HEALTH AND HUMAN RIGHTS – A HISTORICAL PERSPECTIVE

HELENA NYGREN-KRUG, WHO

Introduction

The Universal Declaration of Human Rights (UDHR) was adopted sixty years ago by a world that had just experienced the Holocaust and the other horrors of the Second World War. It was a world acutely aware of the importance of safeguarding human rights as the framework to govern the relationship between governments and their people. At the heart of human rights lies the commitment to the inherent dignity and equality of every human being. The Universal Declaration proclaimed “freedom from fear” and “freedom from want” as the highest aspiration of all peoples. The WHO was established during the same era. It is, therefore, not surprising that “the enjoyment of the highest attainable standard of health as a fundamental right of every human being” was enshrined in WHO’s Constitution, which entered into force in 1948, the same year as the adoption of the UDHR.

The UDHR and the Constitution of the WHO are more relevant than ever today, as we celebrate their anniversaries. Globalization has brought an increased flow of money, goods, services, people and ideas. Yet, gaps are widening, both within and between countries – in life expectancy, in wealth, and in access to life-saving technology. Those left behind, and experiencing poverty and ill health, feel increasingly disempowered, marginalized and excluded.

The evolution of health & human rights

When the UDHR was adopted, it set out economic, social, cultural, and civil and political rights with the same emphasis. When the time had arrived to convert the provisions of the Declaration into binding law, however, the Cold War had overshadowed and polarized human rights into two separate categories. The West argued that civil and political rights had priority and that economic and social rights were mere aspirations. The Eastern bloc argued to the contrary: that rights to food, health and education were paramount and civil and political rights secondary. Hence two separate treaties were created in 1966 – the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

For decades, since the adoption of the Universal Declaration, the Cold War impeded any real efforts to advance health as a human right. Economic and social rights, which are the category to which the right to health belongs, were considered more as aspirations than legal entitlements. In this context, the Declaration of Alma Ata on Primary Health Care in 1978 reaffirmed health as a human right in the context of upholding the attainment of the highest possible level of health as an important world-wide social goal. In the late ‘80s, there was an awakening within the public health community of the importance of human rights as an integral component of an effective and sustainable HIV/AIDS programme or policy. This awakening focused primarily on civil and political rights dimensions of HIV/AIDS, such as freedom from stigma and discrimination and rights to privacy, participation and information.

Since the end of the Cold War, a new era for the promotion and the protection of human rights emerged marked by the World Conference on Human Rights in 1993, whereby the international community endorsed the interdependence of all human rights – civil, cultural, economic, political and social. In 1997, the UN Secretary-General initiated the UN reform programme, which set out human rights as a cross-cutting activity of the UN. With the advent of the new Millennium, both the international human rights and public health movements have demonstrated trends of increased awareness and more systematic application of human rights beyond HIV/AIDS to a range of public health challenges, as well as recognition of the right to health as an important tool to tackle health inequalities.

In 2000, the UN Committee on Economic, Social and Cultural Rights (the UN human rights treaty body which monitors States Parties’ compliance with the International Covenant on Economic, Social and Cultural Rights) set out its interpretation of the right to health. Importantly, it stated that the right to health is an inclusive right. It is not just about access to health care services but also the underlying determinants of health. These are much broader and include safe drinking water, adequate sanitation, and an adequate supply of safe and nutritious food, healthy occupational and environmental conditions, and access to information, including information about sexual and reproductive health. Further, the Committee set out the key elements of the right to health. It stated that health care
and underlying determinants must be available, accessible, acceptable and of good quality, paying particular attention to the most vulnerable and marginalized groups in society.

Of course, the right to health cannot be realized overnight. There are resource limitations. This is why the principle of progressive realization is critical when we assess progress. The right to health obligates governments to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the right to health. This means taking deliberate, concrete and targeted steps and demonstrating, when reporting to international human rights monitoring mechanisms, how governments are moving as expeditiously and effectively as possible towards the realization of the right to health.

Another important development, at the international level, was the appointment in 2002 by the UN Commission on Human Rights (now replaced by the UN Human Rights Council) of a UN Special Rapporteur on the Right to the enjoyment of the highest attainable standard of physical and mental health – an independent expert tasked with monitoring and reporting on the enjoyment of the right to health globally. At the national level, increasingly, constitutions are enshrining the right to health and we are beginning to see a significant amount of jurisprudence generated.

The UN system is now increasingly embracing a human rights-based approach as its common and overarching framework for analysis and programming in all sectors. This means that the goal of the UN’s actions is explicitly set out as the realization of human rights. Moreover, the process towards achieving this goal is consistent with human rights principles. Such principles include equality and non-discrimination, the right to participation, accountability and rule of law. Equality demands that actions in health go beyond statistical averages and identify vulnerable and marginalized groups. In addition, beyond identifying the most vulnerable, these groups should be engaged as active participants and generators of change. This is not only to ensure that health policies and programmes are inclusive. It is also a question of empowering people. This responds to one of the greatest challenges for global development which is how to weaken the web of powerlessness so that people, particularly those living in poverty, can take more control over their lives. Finally, a human rights based approach focuses on building the capacity of rights holders to claim their rights and duty-bearers to meet their obligations.

**Conclusion**

Human rights provide a universally recognized legal framework for the UN and its Member States. The theme of the campaign to celebrate the UDHR, “Dignity and justice for all of us,” reinforces the vision of the Declaration as a commitment to universal dignity and justice and not something that should be viewed as a luxury or a wish list. This commitment shifts the normative foundation of our work from responding to needs to the fulfilment of rights, and from the optional realm of charity to the mandatory realm of law. For us working in health, it means that health is not a commodity but “one of the fundamental rights of every human being” as articulated in the Constitution of the WHO sixty years ago. Our wise foremothers and forefathers gave us a clear vision and mandate, now we need to muster the courage and resources to implement it.

**Website:** www.who.int/hhr