

## THE WORLD HEALTH ORGANIZATION (WHO): THE HEALTH AND HUMAN RIGHTS RELATIONSHIP

## L'ORGANISATION MONDIALE DE LA SANTÉ (OMS): LE RAPPORT ENTRE LA SANTÉ ET LES DROITS DE LA PERSONNE

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### ABSTRACT

As world leaders debate the relevancy of the United Nations (UN), the World Health Organization (WHO) presents as more relevant than ever. WHO's role as the world's health authority places it in a position to co-ordinate all aspects of global human rights issues annexed to health issues. WHO has spent the last 50 years in near avoidance of authority but now is rebounding from that position. Identification of the events that occurred to effect this evolution will be discussed. The identification by WHO that global health cannot be fully achieved without addressing basic human rights is applicable to all aspects of health care delivery and should guide the way we deliver care and set policy locally.

### KEY WORDS

World Health Organization, global health, evidenced-based medicine, infectious disease, tobacco, HIV/AIDS, smallpox, tuberculosis, plague, cholera, quarantine, maternal mortality, human rights, non-government organizations

THIS ARTICLE HAS BEEN PEER-REVIEWED

### RÉSUMÉ

Alors que les chefs d'État s'interrogent sur la pertinence des Nations Unies (ONU), l'Organisation mondiale de la Santé (OMS) se révèle comme étant plus pertinente que jamais. Le rôle de l'OMS en tant qu'autorité mondiale de la santé, lui permet de coordonner tous les aspects des questions mondiales des droits de la personne qui se rattachent aux questions de la santé. L'OMS a passé les 50 dernières années à pratiquement éviter l'autorité, mais à présent, elle rectifie cette position. L'identification des événements qui ont contribué à cette évolution sera discutée. L'OMS reconnaît que la santé mondiale ne peut pas être pleinement réalisée sans que les questions des droits fondamentaux de la personne soient abordées. Ce constat est applicable à tous les aspects de la fourniture des soins de santé et devrait guider la manière dont les soins sont prodigués ainsi que la façon dont les politiques locales sont établies.

### MOTS CLÉS

Organisation mondiale de la Santé (OMS), santé mondiale, médecine basée sur des preuves, maladies infectieuses, tabac, VIH/SIDA, variole, tuberculose, peste, choléra, quarantaine, mortalité liée à la maternité, les droits de la personne, organisations non gouvernementales

CET ARTICLE FUT RÉVISÉ PAR SES PAIRS

### INTRODUCTION

“...health may be viewed as a basic good, an essential prerequisite to the exercise of personal autonomy and an irreducible condition of human flourishing”, and as

such, includes essentially all human rights issues.<sup>1</sup> The World Health Organization's role as the world's health authority places it in a position to coordinate all aspects of global human rights issues annexed to

health issues. Its credibility and its authority are derived from respect for its pre-eminent objective: “the attainment by all people of the highest possible level of health”.

In the preamble to the WHO constitution, four central ideas underlie the vision of personal, national and global health. First, by defining health as “a state of complete physical, mental and social well-being”, WHO profoundly enlarges its potential field of action. The second notion is that the “highest attainable standard” of health is declared a fundamental right of every human being. Realization of this right directly engages governments. Third, health is understood to be fundamentally transnational; global security and peace depend on progress and equity in health and on collective action. Finally, improved health requires public participation and informed public opinion.

Health – primarily the spread of infectious disease and its subsequent impact on trade and threats to security – has always been a global concern. However, the way the world has perceived these concepts has changed. Traditionally, developed nations have sought to protect themselves from the scourges of developing nations.<sup>2</sup> Although the specific infections that confounded nations for the past century (as well as poverty and war) have remained significant health issues in developing countries, it is the interdependence of states, travel, and immigration that have changed the way states view treatment and confinement of these diseases.<sup>2</sup> The world is now confronted with modern ills such as the environmental issues of nuclear contamination and industrial toxins, developed nations exporting carcinogenic commercial products and antibiotic resistant strains of bacteria. The emergence of the human immunodeficiency virus (HIV) has changed the global health paradigm from the traditional notions of containment and treatment to a more comprehensive approach of social intervention.

### **WORLD HEALTH ORGANIZATION: HISTORICAL PERSPECTIVE**

International health organizations and a history of international legal activity on infectious disease control preceded the establishment of the World Health Organization in 1946. Cholera was a major

concern. Quarantines placed a tremendous strain on trade and maritime commerce. Cargo ships were often held in port for months in quarantine.<sup>3</sup> To avoid quarantine restrictions, ships had to provide clean bills of health, or spend months anchored at ports waiting to unload their goods. As shipping became more vital because of greater trade and travel, the inconvenience of quarantine translated into significant economic losses. States realized they needed to cooperate to protect their territories and to reduce the burdens of quarantine and the resulting trade restrictions.

The first International Sanitary Conference was held in 1851. Twelve nations attended that conference, the primary focus of which was to combat the spread of cholera, plague and yellow fever. Although participating nations never ratified the resulting convention, the convention contained a number of significant principles, which became the framework for numerous subsequent conferences.<sup>4</sup>

The major activity of the conferences of the 1851-1940 era concentrated on human infectious disease control (although plant and animal disease control were also discussed). International legal harmonization of quarantine measures through scientific principles (primarily the newly discovered “germ theory”) directly affected the linkage between trade and health and resulted in less drastic restrictions on international trade. By the end of World War II, the presence of so many health conventions caused a good deal of confusion and provided an impetus for change.

The United Nations (UN) recognized the need to promote international co-operation in public health and called for the establishment of a specialized health agency. In 1946 the UN mandate was carried out at the International Health Conference in New York, which founded the World Health Organization (WHO) and adopted the WHO constitution.

In this constitution, WHO founders utilized a radical approach in international law by providing for regulations that are binding on member states. The World Health Assembly (WHA) has the authority to adopt regulations in five specific areas:

- sanitary and quarantine regulations

- nomenclatures on diseases, causes of death, and public health practices
- standards for diagnostic procedures for international use
- standards for the safety, purity, and potency of biological, pharmaceutical, and similar products moving in international commerce
- advertising and labeling of biological, pharmaceutical, and similar products moving in international commerce

Scientific advances gave physicians and public health experts powerful healing tools that they wished to apply globally. Deeper understanding of virology, genetics and the development of antibiotics allowed ever-higher effectiveness of healing. This sense of victory in the war against disease was supported by the promise of powerful new antibiotics, vaccines, and insecticides. Mass campaigns using penicillin were launched against syphilis and the endemic treponematoses with encouraging results.

The systematic application of insecticides and removal of mosquito breeding sites eliminated malaria from many areas. As standards of living improved and effective drugs became available, tuberculosis receded as a threat in many advanced countries. On the eve of its 20th anniversary, WHO expressed the sanguine view that malaria was decreasing in importance as a disease of international significance, and that many other diseases, including tuberculosis, poliomyelitis, smallpox, yellow fever, typhoid fever, diphtheria, and pertussis, were successfully controlled and would gradually disappear. The eradication of smallpox in the late 1970s was considered a major victory for the scientific approach.

WHO's broad definition and visionary view of health seems to give it the authority to operate in areas of human conduct that critically affect the world's people. However, WHO has not always used the authority ascribed to it. The World Health Organization has been dominated by a biomedical concept of health in terms of disease, disability, and premature death. The mental and societal dimensions of health that WHO identified in its definition of health have been virtually ignored. The interface of health and human rights was ignored. Perhaps WHO was fearful that this dangerous mix might

contaminate the organization with 'political' considerations. Perhaps the agenda was controlled by disease eradication. A key factor affecting the partial fulfilment of its original vision has been deference to its member states. Appropriate respect for national sovereignty has sometimes been overtaken by blind obedience to a state's narrow interest.

From 1948 through 1996, WHO did not utilize its international legal authority. It relied on the member states themselves to self-report outbreaks of infectious diseases. A state's reluctance to report outbreaks of infectious disease, whether out of embarrassment or restrictions of trade, was tolerated, resulting in the reduction of authority. As a result, the effectiveness of infectious disease surveillance has been undermined. Countries are reluctant to report outbreaks due to fear of the negative impact this news could have on travel, trade, and tourism. Outbreaks are always costly, and most especially so when reactions are inflamed by sensational media coverage.<sup>5</sup> All states, and especially those countries with fragile economies, are understandably reluctant to admit the occurrence of outbreaks that are almost certain to result in severe economic losses.

In 1989, WHO's legal counsel argued that international law was not a useful instrument for dealing with global health problems. Health problems move too quickly. International legal machinery moves too slowly. Ironically, at the same time the legal counsel advocated this position, WHO was embracing international human rights law as the paradigm for dealing with HIV/AIDS. As Fidler notes, "The medical-technical approach has failed and has left WHO relatively unprepared to deal with a crisis that cannot be resolved by the mere application of scientific advances".<sup>2</sup>

After 50 years, the less than visionary activity at WHO has been reversed. Emerging infectious diseases and other global health problems are the catalyst. It was the HIV pandemic that cracked the façade of the medical-technical ethos, with the realization that pharmaceuticals alone would not permanently hold infectious disease at bay. It has reawakened people to the dangers of relying heavily on drugs to combat infectious diseases. The emergence of HIV, as well as returning diseases on the original 'most wanted' list,

shows that the underlying political, economic, and social changes and problems (such as a breakdown in public health infrastructures, social unrest and civil war, environmental degradation, changes in human behavior, urbanization, and poverty) need to be treated. This is beyond the realm of the medical-technical ethos.

Human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) infection crept relatively unnoticed onto the global health scene in the late 1970s, with the first reported description of the disease in 1981.<sup>6</sup> In parts of sub-Saharan Africa, the AIDS epidemic appears to rival the bubonic plague, or 'pestilence' as it was referred to in mid-14th Century England.

Policies governing member state's reporting on infectious disease did not work to control the spread of the disease.<sup>1</sup> This failure of its health policy shocked WHO into showing concern about the public health consequences of human rights violations. "Confronting HIV/AIDS, WHO tried but was ultimately unable to (a) sustain its work with community and nongovernmental organizations; (b) deal with human rights issues (first, as a tragic effect of the pandemic and later, when it recognized discrimination and other rights abuses as the root cause of vulnerability to pandemic); (c) develop a strategy to address the societal dimensions; (d) sustain international solidarity; or (e) apply a truly global perspective to the greatest lesson of all global vulnerability to emerging diseases".<sup>7</sup> Public health officials quickly saw that the identification of respect for human rights was the best public health approach to the HIV/AIDS problem. Through this deductive logic, and with a remarkable turnaround, WHO went from having taken no discernible action in the area of international human rights law to embracing the philosophy that such law provided the basis for addressing the HIV/AIDS pandemic.

Occurring nearly simultaneously, the medical community was changing its scientific practice, from an empirical science to one that is evidenced-based. Evidenced-based medicine has been defined as: "the explicit, judicious, and conscientious use of current best evidence from health care research in decisions about the care of individuals and populations."<sup>8</sup> This

evidenced-based approach transforms the way in which data is viewed and interpreted and allows for a more comprehensive understanding of the health issue, rather than the previous pragmatic approach to a health problem. This altered approach, coupled with the emergence of new infections and the resurgence of existing ones, resulted in WHO's 'Health for All in the 21st Century' doctrine, which highlights the importance of human rights.<sup>9</sup>

Experience with the HIV pandemic revealed that human rights problems are linked to government actions. "Frequent human rights violations occur when governments: (1) discriminate against individuals or groups suffering from diseases by denying them access to public health services or by singling them out in applying public health measures; (2) deprive people of their liberty and security by applying compulsory public health measures against them without clearly establishing that they pose a significant risk to society or without providing due process of law; (3) fail to protect private health information gathered by public health systems; and (4) fail to provide their people with the infrastructure, services, and information necessary to prevent and control diseases."

## **WOMEN'S AND CHILDREN'S HEALTH AND HUMAN RIGHTS**

Health, by its definition, may not be achieved without recognizing human rights of all the world's people. "The right to life represents the most basic human rights doctrine, the essential and non-derogable prerequisite to the enjoyment of all other rights. The right to life figures prominently in all the basic international human rights instruments and enjoys worldwide recognition."<sup>10</sup> War, world debt and trade have a substantial effect on global health.

War has a disastrous effect on health even beyond the calculated, planned casualties. Two million children have been killed in wars over the past 10 years. Disablement, displacement, and the orphaning of children have had a profound impact on the global health of children. War also has a tragic impact on women.<sup>ii</sup> Maternal mortality is startlingly high in states in conflict or post crisis situations.<sup>iii</sup> Maternal mortality has the dual impact of loss of mother and the orphaning of babies and other siblings. Consider that

a mother's death doubles the death rate among her surviving sons and quadruples the death rate among her surviving daughters.<sup>11</sup> Often, a maternal death means the end of a socially functioning family.

About a half a million women die every year from complications of pregnancy. Most of these women are from the developing world. This number roughly translates to one woman dying during pregnancy or childbirth every minute. For a woman to die from pregnancy and childbirth is an injustice and infringement of a women's human right and a reflection of women's powerlessness. These deaths are rooted in unequal access to employment, finances, education, basic health services and other resources. Maternal mortality is a particularly sensitive indicator of inequality and social development.

The expectation to survive childbirth is a basic human right. In fact, this is codified in the Convention of the Elimination of Discrimination of Women. Yet, the problem remains.<sup>12</sup>

Legal and social equality of woman would seem to be a concept embracing a moral norm. However, inequality persists in which governments and others see nothing persecutory in sex discrimination, but do not permit inequality based on race or religion. That is the reason that the Convention on the Elimination of All Forms of Discrimination of Women was made binding on all member states. Although binding (as is the custom of treaties), states could make reservations, or a statement, of their disagreement with a particular issue of a treaty. This particular convention resulted in a record number of reservations, particularly the article regarding women and the family.<sup>iv</sup> Regardless of whether these reservations relating to marriage and reproduction were for religious or cultural reasons, they may be viewed as paternalistic.

Human rights as a legal concept did not traditionally include issues paramount to women's rights of safe motherhood and reproductive rights because they did not fall within the sphere of men's practice. Women are woefully under-represented in the political sphere. Rape, forced marriage, forced motherhood and death in childbirth for lack of care, are ancient violations of human rights. It was not until 1995 during the Fourth

World Conference on Women, held in Beijing, that the connection between human rights and reproductive rights were established and a pledge to end to discrimination of women through marital rape, female genital mutilation and domestic violence was made. Perhaps even more importantly, the conference reinforced the concept that reproductive rights (including all matters related to sexuality and childbearing) are human rights that are to be upheld cross-nationally despite religious and cultural differences.

Yet six years after the Beijing Conference, the Bush administration in the United States, reinstated the 'global gag rule' which continues to be policy. Originally instituted under President Reagan, the gag rule cuts off any funding to a non-government organization (NGO) that provides abortion advice or services or advocates legalizing abortion services. Originally, the policy cut funding for any agency that provided post-abortion services, even if woman's life was in danger. Bush has eased that restriction.

Many of the world's poorest women receive their reproductive services in the NGO sponsored clinics. These NGO sponsored family planning centers are particularly vital for women. Women are at a greater risk for contracting HIV than men. In sub-Saharan Africa, for example, where HIV has already killed more than 19 million people, women comprise 58% of the infected population. HIV transmission to women is more likely because it is biologically more efficient and because women may not have the ability to attain safer sexual practices because of lack of power due to gender inequality.<sup>v</sup> The NGO clinics help women avoid contracting HIV by providing education, counseling, condom distribution, and HIV/AIDS treatment during pregnancy and childbirth. Cutting funding to these clinics eliminates access to care for women. In a world where more than 20 million women are HIV positive, this is a significant event. Women who are HIV positive risk a 30% chance of transmitting the disease to their child. They know they may not survive, and risk orphaning their child. More that 20 million African children will lose one or both parents to AIDS related illness by 2010. Surely in this context, abortion should be available as an option.

## CONCLUSION

"It is my desire that health is not to be seen as a blessing to be wished for, but a human right to be fought for".<sup>13</sup>

What are the lessons to be learned from WHO's experience and how do we fight? A 1998 report by WHO on safe motherhood explains that empowering women and guaranteeing them their human rights will improve their reproductive health. The 57th World Health Assembly noted that HIV/AIDS affects women and children with particular severity. It recommended a stronger role for WHO in sponsoring policies that promoted human rights, equity, and gender equality in access to treatment and care, further noting that promoting health and fulfilling human rights are inextricably linked. Vulnerability can be reduced by confronting practices of violence against women and discrimination based on gender.

Enactment of laws is another means of empowering women. Laws that do not allow women to inherit, or to keep their house or possessions if her partner dies, need to be changed. However, the primary means of empowering women is through education. It is estimated that for every year of education a woman has, infant mortality decreases by 10%.

The topic of human rights and the relationship to health should not be thought of only in the abstract. Rather, the relationship should be thought of as an imperative to those of us who provide health care, education, and develop policy.<sup>vi</sup> This relationship between health and human rights is not a discussion of limited resources and cost of health, but rather, a view of health and how it is promoted, protected and fought for. As the story of the World Health Organization's last 50 years has shown, it is evident that ignoring this relationship has immeasurable costs.

## AUTHOR BIOGRAPHY

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## FOOTNOTES

<sup>i</sup>Interview with the government's doctors (of both traditional and western medicine) designates for reporting health practices at the People's Hospital in Beijing (October 22, 2001). When asked about HIV in China, the response was: "There is no HIV in China."

<sup>ii</sup>"One third of Iraq's women give birth without a qualified health worker in attendance. Fifteen to 20% of them face high risks to their health and need advanced medical support. This explains the high maternal mortality of 300 maternal deaths per 100,000 live births—much higher than in other countries in the region." <http://www.who.int.ihf/>

<sup>iii</sup>Charts of perinatal mortality and morbidity show Afghanistan, Eritrea (all sub-Saharan nations) as the highest in the world. <http://www.who.int>

<sup>iv</sup>Article 16 is the principal provision of the Women's Convention requiring states parties to eliminate discrimination against women in matters affecting marriage and family relations. The article states that: 1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide 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; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases

the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

<sup>v</sup>Stephen Lewis, UN Special Envoy for HIV/AIDS in Africa, stated in a speech at Salt Lake Community College and reported November 2004 in the Salt Lake City Deseret Morning News Report "that women in sub-Saharan Africa are particularly vulnerable to HIV infection because gender equality is a death knell. For some African women marriage is one of the "most hazardous environments" because married women often do not have the right to refuse sex with their husbands or negotiate condom use."

<sup>vi</sup>Consider the statement made by Dr. Kathleen Cravero, deputy executive director of UNAIDS, November 2004: "The core of HIV prevention is advice to abstain from sex until marriage, to be faithful and use condoms. The prevention strategies now in place are missing the point when it comes to women and girls. We are finding in most regions of the world, they simply do not have the economic and social power or choices or control over their lives to put this information into practice."

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