

Human Rights and the Right to Health

Lecture 10
Social Determinants of Health and Health Inequalities

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What are human rights?

- Being imprisoned without trial
- Suffering from poor health because of cold weather
- Being denied ART because of your ethnicity
- Being denied ART because of your sexuality
- Being denied ART because you are poor
- Being called a derogatory name

Blatant violation of human rights affecting the health of both individuals and populations continues. Examples include the torture of detainees in Abu-Ghraib prison in Iraq; systematic rapes and murders in the Balkans, Rwanda, Chechnya, and Darfur; physician involvement in torture, botched executions; inhumane experimentation; and questionable interrogation techniques in the so-called war on terror. Such violations of human rights can be engineered by or endorsed by governments, institutions of power, and individuals. These deplorable violations exist alongside more subtle activities that also have severe and long-lasting effects on health and human rights such as absence of basic health-care systems; policies keeping medicines unaffordable; and tolerance of discrimination against groups such as injecting drug users, people with mental-health disorders, illegal immigrants, or homeless people. The continuing and foreseeable absence of access to effective care for most people living with most diseases in poor countries can also be viewed as a violation of human rights. Therefore human rights should be imperative in delivery of care and implementation of public-health programmes.

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Where does the idea of human rights come from?

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.
—United States Declaration of Independence, 1776

Conception of universal (and global) rights

- Aftermath of the Second World War
- UN Charter

Roosevelt (1941)

Four freedoms

- Freedom of speech and expression
- Freedom of worship
- Freedom from want
- Freedom from fear

UN Charter (June 1945)

- Primarily concerned with the prevention of future wars
 - but contained provision for “human rights and fundamental freedoms for all without distinction as to race, sex or religion”

Universal Declaration of Human Rights (December 1948)

- 58 countries entitled to vote
 - 48 voted in favour and 8 abstained (Soviet bloc + Saudi Arabia + SA)
 - 30 articles

UDHR Preamble

Whereas recognition of **the inherent dignity and of the equal and inalienable rights of all members of the human family** is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy **freedom of speech and belief and freedom from fear and want** has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that **human rights should be protected by the rule of law**,

Whereas it is essential to promote the development of friendly relations between nations,

UDHR Preamble

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas **Member States** have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas **a common understanding of these rights and freedoms** is of the greatest importance for the full realization of this pledge,

UDHR Preamble

Now, therefore, the General Assembly, proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that **every individual and every organ of society**, keeping this Declaration constantly in mind, **shall strive by teaching and education to promote respect for these rights and freedoms** and by progressive measures, national and international, to secure their universal and effective recognition and observance, both **among the peoples of Member States themselves and among the peoples of territories under their jurisdiction**.

Article 1

All human beings are born free and equal in dignity and rights.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in **slavery or servitude**; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration ...

Article 9

No one shall be subjected to arbitrary arrest, detention or exile. discrimination.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the **right to leave** any country, including his own, and to return to his country.

Article 14

1. **Everyone has the right to seek and to enjoy in other countries asylum from persecution.**
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have **the right to marry and to found a family**. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. **The family is the natural and fundamental group unit of society**

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion;

Article 19

Everyone has the right to freedom of opinion and expression;

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.

Article 22

Everyone, as a member of society, has **the right to social security** and is entitled to realization, **through national effort and international co-operation and in accordance with the organization and resources of each State**, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Foundations

- Religious
- Instinctive / Emotive
- Ideological
- Cultural
- Philosophical

Health Rights – WHO, 1946

- “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.
- Health defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity

Universal Declaration of Human Rights

Article 25

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Signed when there was racial segregation in the US; colonialism and imperialism practiced by Britain; and more than a 1 million people interned in Soviet gulags

- A declaration is just a declaration ...
- Needed a legally binding covenant
 - International Covenant on civil and political rights
 - International Covenant on economic, social and cultural rights

- negative rights - positive rights
- first generation - second generation

International Covenant on Economic, Social and Cultural Rights

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - b) the improvement of all aspects of environmental and industrial hygiene;
 - c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

1978 Alma Ata Declaration

- The Conference strongly reaffirms that health, which is a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity, is a **fundamental human right** and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization **requires the action of many other social and economic sectors in addition to the health sector.**

- It was not until 2000 that an authoritative understanding of the right to health emerged when the UN Committee on Economic, Social, and Cultural Rights, working in close collaboration with WHO and others, drafted and adopted General Comment 14.
- Although not legally binding, the comment is an authoritative interpretation of article 12.

General Comment 14, 2000

- The right to health is not a right to be healthy (article 8)
- Because states cannot immediately realise the right to health, the language of ‘progressive realisation’ was introduced (through ‘deliberate, concrete and targeted steps’)
- But there are some ‘core obligations’ ... (which are not subject to progressive realisation or resource availability)

General Comment 14, 2000

- Obligations of government to provide essential elements of a well functioning health system (availability; accessibility; acceptability and quality)
- 3 types of obligations / duties of states (commonly referred to in human rights doctrine):
 - respect (non discrimination and non coercion by government)
 - protect (from third parties)
 - fulfil (positive obligations)

General Comment 14, 2000

States are also obliged to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence.

General Comment 14, 2000

- Obligation of states to provide economic and technical assistance in the face of global health inequalities
- Duty to provide disaster and humanitarian relief
- States should not undermine the health of other citizens
- States have a duty to prevent third parties from undermining the RTH (explicit reference made to policies of WB and IMF)

To what extent are state complying with their obligations and duties?

Backman G, Hunt P et al, 2008. Health systems and the right to health: an assessment of 194 countries. Lancet 2008; 372: 2047–85

Problems associated with human rights

- Reinforce inequity
- Individualism versus social / communitarianism
- Distortion of priorities
- Litigation
- Ignores heterogeneity

The historical significance of HIV

- Nelson Mandela: HIV is not just a disease; it has become a human rights issue

Rights ... and duty bearers

- A key point about 'rights' is that it shifts the distribution of power and status.
- Those with rights have enforceable claims (and need not rely on simple goodwill or charity)
- This implies that some actors / institutions have duties to ensure the fulfilment of rights

The universalisation of Human Rights

...

- Two roles
 - Provide a statement of the minimum moral obligations owed to human beings simply by virtue of their existence as human beings
 - Generate a mechanism of accountability beyond the nation state

Broad Orientations

Until recently, three broad orientations to the right to health predominated:

- (1) legal approaches grounded in UDHR and ICESCR
- (2) ethical approaches grounded in moral philosophy;
- (3) symbolic or rhetorical approaches.

Two new orientations?

- (4) translation into policy making and evaluation
- (5) application to clinical practice

Willen 2011, MAQ

Roles, rights, obligations and responsibilities

- Primary responsibility for protecting and enhancing health equity rests in the first instance with national governments (CSDH-WHO).
- According to Amartya Sen (2002), "health equity cannot only be concerned with inequality of either health or health care, and must take into account how resource allocation and social arrangements link health with other features of states of affairs."
- Anand (2004) points out that health is a special good, whose equitable distribution **merits the particular concern of political authorities** for two principal reasons: health is directly constitutive of a person's well-being and health enables a person to function as a social agent.
- Inequities in health compromise **freedom, social justice** and **human rights**, and when there is inequity; governance has failed in one of its prime responsibilities.(CSDH-WHO)

Legal versus political

- "It is not inequalities that kill people. It is the people who produce and reproduce inequalities through their public and private interventions that kill people. In most cases, we have the specific names of those responsible for those inequalities and, therefore, for those deaths."

Navarro V. The importance of politics in policy. Aust NZ J Public Health 2011, 35, 313.
