleasure plays in it.

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[223] Ford et al (n 56) 218.
[224] Ford et al (n 56) 220.

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