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WHO: Past, Present and Future

The evolution of human rights in World Health Organization policy and the future of human rights through global health governance

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ABSTRACT

The World Health Organization (WHO) was intended to serve at the forefront of efforts to realize human rights to advance global health, and yet this promise of a rights-based approach to health has long been threatened by political constraints in international relations, organizational resistance to legal discourses, and medical ambivalence toward human rights. Through legal research on international treaty obligations, historical research in the WHO organizational archives, and interview research with global health stakeholders, this research examines WHO's contributions to (and, in many cases, negligence of) the rights-based approach to health. Based upon such research, this article analyzes the evolving role of WHO in the development and implementation of human rights for global health, reviews the current state of human rights leadership in the WHO Secretariat, and looks to future institutions to reclaim the mantle of human rights as a normative framework for global health governance.

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Introduction

Looking to human rights under international law as a basis for public health, this article analyzes the evolving operationalization of a rights-based approach to health in the World Health Organization (WHO). This research traces WHO's early leadership in developing international legal obligations, squandered opportunities to implement a rights-based approach to health, failed effort to employ rights-based language for primary health care, and rediscovery of

human rights protections in response to the HIV/AIDS pandemic. With WHO now attempting a more systematic mainstreaming of health-related rights, an initiative given new focus under the current reform process, it is necessary to examine the enduring challenges to human rights in WHO policy. By tracing the past neglect of human rights in international health and analyzing the present obstacles to human rights in the WHO Secretariat, the authors look to the future of human rights in global health governance, highlighting an expansion of the rights-based approach to health through WHO's international legal authorities, global

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health public-private partnerships, and the proposed Framework Convention on Global Health.

Health & human rights

By addressing threats to public health as ‘rights violations,’ international law has offered global standards by which to frame government responsibilities and evaluate health policies, shifting the debate from political aspiration to legal accountability. Out of the horrors of the Second World War, the contemporary origins of WHO’s human rights authority encompass human rights under international law as a basis for public health, structured by the United Nations Charter, given meaning in the WHO Constitution, and proclaimed through a Universal Declaration of Human Rights.

Developing international human rights law for health through the United Nations (UN), the 1945 UN Charter elevated human rights as one of the principal purposes of the postwar international system. With the UN seeking to ‘make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all,’¹ states worked within the UN system to establish human rights as a formal legal basis to assess and adjudicate principles of justice.² Concurrently elevating health within the UN, state representatives established WHO as the UN’s first specialized agency, with the Constitution of the World Health Organization (WHO Constitution) serving as the first international treaty to conceptualize a unique human right to health.³

Through the preamble of the 1946 WHO Constitution, states framed international health cooperation under the unprecedented declaration that ‘the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being,’ defining health positively to include ‘a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.’⁴ Established by medical representatives at the postwar International Health Conference, this preambular language further declared that ‘governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.’ Under such far-reaching rights and responsibilities, even if too vague to offer any meaningful operationalization, the WHO Constitution was seen to ‘represent the broadest and most liberal concept of international responsibility for health ever officially promulgated’⁵ and encompass the aspirations of the medical community to build a healthy world out of the ashes of the Second World War.⁶

Drawing on the negotiations for a WHO Constitution, states proclaimed a 1948 Universal Declaration of Human Rights (UDHR), framing within it a set of interrelated social welfare rights by which:

*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, widow-hood, old age or other lack of livelihood in circumstances beyond his control.*⁷

Including both the fulfilment of necessary medical care and the realization of underlying determinants of health, this expansive vision reflected budding national welfare policies and prevailing social medicine discourses as a basis for public health systems.⁸

Evolution of human rights in WHO governance

With both the UDHR and WHO coming into existence, there was great promise that these two institutions would complement each other, with WHO—like all UN specialized agencies—serving to support human rights in its policies and programs. Yet in spite of this promise and early WHO support for advancing a human rights basis for its work, the WHO Secretariat intentionally neglected human rights discourse during crucial years in the development and implementation of health-related rights, projecting itself as a technical organization above ‘legal rights’ and squandering opportunities for WHO leadership in the evolution of rights-based approaches to health.

WHO in the development of the right to health

As states worked through the UN Commission on Human Rights to develop human rights treaty law, WHO was set to play a defining role in translating the aspirational public health language of the 1948 UDHR into the binding legal obligations of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Although WHO served this vital human rights leadership role in the first five years of its existence, the political constraints of the Cold War led WHO to reposition itself in international health as a purely technical organization, focussing on medical intervention and disease eradication to the detriment of rights advancement. Where WHO neglected human rights development, it did so to the detriment of public health. When WHO sought to reclaim the language of human rights in the 1970s in the pursuit of its ‘Health for All’ strategy, its past neglect of human rights norms left it without the legal obligations necessary to implement primary health care pursuant to the Declaration of Alma-Ata.

WHO’s early years were marked by the Secretariat’s active role in drafting human rights treaty law and its cooperative work with other UN agencies to expand human rights frameworks for public health. Working with state representatives in the early 1950s, WHO Director-General Brock Chisholm welcomed ‘opportunities to co-operate with the [UN] Commission on Human Rights in drafting international conventions, recommendations and standards with a view to ensuring the enjoyment of the right to health,’ recognizing that ‘the whole programme approved by the World Health Assembly represents a concerted effort on the part of the Member States to ensure the right to health.’⁹ In pressing the Commission on Human Rights in its development of health obligations, the WHO Secretariat successfully suggested in 1951 that the right to health reflect state commitments in the WHO Constitution, emphasizing (1) a positive definition of health promotion, (2) the importance of social measures as underlying determinants of health, (3) governmental

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