



MMS Bulletin #123

Gesundheit - ein Menschenrecht

The World Health Assembly Resolution on the Human Right to Health

A Tool to Encourage increased Investment in Health

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The WHO is the global entity tasked with facilitating international cooperation on health. A resolution on the right to health that encourages WHO to adopt and implement a rights-based approach to health is an opportunity to emphasize the importance of the right to health and to take a step towards ensuring this right for all people.



The right to health has been nearly universally agreed upon by States in numerous international treaties and declarations. The World Health Organization (WHO) is the specialized agency within the wider United Nations family that has been mandated to strive towards promoting the highest attainable level of physical and mental health for all people everywhere. Its work is guided by the World Health Assembly, the plenary body of WHO in which all States participate. Through its resolutions World Health Assembly both expresses the views of States in relation to their international obligations as well as contributes to setting priorities for the work of WHO's Secretariat.

In light of the recent effort by member States to prioritize the rights-based approach to health, possibly through the adoption of a resolution by the World Health Assembly in May 2012, it is useful to outline how this has come about and where this movement may be headed. To accomplish this goal we first very briefly describe where the right to health has been agreed upon by States. We do not go into a discussion of what the right to health means as that requires more time and is a discussion that has been begun elsewhere. Instead we focus on how the right to health has been considered within WHO and its partners in the past and in recent years. This discussion is not exhaustive, but rather tried to identify on some important milestones. We conclude by discussing the value-added of World Health Assembly resolution on the right to health focusing on the value it will add to WHO's work and what this effort requires from States and civil society.

The objective of this relatively short consideration of the right to health is to take stock of some of the most recent developments and especially to review its development – both past and present – in the WHO.

The Right to Health

Health has been a concern of governments for some time. Under the League of Nations (LON), which was created after World War I, there existed the League of Nations Health Organization that consisted of four parts. At the time the League's mandate on health was limited to "general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs." (Art. 23(c) of the Covenant of the League of Nations, 1919) In fact the real authority over public health was apparently given to Red Cross Movement whereby the States "Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world." (Id. art. 25)

Nevertheless, in accordance with its mandate to organize international action generally in article 24 of its Covenant, the League of Nations Health Organization undertook to coordinate international action on health. Its action consisted of coordinating: a Health Committee made up of public health specialists whose main function was to advise the LON Council and Assembly on important matters of international public health; a General Advisory Health Council; an Advisory Committee of the Eastern Bureau of Epidemiological Information; and a secretariat that also served as the Health Section of the Secretariat of the League of Nations. (League of Nations Archives) The General Advisory Health Council was established by the Permanent Committee of the Bureau international d'hygiène publique, an autonomous entity created in Paris in 1909. And the Advisory Committee of the Eastern Bureau of Epidemiological Information was established independently in Singapore in 1924. (League of Nations Archives)

These bodies undertook public health functions such as the prevention and control of diseases, surveillance of epidemics, the evaluation of vaccines and biological products, encouraged the exchange of health personnel, organized conferences and courses, promoted rural hygiene, nutrition, and urban and rural housing, etc. (League of Nations Archives) It is also evident that the LON Health Organization had a relatively narrow mandate based on the benevolent concern of States and not the distinct right of individuals.

When the United Nations was formed after World War II, the activities and institutions of the LON were transferred to it. In order to better undertake the LON's activities related to international health, the World Health Organization was created in 1945 as Specialized Agency of the United Nations. The preamble to the WHO Constitution describes health through a rights-based prism stating that "[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being." (WHO Constitution) Although this principle was not legally binding because it does not appear in the operative paragraphs of the

Constitution, its reiteration through numerous other human rights instruments that have been ratified by the overwhelming majority of States has undoubtedly elevated it to a principle of international law today.

WHO itself was involved in ensuring that the right to health was recognized by the international community as part of international human rights law. The first Director-General of WHO, Brock Chisholm, was instrumental in ensuring WHO's role in transforming article 25 of the Universal Declaration of Human Rights that contains the first clear expression of health as a human right into a legally binding obligation in International Covenant of Economic and Social Rights. (Meier 2010) After Chisholm left WHO in 1953, however, the organization "remained on the sidelines" as the right to health was developed in numerous other international human rights instruments. (Meier 2010)

Attempts to revive the rights-based approach in the movement concerned with health for all, were only partially successful in regaining the momentum that had been lost. Most notable among these efforts was Declaration of Alma-Ata that reaffirmed the human right to health and strove to encourage universal health coverage (WHO, Declaration of Alma Ata) and a WHO resolution on international cooperation that reaffirmed that "the right to health is a fundamental human right" and "considered that the health aspect of human rights in the light of scientific and technological progress is within the competence of the World Health Organization." (WHA23.41 (21 May 1970).

But while the rights-based approach was begrudgingly being accepted by WHO, rapid progress was being made by the human rights community toward recognizing the right to health. Civil society actors were as pushing for the wider recognition of the right to health in numerous countries. Several treaties were adopted recognizing the right to health. Some of the leading treaties are listed in panel I.

Panel I. International Legal Instruments Recognizing Health as an International Human Right

- WHO Constitution (1946)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child,
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- Convention on the Rights of Persons with Disabilities
- African Charter on Human and Peoples' Rights
- Protocol to the African Charter concerning violence against women
- African Charter on the Rights and Welfare of the Child
- San Salvador Protocol to the American Convention on Human Rights
- European Social Charter of the Council of Europe
- Charter of Fundamental Rights of the European Union
- Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms
- Arab Charter on Human Rights
- Charter of the Association of South East Asian Nations

These treaties, in addition to being the solemn legal undertakings of States, have created an undisputable corpus of *opinio juris* and State practice in support of the human right to health as principle of customary international law.

The health movement has adopted this approach. For example, Dr. Halfdan Mahler, the Director-General of WHO that championed the 'Health for All' concept that is fundamental to the Declaration of Alma-Ata, after leaving WHO became a leading figure in the Peoples Health Movement, a collective of over 4000 civil society actors represented in almost every country in the world, which bases many of its representations on the rights-based approach to health. When the Convention on the Rights of the Child was being drafted Save the Children Sweden (Rädda Barnens) included the right to health of children in the Convention from the very beginning. (UN Legislative History)

WHO has been involved in these movements encouraging a rights-based approach, but often in the background rather than at the forefront. This situation appears to be true today despite the fact that WHO has more than a dozen staff working on the right to health in organization-wide or specific cluster or departmental capacities.

There are recent signs that this is changing. The WHO appears to have begun to feel more comfortable with the rights-based approach to health encouraged by its regional office for the Americas. The Pan-American Health Organization, which functions as both the WHO regional office for the Americas and the health body of the Organization of American States, has led the way with its consistent support for a rights-based approach over approximately 20 years. Since 1990s PAHO entered into cooperative agreements with academic institutions to examine how health policy can be guided by the rights-based approach. At the same time, PAHO launched country projects to examine how the rights-based approach could improve the delivery of health services. The success of these efforts at cooperation has been used by the PAHO Director Dr. Mirta Roses Periago to use the rights-based approach within the organization and in its relations with States. (Periago 2006) PAHO's 2008-2012 Strategic Plan included the rights-based approach to health (PAHO OD-328) and in September 2010 the Directive Council of PAHO adopted a resolution on Health and Human Rights. (PAHO Resolution CD50.R8)

As the recent Executive Board resolution emphasizes WHO is a State-driven organization and it is therefore governments that need to determine the WHO's priorities. In part they have done this. As already indicated, the WHO Constitution stresses that the right to health is a principle that States have accepted. Subsequent, resolutions by the WHO's World Health Assembly have also reaffirmed the human right to health. (See, for example, WHA23.41 (1970), WHA51.22 (1998) WHA64.9)

The 11th General Programme of Work (GPW) for 2006-2015 identifies "promoting ... health-related human rights" as one of its seven priorities areas and further states that: "In its relations with the United Nations, WHO will place particular emphasis ... on cross-cutting issues such as ... human rights ..." (WHO Engaging for Health) In 2007, WHA adopted the Medium-Term Strategic Plan (MTSP) for 2008-2013 to operationalize the GPW. Strategic Objective 7 of the MTSP addresses policies and programmes that enhance human rights-based approaches. (WHO's Mandate on Health and Human Rights, Item 5, 2011)

At its Executive Board in January 2011 (EB128.R8) and subsequently at its World Health Assembly in May 2011, the Member States of WHO adopted a resolution on Sustainable Health Financing Structures and Universal Coverage, which in its third preambular paragraph quotes paragraph 1 of article 25 of the Universal Declaration on Human Rights that introduces contains the right to health.

WHO has continued to reiterate its attention for the human right to health in the reform process in a recent report issued by the Director-General. (WHO reforms for a healthy future: WHO Doc. EBSS/2/2 (15 October 2011) at paras. 20 and 37) This aspect of the report, however, received no attention from States or NGOs at the Executive Board Special Session held from 1 to 3 November 2011 for the purpose of considering WHO reforms.

Nevertheless, at a conference on the Social Determinates of Health held from 13 to 15 October 2011 in Rio de Janeiro, Brazil with the cooperation with the WHO Secretariat, Member States adopted the Rio Declaration that reiterates a commitment to the rights-based approach to health in paragraphs 6 and 16.2. (Rio Political Declaration on Social Determinants of Health, 21 October 2011)

While the record is mixed, recent developments appear to show that both the WHO and its Member States are confirmed in their support for a rights based approach to health. It is relevant therefore to at least briefly explore what value such an approach adds to efforts to achieve the highest attainable mental and physical health for all persons. Specifically, what does a WHA resolution on the right to health add to our efforts towards achieving health for all.

The Value-Added of a WHA Resolution on the Right to Health

Health is described as a state of being in the World Health Organization's Constitution and by numerous writers. The WHO was created by the international community of States to help all people to attain this state of being. As such the WHO is an inter-governmental organization that is driven by its States and founded on the responsibilities that States have for ensuring the health of their populations. This is a responsibility that States usually strive to accomplish through domestic action, however today it is impossible to take effective domestic action on health without international cooperation. The international human right to health is a consequence of this situation of globalization and interconnectedness of the people of the world.

The WHO is the global entity tasked with facilitating international cooperation on health. One of the most important means by which States set the priorities for the WHO Secretariat and the Director-General is through WHA resolutions. A resolution on the right to health that encourages WHO to adopt and implement a rights-based approach to health is an opportunity to emphasize the importance of the right to health and to take a step towards ensuring this right for all people. It thereby builds on the overlying principle in the WHO Constitution that health is one of the fundamental rights of every human being.

A WHA is particularly timely given WHO's reform efforts. The expected result of the WHO reform process is "greater coherence in global health ... improved health outcomes ... and an organization which pursues excellence; one that is effective, efficient, responsive, objective, transparent and accountable." (The future of financing for WHO, 2011) The reform strives to focus WHO on core competences. Striving to achieve the human right to health is a core competence as it is clearly identified as a guiding principle of all that WHO does in the WHO Constitution. A resolution stating this obvious fact will help to achieve to focus the WHO reform process in the right direction.

The reform process also more specifically includes priority setting. The priorities of WHO should both be consistent with and an expression of efforts to achieve the right to health. In this respect, a WHA resolution could play an important role in ensuring that WHO prioritizes to the end of the achieving the right to health and not merely, for example, to deal with resource constraints.

Finally, the drafting of a strategy for mainstreaming human rights in WHO has already been agreed within WHO. The process has been started under the authority of one of the WHO clusters or Assistant Director Generals, Dr. Flavia Bustreo, with the assistance of the former UN Special Rapporteur on the Human Right to Health, Professor Paul Hunt. A WHA resolution is urgently needed to guide this process and ensure that it focuses on the rights-based approach to health that States themselves have agreed to in the numerous legally binding and declaratory agreements of States previously mentioned.

The practical implications of integrating human rights in the work of WHO would include having human rights as a standard of assessment of health policy and practice. It would mean using human rights as an analytical framework for contextualizing the broad determinants of health within and beyond the health sector. The implementation of such a resolution would require WHO to engage with international and regional human rights systems, and would enhance cooperation between WHO and the UN Human Rights Council's Special Rapporteur on the Right to Health.

It is also an opportunity for States to reiterate a concern that they have repeatedly and in solemn legally-binding instruments obliged themselves to respect—the achievement of the highest attainable standard of mental and physical health for all.

Cooperation between the states is necessary for ensuring the right to health. No country has successfully achieved respect for the right to health, yet most governments honestly want to achieve respect for this right.

The value added of such a resolution is in reiterating states' commitment to the Right to Health. The strategy for health, based on the concept of human dignity, would empower the WHO in its work and guide the Secretariat in prioritizing and focusing its activities. The resolution would facilitate setting international norms and standards of the Right to Health and providing consistent guidance to the Member States. It would move health higher on political agenda. It would allow WHO to better use its resources. WHO will not need new resources, just need to focus them better.

The Resolution on the Right to Health would increase human rights perspective at a state level. The right to health has enormous potential to close health inequities, meeting the needs of marginalized, vulnerable, and disadvantaged populations, based on a non-discrimination principle. A right to health approach involves participation of people in health-related decision-

making, including planning, monitoring and evaluation. It would contribute to raising awareness of health workers on gender related issues, including sexual and reproductive health, help confront discrimination and improve access to medicine.

Strengthening a human rights component in WHO would impact state health systems and health communities in general, as WHO credibility is overwhelming. Educating people on their rights would empower them to claim these rights. A right to health approach would hold governments accountable to their commitments and obligations. The states would need to ensure that health facilities, goods and services – including underlying determinants of health – are available, accessible, acceptable, and of good quality. There are some good examples of work in this direction already. Implementing a policy of universal coverage without user fees, deploying health workers teams to poor areas, and reducing regional disparities has enabled Brazil to eliminate disparities among wealth quintiles for skilled birth attendant coverage. (Buttha 2011)

Another good example of work enhanced by a human rights approach is the cooperation of Australian government in rebuilding of the health system of East Timor. The outline of a new health system was defined in Melbourne in 1999, based on principles of equity, acceptance of cultural diversity and accountability to the Timorese people. (Alonso 2006) Dr Tulloch, one of the outstanding medical experts of World Health Organization (WHO) was given the full responsibility for setting up the overall health infrastructure in East Timor and for supervising and organizing health services in 2000-2001. (WHO Note for the Press No 9 (31 July 2000)

The rights-based approach to health is closely linked to WHO progress on social determinants and Millennium Development Goals (MDGs). At the 2010 Follow-up to the Outcome of the Millennium Summit, UN Member States recognized that the respect for and promotion and protection of human rights is an integral part of effective work towards achieving the MDGs. (UN General Assembly, 19 October 2010) “Promoting comprehensive systems of social protection that provide universal access to essential social services .. by establishing a minimum level of social security and health care for all” was mentioned under MDG1. (UN General Assembly, 19 October 2010) Rights-based approach to health was particularly mentioned in relation to MDG3 –preventing and combating violence, (UN General Assembly, 19 October 2010) MDG5 – “taking steps to realize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including sexual and reproductive health,” ((UN General Assembly, 19 October 2010)) and MDG6 – increasing capacity to protect from the risk of HIV infection through the promotion and protection of all human rights. (UN General Assembly, 19 October 2010) Therefore, it is a good moment to introduce the resolution on the right to health now.

The resolution would give direction for developing monitoring and evaluation mechanisms to promote accountability at the national, regional and global levels. Adding human rights perspective to health would increase the scope of analysis of WHO work at all levels, and boost the range of partners. Integrating human rights in the work of WHO would contribute to development of tools and guidance to better address poverty and ill-health.

This is an effort by governments and they need to discuss the text of the resolution. Their active engagement and leadership in this initiative will ensure necessary support of the resolution. The governments can organize consultations at national and regional levels to receive feedback and build consensus on the elements of the resolution. They can get in contact with other states by email, phone and in face-to-face meetings and take an opportunity to discuss the human right to health and encourage their colleagues to work on the text of the resolution. The states can continue involving their diplomatic missions in Geneva in order to ensure coordination of the contributions of Member States in their regions to the text of the resolution.

The environment is prepared for the resolution to go forward. All European States have already agreed to the right to health in European Social Charter and supporting the resolution on the right to health would be consistent with states' commitments to achieving commonly agreed health goals.

Some NGOs have already adopted rights-based approach. By supporting the effort to encourage States to adopt a WHA resolution emphasizing the rights-based approach to health they urge States to do same. NGOs need to understand rights-based approach holistically... cooperation as well as obligations by States to those under their jurisdiction. The resolution on the right to health will be another tool to encourage increased investment in health by States and to ensure accountability by all actors. A means to achieve greater participation opportunities and rights within and with WHO, the resolution will serve as a reminder of the universal, indivisible, interdependent and interrelated nature of human rights.

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