



IFHHRO

International Federation of Health and Human Rights Organisations

TSUNAMIS, MILLENIUM DEVELOPMENT GOALS AND HEALTH PROFESSIONALS

Strategising for monitoring the Right to Health

Keynote address by Elizabeth Solomon
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Ladies and Gentlemen,

I am sure I am not the first person to ask you to focus your thoughts for a moment on the massive destruction left in the wake of the Boxing Day Tsunami, but I crave your indulgence as I ask you to think about it again. Think about it this time in the context of human rights.

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Perhaps your first reaction is to wonder what use are abstract *rights* and *legal entitlements* in the face of such raw natural destructive power? Which one of the survivors left homeless or orphaned or drained of all hope, is interested in clinging to the vague notion of human rights? Indeed there seems little compensation in the fact that all humans are born free and equal in dignity and rights. Yet surely greater emphasis on the rights of those thousands upon thousands of people affected by the Tsunami could have avoided such massive loss of life and livelihood.

It is true that thousands of tourists were drowned alongside tens of thousands of victims who lived on the coasts of East Asia, South Asia and Africa. In a recent article, Jeffrey Sachs questions the “common mortality” of the “life and death arithmetic” of the disaster¹. There is no question that most of those who perished were poor. If the Tsunami had hit a more affluent region, the death toll would have been far, far less. Furthermore, most of the survivors who now face the threat of disease and dire futures are poor. The reality is that while all humans may be born equal in their vulnerability to nature’s rages, in fact we do not suffer them equally. Earthquakes, floods, hurricanes, epidemics, pests and the like systematically claim the lives of the poor in vastly greater numbers than they do the rest of the world’s population. While some people can afford to live in fortified structures away from flood planes, others- such as the thousands of Haitians who died in recent hurricanes in the Caribbean- remain insecure and vulnerable. Look also at the global AIDS pandemic. The most impoverished countries of Sub-Saharan Africa boast 64% of all cases and 74% of all deaths. Think also about the fact that as many as 3 million children living in poverty are expected to die this year of malaria - an easily preventable disease. Children living in situations of sustainable livelihoods can feel secure behind mosquito nets and easy access to available antimalaria medicine.

So, the question remains, how can human rights help us abate the loss of life among impoverished communities? There is no doubt that every individual man, woman and child has an equal right to accessible, available and adequate healthcare. There is also no doubt that every man, woman and child is entitled to the security of living in a healthy environment with educational and livelihood opportunities enough to plan a future. These rights may exist as legal entitlements, but the survivors of the Tsunami do not need grounds for redress against delinquent governments. What is needed a proactive approach to human rights in which human rights standards contribute to government and global policy formulation. It is in this context of human rights -both as legal guarantees and as universal standards- that we must place our work in the promotion and protection of the Right to Health.

Evolution of the right to health

When the Universal Declaration of Human Rights was adopted in 1948, the international media barely reported on it. Now, 54 years later, it is the world’s most translated document. The language of human rights is firmly embedded in human discourse.

In 1978 the Hague Academy of International Law convened a colloquium on the right to health as a human right during which three aspects of the right to health

¹ Jeffrey D Sachs, Director Earth Institute at Columbia University and Director of the Millennium Project

were distinguished: negative, positive and egalitarian.

In the *negative* sense it means that the State should abstain from any act that could endanger any individual's health. The *positive* aspect means that the State must take a series of measures that would advance the realisation of the right to health. The *egalitarian* aspect means that there must never be discrimination on any basis in the enjoyment of the right to health.

With the Alma Ata Declaration, the right to health advanced from an individual aspiration to a social aim. The goal: "health for all" by the year 2000. This paralleled by greater attention to economic, social and cultural rights resulted in a rash of commitments, which probably as a result of the intervening cold war, we have majestically failed to live up to.

However, in recent years the right to the highest standard of health has gained momentum, advanced considerably by the adoption of General Comment 14 on the Right to Health and the appointment of a UN Special Rapporteur on the Right to Health. Of course the issues of accountability and 'progressive realisation' that have heretofore downplayed the importance of economic, social and cultural rights continue to make justiciability open for debate and to slowdown progress. And even here we have made inroads. There seems to be a consistent growth in the number of laws and constitutional provisions confirming the justiciability of the right to health. Furthermore, the debate itself provides for a useful strategy as litigation provides the opportunity for building awareness amongst the key players - civil society groups, professional organisations, governments and the international community.

Promoting and protecting the right to health

Contributing to this momentum has been the increased effectiveness of international mechanisms for the promotion and protection of the Right to Health primarily the Committee on Economic Social and Cultural Rights whose role it is to monitor states' compliance with Article 12 of the ESCR Covenant, and the UN Special Rapporteur on Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt.

The ESCR Committee works with a broad conception of the right to health and determines whether or not states' have taken all reasonable measures to implement not just universally accessible and adequate healthcare but the underlying determinants of health. The Committee could and should play a much greater role but it requires astute NGOs with the support of UN Agencies operating at the national level to ensure the consistent monitoring and support in the implementation of the concluding observations.

The Special Rapporteur was appointed in 2002 for a three-year term. While the Committee can only monitor countries that have ratified the Covenant, the special Rapporteur can monitor the performance of all states with respect to the right to health. His mandate has three key objectives:

1. Raise the profile of health as a fundamental human right.

We are far from health being appreciated as equal in importance as the right to a fair trial or freedom of expression, for example. In this NGOs such as ourselves have much to do to promote the importance of the right to health.

2. Increase jurisprudential understanding of the right to health.

General Comment 14 sets out the normative framework and the national jurisdictions of South Africa and India amongst others contribute substantially to deepening understanding on what the right to health means in terms of governmental obligations and individual entitlements. More recently the extraterritorial obligations under the right to health and other economic social and cultural rights have begun to be challenged.

3. Identify good practices on how the right to health has been respected, protected and fulfilled.

Our role is to disseminate best practices and ideas. To constantly raise the bar in the universal realisation of the right to health

Monitoring the Right to Health

The issue of monitoring is complex, to say the least. What elements of the right to health should we focus on? If we choose an area of focus, as we must, how do we strike a balance with other aspects of the right to health? How will the monitoring be done? Large scale monitoring trends can leave out vulnerable groups. But how do we disaggregate and separate issues when they are all so interrelated? When we do separate out vulnerable groups for special attention, how do we avoid stigmatisation and other kinds of discrimination?

There is too the persistent problem of 'progressive realisation'. How do we factor in lack of resources in monitoring government performance? What benchmarks and indicators do we set against which a state's progress can be measured? And where governments attempt to privatise health systems, how do we access the information necessary to make assessments in an environment of commercial confidentiality? Lack of transparency impedes monitorability.

And who is to do the monitoring? While NGO monitoring and reporting of civil and political rights has become fine-tuned and systematic, groups monitoring and reporting on economic social and cultural rights have not matured satisfactorily. In a recent study conducted by the International Federation of Health and Human Rights Organisations², the ESCR Committee noted a very low incidence of reporting on the right to health and in the few cases a poor record on the part of NGOs in providing evidence useful to a human rights committee.

There is need now to hone our skills as health and human rights NGOs; to develop tools for monitoring; to share best practices and to collaborate with each other and with other human rights organisations.

And what of the MDGs?

In his most recent report to the General Assembly³, UN Special Rapporteur Paul Hunt points out that one of the most striking features of the Millennium Development Goals is the prominence they give to health. Unfortunately, the

² 'Assessing the Impact of parallel reporting on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' report by Dessislava Stoitchkova. IFHHRO 2004

³ Report of Paul Hunt, Special Rapporteur of the Commission on Human Rights on the right of everyone of the highest attainable standard of physical and mental health 2004/27.

other most striking feature is the bizarre omission of human rights. The Millennium Development Goals are a mixed bag of opportunities and diffused efforts. In a recent lecture, one member of the Millennium Development Task Force recognised that MDGs have come to be known by some as the “Most Distracting Gimmicks”⁴. The sceptics argue that internationally-agreed time-bound development targets are nothing new and those agreed on in the past have not been met. They are seen as serving a minimalist agenda and setting a lower standard of achievement than previously established in human rights treaties. On the other end of the spectrum, the optimists believe the MDGs will improve transparency and accountability and be a better instrument for mobilising resources for development, which admittedly, human rights treaties have thus far failed to do.

Clearly, the mere existence of MDGs does not empower poor people and the governments of poor countries to insist on what they before could not insist on. What they can do however is provide an arena for critical engagement which advocates of human, egalitarian development should not cede to technocrats and bureaucrats⁵.

In his report the Special Rapporteur “ signals the contribution that the right to health can make to the realisation of the-health related Goals. He argues that considerable overlap exists between health-related MDGs and the right to health. Specifically he suggests that human rights principles will strengthen the effectiveness of the goals by focusing on vulnerable and the disadvantaged. Where the MDGs create a framework of societal averages, a human rights approach requires a lens of non-discrimination and equality. The principle of participation integral to the right to health could transform country-owned strategies for development into development strategies owned and implemented by a wide range of stakeholders, making them more effective, more sustainable and more egalitarian. Furthermore, human rights, including the right to health, can strengthen the weak accountability mechanisms presently associated with the MDGs. Professor Hunt concludes that there is a need for collaboration, for both constituencies to help infuse the Millennium Development Goals with human rights, including the right to health.

The role of IFHHRO

I will end now with a brief explanation of where the International Federation of Health and Human Rights Organisations fits in to the landscape of health and human rights.

We are, as our names suggests, a network of organisations working on issues of health from a human rights perspective or working on human rights from a health perspective, depending on how you want to look at it. Our members and affiliates are spread around the globe and vary in size and context quite significantly. The most notable commonality is that they all claim health professionals as their constituency.

Health professionals are both victims and perpetrators of human rights violations and they constitute an essential element in ensuring the fulfilment of the right to

⁴ Peggy Antrobus, Founder of DAWN

⁵ Dr Diane Elson ‘The Millennium Development Goals- a feminist development economics perspective’ at the 52 Dies Natalis Address at the ISS, The Hague

health. Human rights law emerged after the Second World War with professional bodies such as the World Medical Association (one of our members) created to avoid future atrocities like those committed by physicians during the war. Today there is concern about the complicity of health professionals in human rights violations in the context of similar conflict situations and in relation to health conditions associated with stigma and discrimination.

Initially, medical professional groups, including those that come under the umbrella of human rights NGOs have predominantly focused on civil and political rights violations with severe health consequences such as torture. There was a desire to create a platform for human rights concerns within the medical profession and to allow health professionals to exercise the role of “whistle blower”. Only recently has there been awareness among these groups of health as a human right, the right to health. This has proved quite a paradigm shift for health professionals. Where before compassion and good clinical practice was guided by medical codes of ethics, with a human rights approach health professionals are required to broaden their perspectives and increase their responsibilities to protect and fulfil the human rights of individuals based on universal standards.

Already, health and human rights organisations play a significant role in the momentum of the right to health, even as we continue to explore how they can contribute to the human rights monitoring mechanisms.

Monitoring is the specific mandate of the International Federation of Health and Human Rights Organisations. We work closely with the Special Rapporteur and other organisations with specialised agendas in the areas of lobbying, research and advocacy.

IFHHRO continues to explore the full meaning of our monitoring mandate, we continue to increase our network of health and human rights organisations and we continue to respond to issues and incidents related to the right to health.