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For a Conceptual Approach to the Right to Health

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ABSTRACT

The purpose of this paper is to answer the following question: To what extent can international conventions contribute to improving the practice of the right to health, via a deductive approach: which has made it possible to present generalities on the right to health and determine the flagship actions of international bodies guaranteeing the right to health.

Keywords: *conceptual approach; right; health.*

I. INTRODUCTION

The term “right to health” has been criticized for implying states' obligation to ensure good health for citizens. Some have advocated changing it to the term “right to protection of health” and in this case it will encompass the right to health care, and the right to healthy living conditions. In fact, the meaning of the right to health has been gradually clarified over time and through the interpretation of concrete situations.

Recognition of the right to health as a human right attributes exceptional importance to this objective. Characterizing a specific human rights goal elevates it above other societal goals, immunizes it from possible challenge, and generally imbues it with an aura of timelessness, absoluteness, and universal validity. It remains to define the contours of this right by presenting it, by establishing the actions of world organizations³.

(A) General information on the right to health

"Health is a state of complete physical, mental and social well-being and does not consist merely in the absence of disease or infirmity",⁴ the right to health is understood as the right to a state of complete well-being, no longer corresponds to a human right, but to all human rights.

a. Development of the concept of the right to health

The right to health is the foundation of human rights, it is a global right covering a wide range

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³ Report: "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health", presented by Paul Hunt, Special Rapporteur, in March 2003, in Geneva

⁴ Eric David, The right to health as a human right, *Revue Québécoise de Droit International*, 1985

of elements that help us lead a healthy life, such as access to drinking water, adequate means sanitation, safe food, healthy working conditions.

i. Health is a fundamental right

Dr Tedros Adhanom Ghebreyesus, Director-General of WHO on December 10, 2017, said in his statement on Human Rights Day:

“The possession of the best state of health that he is capable of attaining constitutes one of the fundamental rights of every human being, whatever his race, his religion, his political opinions, his economic or social condition.

Almost 70 years after the adoption of the Constitution of the World Health Organization, these words resonate with more force and more relevance than ever.

The right to health has been at the heart of WHO's identity and mandate since its inception. It is also at the heart of my absolute priority: universal health coverage.

The right to health for all means that everyone should have access to the health services they need, when they need them and where they need them, without facing financial hardship.

No one should get sick or die just because they are poor or cannot access the health services they need. We must all work together to combat inequalities and discriminatory practices so that everyone enjoys the best possible state of health, regardless of age, gender, race, religion, state of health, sexual orientation, identity of gender and, possibly, their disability or migrant status⁵.

b. The evolution of the right to health⁶

Traditionally health was seen as a private rather than a public domain. Health was defined as the absence of disease. The first laws to contain provisions relating to health date back to the industrial era. The Moral Apprentices Act (1802) and the Public Health Act (1848) were adopted in Britain as means of containing social pressure caused by poor working conditions of the poor. The Mexican Constitution of 1843 refers to the responsibility of the state in safeguarding public health (European Social Charter).

The evolution that made it possible to define health as a social issue led to the founding of the World Health Organization (WHO) in 1946. With the emergence of health as a public issue, the conception of health changed. WHO has defined health as health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity. It has defined

⁵ https://www.wto.org/english/thewto_f/coher_f/wto_who_f.htm

⁶ (European Social Charter)

an integrated approach that links all the factors that determine human well-being, including the physical and social environment conducive to good health.

With the creation of the WHO, for the first time, the right to health was recognized internationally. The WHO Constitution affirms that the possession of the highest attainable standard of health is one of the fundamental rights of every human being, regardless of race, religion, political opinions, economic or social condition. Over time, this recognition has been reiterated in a wide variety of formulations in various international and regional human rights legal instruments.

The universal recognition of the right to health was further confirmed in the Alma-Ata Declaration on Primary Health Care, in which States committed themselves to progressively developing comprehensive medical care systems in order to ensure a efficient and equitable resources for the maintenance of health. They repeated that it was their responsibility to ensure the health of their populations, which they could only fulfill by providing adequate social services. The Declaration develops the bases for the establishment of primary health care systems, directly linked to respect for the law. Even if this legal instrument is not made compulsory, it represents an additional commitment on the part of the States relating to the right to health, and establishes the framework of an integrated policy which aims to ensure its enjoyment.

In the context of the Alma-Ata Conference, the WHO drew up the Health for All plan, which consists of a series of objectives and programs intended to ensure minimum levels of health for all. Nevertheless, in a context where health problems associated with poverty and inequality continue to present the same obstacles to achieving minimum levels of well-being for most of the world's population, the failure to achieving these goals highlights the need to rework strategies.

Health advocacy, one of the fundamental aspects of primary health care, was first, independently, through four successive conferences: the first in Ottawa, Canada, in 1986 and the most recent in Jakarta, Indonesia, in 1997. The Jakarta Declaration includes an updated conception of health and expresses the desire to achieve it at the dawn of the next century. They identify with peace, housing, education, social security, social relations, food, income, empowerment of women, a stable ecosystem, social justice, respect for human rights, and equity. Above all, poverty remains the greatest threat to health.

Other relevant international health-related initiatives have been taken in recent years by the Program of Action of the International Conference on Population and Development (Cairo,

1994), which included three objectives aimed at reducing infant and maternal mortality, and which guaranteed universal access to reproductive health and family planning services; and by the program of action of the Fourth World Conference on Women (Beijing, 1995) which adopted five strategic objectives aimed at improving the health conditions of women everywhere.

(B) The main aspects of the right to health⁷

The "right to the enjoyment of the highest attainable standard of health" implies that a set of social criteria favorable to the state of health of all be met, in particular the availability of health services, safe working conditions, appropriate housing and nutritious foods. The realization of the right to health is closely linked to the realization of other human rights, including the right to food, housing, work, education, non-discrimination, access information and participation.

a. The right to health in terms of freedoms and rights

The right to health implies both freedoms and rights.

Freedoms include the human right to control their own health and body (e.g. sexual and reproductive rights), as well as the right to integrity (e.g. the right not to be subjected to torture and not to be subjected without his consent to medical treatment or experimentation).

Rights include the right of access to a health protection system that guarantees everyone, on an equal footing, the opportunity to enjoy the highest attainable standard of health.

Health policies and programs have the capacity to promote or violate human rights, including the right to health, depending on how they are designed or implemented. While they aim to respect and protect human rights, they help the health sector fulfill its responsibility to care about everyone's health.

b. Human rights violations in the area of health

If human rights are violated or insufficiently taken into account, this can have serious consequences for health. Overt or implicit discrimination in the provision of health services constitutes a violation of fundamental rights.

Many people with mental disorders are placed in mental institutions against their will, even though they have the ability to make decisions about their future. Conversely, when beds are in short supply, it is often members of this population who leave hospital prematurely, which can lead to high readmission rates and even death, and which is also a violation of their right to

⁷ https://www.wto.org/english/thewto_f/coher_f/wto_who_f.htm

treatment.

Similarly, women are often denied access to sexual and reproductive health care and services in both developed and developing countries. It is a violation of human rights deeply rooted in the values of societies regarding women's sexuality. In addition to denial of care, women in some societies are sometimes forced to undergo procedures such as sterilization, abortion or virginity examinations.

c. Human rights-based approaches

A human rights-based approach to health provides strategies and solutions to confront and rectify inequalities, discriminatory practices and unfair power relations, which are often at the heart of unequal health outcomes. A human rights-based approach aims to ensure that all health policies, strategies and programs are designed to gradually improve the enjoyment by all of the right to health. Interventions to achieve this goal adhere to strict principles and standards listed below.

Non-discrimination: The principle of non-discrimination seeks to ensure that human rights will be exercised without discrimination on the basis of race, color, sex, language, religion, political opinion or any other opinion, national or social origin, wealth, birth or any other status such as disability, age, marital and family status, sexual orientation and gender identity, state of health, domicile or the economic and social situation.¹ (Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in the enjoyment of economic, social and cultural rights; 2009.)

Availability: Public health and health care facilities, goods, services and programs are available in sufficient numbers.

Accessibility: Health facilities, goods and services are accessible to all. Accessibility is made up of four interrelated dimensions:

- Non-discrimination;
- Physical accessibility;
- Affordability;
- Accessibility of information.

Acceptability: All health facilities, goods and services must respect medical ethics and cultural differences, and take into account the needs of men and women across the lifespan.

Quality: The quality as well as the scientific and medical level of health establishments, goods

and services must be adapted.

Accountability: States and other responsible entities must be accountable for the extent to which they respect human rights.

Universality: Human rights are universal and inalienable. They must be respected for every person, everywhere in the world.

Policies and programs are designed to meet the needs of the population through the accountability system put in place. A human rights-based approach determines the relationships between the different actors in order to empower people to claim their rights and to encourage decision-makers and service providers to respect their obligation to create systems of more responsive health.

Health law is a multidisciplinary and interdisciplinary law. It includes several categories of rules.

d. Rules relating to the organization of the health system

The law of our health system includes strictly legal aspects, but also political and economic aspects. We distinguish:

Public health law: this includes the rules of public policy applicable to the State, whose mission is to protect the health of the population. These rules of social policy concern in particular:

- The quality of water and food;
- Maternal and Child Protection (PMI);
- Prevention of alcoholism, smoking;
- Vaccination campaigns;
- Epidemic monitoring;
- Management of health and environmental accidents.

Social security law: it includes the rules relating to health insurance.

The law of public health institutions: it includes the rules applicable to the institutions in charge of regulating health activities (Directorate General for Health, Directorate General for Health Care, etc.).

e. Rules relating to areas affecting health

We can cite, for example, pharmaceutical law relating to the design, marketing and sale of medicines and health products.

It is also the field of bioethics relating to research on the human person, questions of the beginning and end of life, organ donation, etc.

(C) The scope of the right to health⁸

The scope of the right to health includes several populations.

a. Disadvantaged populations

Vulnerable and marginalized groups in society are often less likely to enjoy the right to health. Three of the world's deadliest communicable diseases – malaria, HIV/AIDS and tuberculosis – disproportionately affect the world's poorest people, putting a heavy strain on the economies of developing countries.

Conversely, it is often perceived that non-communicable diseases affect high-income countries; yet the associated burden increases disproportionately in low-income countries and among their populations.

Within countries, certain populations, such as indigenous communities, are exposed to higher rates of ill health and must overcome daunting barriers to access quality health care at affordable prices.

Compared to the general population, these populations have much higher mortality and morbidity rates from non-communicable diseases such as cancer, cardiovascular diseases and chronic respiratory diseases. People particularly vulnerable to HIV infection – including young women, men who have sex with men and people who inject drugs – often belong to discriminated against and socially and economically disadvantaged groups.

These vulnerable populations may be targeted by laws and policies that further aggravate this marginalization and make it even more difficult to access prevention and care services.

Certain groups or individuals face particular difficulties in exercising their right to health. These may be biological or socioeconomic factors, discrimination or stigmatization or more generally a combination of these. To consider health as a human right, it is necessary to pay particular attention to different individuals and groups of individuals within society, especially those who are in a situation of vulnerability.

b. adolescent health

Adolescence is the period of life between childhood and adulthood, i.e. between 10 and 19 years old. It is a unique stage of human development.

⁸ The United Nations Human Rights Treaty System, Fact Sheet No. 30, Rev.1, 2012.

Adolescents experience rapid physical growth and cognitive and psychological development. This has consequences for how they feel and how they think, make decisions and interact with the world around them.

Considered a stage of life when one is in good health, adolescence is nevertheless accompanied by many deaths, illnesses and injuries. Most are preventable or treatable. During this stage, adolescents adopt behavioral patterns – related, for example, to diet, physical activity, use of psychoactive substances and sexual life – that are likely to protect their health and that of those around them, or endanger their health now and in the future.

To grow and develop in good health, adolescents need information, including age-appropriate comprehensive sexuality education; opportunities to develop their practical skills; health services that are acceptable, equitable, responsive and effective; and healthy and supportive environments. They also need opportunities to meaningfully participate in the design and implementation of interventions to improve and protect their health. Increasing these opportunities is essential to meet the specific needs and rights of adolescents.

c. The health of refugees and migrants

Today, there are about one billion migrants in the world, or about one in eight people. These include 281 million international migrants and 82.4 million forcibly displaced.

The experience of migration is a key determinant of health and well-being. Refugees and migrants remain among the most vulnerable members of society and often face xenophobia; discrimination; poor living, housing and working conditions; and inadequate access to health services, despite the frequent physical and mental health problems they suffer from.

The COVID-19 pandemic has posed additional challenges, in terms of increased risk of infection and death among refugees and migrants, and has exposed existing inequalities in access to and use of health services. health. Refugees and migrants have also been affected by the negative economic impact of the lockdown and travel restrictions.

Refugees and migrants need to be in good health to protect themselves and host populations. They enjoy the fundamental right to health, and countries have an obligation to provide health care services that are sensitive to refugees and migrants.

In 2020, WHO established the Health and Migration Programme⁹ to provide global leadership

⁹ <https://www.unhcr.org/refugee-statistics/>

The WHO Global Action Plan to Promote the Health of Refugees and Migrants has been endorsed by the World Health Assembly in 2019. The Global Action Plan is part of an international framework established by the United Nations to positively manage global migration, including the Sustainable Development Goals (SDGs)

on health and migration issues in the context of the WHO Global Action Plan to Promote the Health of Refugees and migrants, 2019-2023.

d. Maternal health

dystocia, as well as indirect causes such as anemia, malaria and heart disease.

Most maternal deaths are preventable with prompt management by a qualified health professional practicing in a supportive environment.

Ending preventable maternal deaths must continue to be a global priority. At the same time, the mere fact of surviving pregnancy and childbirth can in no way be a guarantee of quality maternal health care. Increased efforts to reduce maternal injury and disability are essential to promote health and well-being.

Every pregnancy and every birth is unique. Addressing inequalities that affect health, particularly sexual and reproductive health, related rights and gender, is fundamental to ensuring that all women have access to respectful and safe maternity care quality.

e. Mental health

In recent years, the centrality of mental health to the achievement of global development goals has been increasingly recognized, as evidenced by the inclusion of this issue in the Sustainable Development Goals. Depression is one of the leading causes of disability. Suicide is the second leading cause of death among 15-29 year olds. People with severe mental disorders die prematurely – up to twenty years earlier – due to preventable physical pathologies.

Although some countries have made progress, people with mental disorders often face serious human rights violations, discrimination and stigma.

Many mental health conditions can be treated effectively at relatively low cost, but there is still a huge gap between those who need care and those who access it. The number of people receiving effective treatment remains extremely low.

More investment is needed on all fronts: to increase understanding of mental health and reduce stigma; as part of efforts to improve access to quality mental health care and effective treatment; in the context of research, in order to find new treatments and to improve existing treatments for all mental disorders. In 2019, WHO launched the Special Initiative for Mental Health (2019-2023): Universal Health Coverage for Mental Health, to ensure that 100 million more people have access to quality mental health care and affordable in 12 priority countries.

and two global compacts, the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration.

f. Sexual Health

The Sexual health is fundamental to the overall health and well-being of individuals, couples and families, as well as to the social and economic development of communities and countries. Sexual health, when seen in a positive way, is understood as a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasant and safe sexual experiences, free from coercion, discrimination and violence. The ability of men and women to be sexually healthy and to experience a sense of well-being in this respect depends on:

- Their access to comprehensive and good quality information on sex and sexuality;
- The knowledge they have about the risks they may face and their vulnerability to the harmful consequences of unprotected sexual activity;
- Their ability to access sexual health care;
- The environment in which they live, namely an environment that affirms and promotes sexual health.

Issues related to sexual health are wide ranging and encompass sexual orientation and gender identity, gender expression, relationships and pleasure. They also relate to harmful elements or pathologies such as:

- Human immunodeficiency virus (HIV) infections, sexually transmitted infections (STIs) and reproductive tract infections and their adverse effects (such as cancer and infertility);
- Unwanted pregnancies and abortion;
- Sexual dysfunctions;
- Sexual violence;
- Harmful practices (such as female genital mutilation).

g. Urban Health

Urbanization is one of the main global trends of the 21st century that has a major impact on health. More than 55% of the world's population lives in urban areas and this proportion is expected to reach 68% by 2050. As this evolution will mainly affect developing countries, the world today has a unique opportunity to direct urbanization and other important aspects of urban development in ways that protect and promote health. This is important, not least because perhaps a city's most important asset is the health and well-being of its residents.

However, most of the 4.2 billion people who live in cities live in inadequate housing, lack adequate transportation and sanitation, cannot rely on proper waste management, and breathe whose quality does not meet WHO guidelines. Other forms of pollution, such as noise, water

and soil contamination, "urban heat islands" and lack of space for walking, cycling and active living, make cities the epicenters of an epidemic of non-communicable diseases and a driver of climate change.

II. CONCLUSION

The right to health is the right to a minimum, universal level of health, i.e. to which everyone is entitled. This right has economic, social and cultural aspects. And it is increasingly part of international agreements.

The objective of the establishment and implementation of the interactional conventions of the right to health is to have a global solution that makes it possible to meet the real needs of all humanity for the enjoyment of this fundamental right.
