HEALTH ASPECTS OF HUMAN RIGHTS with special reference to developments in biology and medicine

World Health Organization, Geneva

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WORLD HEALTH ORGANIZATION
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PREFACE

On 19 December 1968 the United Nations General Assembly, in resolution 2450 (XXIII), invited the Secretary-General and the executive heads of the relevant specialized agencies to carry out studies on a number of problems involving human rights. A problem of special concern to WHO was contained in paragraph 1 (b) of the resolution: "Protection of the human personality and its physical and intellectual integrity, in the light of advances in biology, medicine and biochemistry." This was discussed in May 1970 by the Twenty-third World Health Assembly, which, in resolution WHA23.41, reaffirmed that the right to health is a fundamental human right and requested the Director-General to prepare a study on the health aspects of human rights in the light of scientific and technological developments.[a]

The present study was written to meet that request, and in it an attempt has been made to summarize briefly the main situations, whether recent or of long standing, in which interventions, compulsions, or restraints, performed or imposed on human beings for preventive or curative therapeutic purposes or with a view to advancing knowledge of health and disease, have implications for the rights of the individual. Nothing in this study has any claim to originality. Rather, it should be regarded as a sort of annotated check list of situations involving the intervention of the physician or related professions that may impinge on the rather ill-defined, and often differently interpreted, problems of human rights.

An important question raised by this study is what role an intergovernmental organization such as WHO should play in attempting to arrive at an international consensus on the point at which certain medical interventions and procedures may offer a threat to human rights. As an example of the role of WHO may be mentioned the question of research involving human subjects. For this important problem the interest of WHO is not merely theoretical, for it supports, directly or indirectly, many medical research activities that must all at one stage or another find their first applications in human beings. In some countries government organizations funding medical research projects have formulated principles for safeguarding the rights of human subjects, and the scrupulous observance of these principles is a condition for the award of a financial subsidy. So far WHO has not enunciated any similar principles, but it has established an internal secretariat committee to advise on research proposals involving human subjects. However, as medical science becomes ever more potent in the promotion of health and the prevention of disease, so governments tend to become increasingly involved not only in the funding of medical research but also in establishing safeguards for its human subjects.

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[a] WHO Handbook of resolutions and decisions, Volume I, 1973, p. 501 (Resolution WHA23.41).

While it might be considered possible to reach a consensus at the intergovernmental level on the principles that should govern human experimentation, there are quite a number of other fields in which it is difficult to achieve an agreement. In some of these matters—such as contraception, sterilization, and induced abortion—ethical, legal, and social values are predominant and the possibility of international agreement at the government level is very remote. In such areas, however, WHO can and does promote research and organize international discussions on purely scientific aspects and disseminates recently acquired knowledge through its publications. The report of a WHO scientific group on spontaneous and induced abortion [a] *and the numerous WHO publications on various aspects of human reproductive behaviour constitute good examples of the outcome of this type of activity.*

These are the limitations and the scope of responsibility of WHO in relation to a number of problems involving ethics. However, it should be stressed that WHO cooperates closely with international nongovernmental bodies such as the World Medical Association (WMA) and the Council for International Organizations of Medical Sciences (CIOMS). WMA has in the course of years issued five codes of ethics : the Declaration of Geneva (1948) ; the International Code of Medical Ethics (1949) ; the Declaration of Helsinki, containing recommendations guiding doctors in clinical research (1964) ; the Declaration of Sydney, in relation to the determination of the time of death (1968) ; and the Declaration of Oslo, in relation to therapeutic abortion (1970). Also of importance is the sponsoring by WHO and by UNESCO of CIOMS, which has devoted a number of studies and convened a number of meetings in relation to medical ethics. The proceedings of the conferences dealing with human experimentation, heart transplantation, drug evaluation, the social and ethical implications of recent progress in biology and medicine, and human rights have been published. CIOMS has, in relation to these subjects, issued a number of resolutions, such as that on amniocentesis approved by the 8th Round Table Conference (1973). [b]

As advances in medical science have progressively increased man's power to influence the forces of life and death, writings on the ethical aspects of various medical interventions have become ever more voluminous. This is particularly the case in the United States of America, where the subject of the ethics of biomedical interventions on human beings or human material has been given the name "bioethics". The extent of the interest focused on this new discipline is illustrated by the fact that early in 1974 the National Library of Medicine, Bethesda, Maryland, announced that it had awarded a grant of $280 000 to the Joseph and Rose Kennedy Institute for the Study of Human

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[a] WHO Technical Report Series, No. 461, 1970.

[b] BTESH, S., ed. *Protection of human rights in the light of scientific and technological progress in biology and medicine : Proceedings of 8th CIOMS Round Table Conference, Geneva, November 1973.* Geneva, Council for International Organizations of Medical Sciences, 1974, pp. 319–320.

Reproduction and Bioethics, Washington, DC, to prepare and publish three annual bibliographies on bioethics. If in this study there is a preponderance of references to experiences and discussions in the United States of America, it is because it is in that country that the problems of bioethics have been most widely ventilated.

In the pages that follow various situations with greater or lesser implications for human rights have been mentioned without reference to their susceptibility to intergovernmental action. It is obvious that a number of other problems might have been dealt with or that some of the sections might have been expanded. The study makes no reference to the rights of children who are mentally retarded or in custodial care, nor does it develop such subjects as transsexualism, euthanasia, or orthothanasia. Its aim is only to illustrate a few of the questions that may present particular problems.

HEALTH AS A HUMAN RIGHT

When referring to health as being a human right, it is essential to consider what is the exact significance of this right, what it involves, and what is its true perspective, while avoiding as far as possible the study of the problem as an abstract concept. It must be demonstrated that the right to health has obvious limitations and it will likewise be necessary to show, in the light of advances in biology, medicine, and biochemistry, what benefits and what parallel potential risks new developments may entail as far as the right to health and, possibly, other rights are concerned.

Historically, and in contrast with the early introduction of a number of other rights, the right to health was one of the last to be proclaimed in the constitutions of most countries in the world. There are no references to the right to health in eighteenth and nineteenth century constitutions, whereas a number of other rights are specifically mentioned.

At the international level, the Universal Declaration of Human Rights established a breakthrough in 1948, by stating in 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 this same social protection.

The Preamble to the WHO Constitution also affirms that it is one of the fundamental rights of every human being to enjoy "the highest attainable standard of health" and that "governments have a responsibility for the health of their peoples which can be fulfilled only be the provision of adequate health and social measures".

Adopted by the World Health Assembly in 1970, resolution WHA23.41 goes far beyond these provisions in declaring without qualification that "the right to health is a fundamental human right". At the same time, another resolution, WHA23.61, elaborates on what may be considered as being the philosophy relating to the right to health and gives the latter a specific dimension. This resolution states that "the attainment by all peoples of the highest possible level of health" is the main long-term objective of the World Health Organization and that the most important condition for this is the development of efficient national health systems in all countries. To achieve this, the following recommendations are made :

> (1) the proclamation of the responsibility of the State and society for the protection of the health of the population, to be based on putting into effect a complex of economic and social measures which directly or indirectly promote the attainment

of the highest possible level of health, through the establishment of a nation-wide system of health services based on a general national plan and local planning, and through the rational and efficient utilization, for the needs of the health services, of all forces and resources which society at the given stage of its development is able to allocate for those purposes ;

(2) the administration of rational training of national health personnel at all levels as a basis for the successful functioning of any health system, and the recognition by all medical workers of their high degree of social responsibility to society ;

(3) the development of health services primarily on the basis of extensive measures to foster the preventive approach both for the community and the individual which will require the integration of curative and preventive services in all medical and health establishments and services, emphasizing the protection of health of mothers and children who embody the future of every country and of the whole of mankind, and the establishment of effective control over the condition of the environment as a source of health and life to present and future generations ;

(4) the provision for the whole population of the country of the highest possible level of skilled, universally available preventive and curative medical care, without financial or other impediments, by setting up an appropriate system of curative, preventive and rehabilitative services ;

(5) the extensive application in every country of the results of progress in world medical research and public health practice, with a view to ensuring conditions that will make it possible to obtain maximum effectiveness from all health measures taken ; and

(6) the health education of the public and participation of wide sections of the population in the carrying out of all public health programmes, as an expression of the personal and collective responsibility of all members of society for protecting human health.

The resolution further recommends Member countries, "having regard to their own historical, social, economic and other conditions, to take these principles into account in establishing their health services and systems".

Although the right to health can be conceived in the sense that a person may not be deprived of his health by the action of another, as by some form of aggression, it would seem that the World Health Assembly was reviewing the right to health rather in the sense of a right to health care. In this context we have a right that is legally enforceable in that a legal duty to provide such care can be created and applied to individuals and communities.

The right to health must also be considered from an international point of view. It is clear that countries have a duty to protect their citizens from communicable diseases, dangerous drugs, and pollution originating in other countries as well as in their own. Various international agreements have been reached in an attempt to secure such protection, examples being the International Health Regulations, the Single Convention on Narcotic

Drugs (1961), the Convention on Psychotropic Substances (1971), and the International Convention for the Prevention of the Pollution of the Sea by Oil (1954).

Having considered the situation of the right to health at the international level,[a] it is necessary to examine how the different countries in the world have implemented the principle of the right to health at the national level, in particular through legal means.

The right to health has been introduced in recent constitutions, not using that precise wording but rather in terms of a right to health protection. This again circumscribes the right to health for the reason that, even before the birth of any individual, his personal health situation will depend on his genetic constitution. It is interesting in this connexion to quote the Constitution of one of WHO's Member States which guarantees to a citizen the "protection of his health and working capacity". This right is to be achieved by "planned improvement of working and living conditions, the fostering of public health, a comprehensive social policy, the promotion of physical culture, of school and popular sports, and of tourism". In the above-mentioned Constitution, the right to health protection is assured by a comprehensive system of social insurance that provides material security in cases of illness or accident, and free medical attention, medicaments, and other necessary materials. Moreover, each citizen has a right to be cared for by society in old age and invalidity.[b]

In a number of other countries, as has already been mentioned, the constitutions do not mention health as a human right. However, the introduction of a whole system of legislative and administrative provisions dealing with therapeutic and prophylactic care shows how the principle of the right to health is implemented in practice.

The right to health has to be considered in relation to a number of other rights, such as the right to food, clothing, and housing and the right to freedom and privacy, and consequently one may state that in particular circumstances specific human rights may sometimes conflict with one another. In a number of situations, the right of health may involve a number of obligations that may entail limitations of personal liberty. This is the case where, for instance, measures for the control of communicable diseases such as quarantine or vaccination may be considered as constituting an infringement of personal liberty, but must be accepted for the sake of

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[a] See also : Report of the Special Rapporteur of the Commission on Human Rights, United Nations, Economic and Social Council (Document E/CN.4/1131), New York, United Nations, 1974, p. 44 ; and ECOSOC resolution 1867 (LVI) in Economic and Social Council Official Records, Fifty-sixth Session *Resolutions*, Suppl. No. 1, New York, United Nations, 1974 (Document E/5544).

[b] Verfassung der Deutschen Demokratischen Republik vom 6. April 1968 [Constitution of the German Democratic Republic of 6 April 1968]. *Gesetzblatt der Deutschen Demokratischen Republik*, Part I, No. 8, 1968, Articles 35 and 36.

the protection of the community. The right to health may thus involve duties to preserve the general welfare and the rights of the community, duties that may override the right of the individual citizen. Moreover, because of differences in standards of living and economic and educational conditions, the attainment of the right to health may vary considerably.

If all the factors that may influence legislative provisions dealing with health protection are studied, it is clear that differences exist owing to factors other than the level of present scientific knowledge. These include religious, moral, ethical, and traditional attitudes that differ from country to country with respect to matters such as abortion, sterilization, and contraception, although such attitudes may well change in the course of time. The role of WHO in the solution of these particular problems is very limited indeed, since they lie within the jurisdiction of the different nations, but this does not preclude WHO from engaging in the scientific study of these problems, for which it is well equipped in view of its position as an intergovernmental organization.

While advances in biology and medicine may promote the attainment of the highest possible level of health and are thus of benefit to mankind, a number of examples in this study will illustrate how they may sometimes involve a risk to the physical and mental aspects of the right to health.

Furthermore, the benefits of recent discoveries in the medical field may still be limited to a few persons. A number of reasons may explain why a general application of the benefits of such discoveries is not feasible and why stringent selection of beneficiaries might be necessary even in highly developed countries—obvious examples being renal dialysis and organ transplantation. The cost of equipment, other financial constraints, and lack of highly skilled personnel may constitute powerful barriers to the exploitation of new medical discoveries.

In summary, there exist, in the field of human rights and health, *positive aspects* from which the State and the community have a duty to ensure that the individual citizen benefits, but those rights may entail *negative* elements in that the individual citizen has the duty to limit his right to freedom for the benefit of the community, as in the case of pollution and immunization.

There are additional questions that must also be considered in this context. Are individual citizens sufficiently protected by the State in their fundamental health rights such as, for example, the right to protection from indiscriminate advertising of alcohol and cigarettes as opposed to the right to essential health education measures to prevent health hazards? An example of the exploitation of ignorance through unethical economic pressures is the "plasmapheresis problem", commercial blood collection in developing countries having induced some people to make too frequent blood donations, with consequent damage to health and even danger to life. This problem was the subject of intensive discussion at the Twenty-eighth World Health Assembly in May 1975, and a resolution was