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The challenges of women's rights in international instruments and its role on stability and family law

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ABSTRACT

This article argues that international human rights law has made a positive contribution to the realization of human rights in much of the world. Therefore, the aim of this study were investigate the challenges of women's rights in international instruments and its role on stability and family law. Simmons argues that international human rights law should get more practical and rhetorical support from the international community as a supplement to broader efforts to address conflict, development, and democratization. By several measures, civil and political rights, women's rights, the right not to be tortured in government detention, and children's rights improve, especially in the very large, heterogeneous set of countries that are neither stable autocracies nor stable democracies. Yet health and human rights are both powerful, modern approaches to defining and advancing human well-being. Attention to the intersection of health and human rights may provide practical benefits to those engaged in health or human rights work, may help reorient thinking about major global health challenges, and may contribute to broadening human rights thinking and practice. However, meaningful dialogue about interactions between health and human rights requires a common ground.

Key words: Challenges, Women's rights, International instruments, Stability

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INTRODUCTION

Health and human rights have rarely been linked in an explicit manner. With few exceptions, notably involving access to health care, discussions about health have rarely included human rights considerations. Similarly, except when obvious damage to health is the primary manifestation of a human rights abuse, such as with torture, health perspectives have been generally absent from human rights discourse. Explanations for the dearth of communication between the fields of health and human rights include differing philosophical perspectives, vocabularies, professional recruitment and training, societal roles, and methods of work. In addition, modern concepts of both health and human rights are complex and steadily evolving. Yet health and human rights are both powerful, modern approaches to defining and advancing human well-being [12]. Attention to the intersection of health and human rights may provide practical benefits to those engaged in health or human rights work, may help reorient thinking about major global health challenges, and may contribute to broadening human rights thinking and practice. However, meaningful dialogue about interactions between health and human rights requires a common ground. To this end, following a brief overview of selected features of modern health and human rights, this article proposes a

provisional, mutually accessible framework for structuring discussions about research, promoting cross-disciplinary education, and exploring the potential for health and human rights collaboration. The goal of linking health and human rights is to contribute to advancing human well-being beyond what could be achieved through an isolated health- or human rights-based approach [14]. This article proposes a three-part framework for considering linkages between health and human rights; all are interconnected, and each has substantial practical consequences. The first two are already well documented, although requiring further elaboration, while the third represents a central hypothesis calling for substantial additional analysis and exploration. First, the impact (positive and negative) of health policies, programs and practices on human rights will be considered [20]. This linkage will be illustrated by focusing on the use of state power in the context of public health. The second relationship is based on the understanding that human rights violations have health impacts. It is proposed that all rights violations, particularly when severe, widespread and sustained, engender important health effects, which must be recognized and assessed. This process engages health expertise and methodologies in helping to understand how well-being is affected by violations of human rights. The third part of this framework is based on an overarching proposition: that promotion and protection of human rights and promotion and protection of health are fundamentally linked. Even more than the first two proposed relationships, this intrinsic linkage has strategic implications and potentially dramatic practical consequences for work in each domain [19]. The three central functions of public health include: assessing health needs and problems; developing policies designed to address priority health issues; and assuring programs to implement strategic health goals.14 Potential benefits to and burdens on human rights may occur in the pursuit of each of these major areas of public health responsibility. Around the world, health care is provided through many diverse public and private mechanisms. However, the responsibilities of public health are carried out in large measure through policies and programs promulgated, implemented and enforced by, or with support from, the state. Therefore, this first linkage may be best explored by considering the impact of public health policies, programs and practices on human rights. The three central functions of public health include: assessing health needs and problems; developing policies designed to address priority health issues; and assuring programs to implement strategic health goals.14 Potential benefits to and burdens on human rights may occur in the pursuit of each of these major areas of public health responsibility. The third core function of public health, to assure services capable of realizing policy goals, is also closely linked with the right to non-discrimination. When health and social services do not take logistic, financial, and socio-cultural barriers to their access and enjoyment into account, intentional or unintentional discrimination may readily occur. For example, in clinics for maternal and child health, details such as hours of service, accessibility via public transportation and availability of daycare may strongly and adversely influence service utilization [16]. Unfortunately, public health decisions to restrict human rights have frequently been made in an uncritical, unsystematic and unscientific manner. Therefore, the prevailing assumption that public health, as articulated through specific policies and programs, is an unalloyed public good that does not require consideration of human rights norms must be challenged. For the present, it may be useful to adopt the maxim that health policies and programs should be considered discriminatory and burdensome on human rights until proven otherwise. Justifying public health concern for human rights norms could be based on the primary value of promoting societal respect for human rights as well as on arguments of public health effectiveness. At least to the extent that public health goals are not seriously compromised by respect for human rights norms, public health, as a state function, is obligated to respect human rights and dignity. It is essential to recognize that in seeking to fulfill each of its core functions and responsibilities, public health may burden human rights. In the past, when restrictions on human rights were recognized, they were often simply justified as necessary to protect public health. Indeed, public health has a long tradition, anchored in the history of infectious disease control, of limiting the "rights of the few" for the "good of the many." Thus, coercive measures such as mandatory testing and treatment, quarantine, and isolation are considered basic measures of traditional communicable disease control [9].

Women's rights in international instruments

The idea that human rights and public health must inevitably conflict is increasingly tempered with awareness of their complementarity. Health policy-makers' and practitioners' lack of familiarity with modern human rights concepts and core documents complicates efforts to negotiate, in specific situations and different cultural contexts, the optimal balance between public health objectives and human rights norms. Similarly, human rights workers may choose not to confront health policies or programs, either to avoid seeming to under-value community health or due to uncertainty about how and on what grounds to challenge public health officials [4]. Health impacts are obvious and inherent in the popular understanding of certain severe human rights violations, such as torture, imprisonment under inhumane conditions, summary execution, and "disappearances." For this reason, health experts concerned about human rights have increasingly made their expertise available to help document such abuses. Examples of this type of medical-human rights collaboration include: exhumation of mass graves to examine allegations of

executions examination of torture victims and entry of health personnel into prisons to assess health status [15]. However, health impacts of rights violations go beyond these issues in at least two ways. First, the duration and extent of health impacts resulting from severe abuses of rights and dignity remain generally under-appreciated. Torture, imprisonment under inhumane conditions, or trauma associated with witnessing summary executions, torture, rape or mistreatment of others have been shown to lead to severe, probably life-long effects on physical, mental and social well-being [10]. In addition, a more complete understanding of the negative health effects of torture must also include its broad influence on mental and social wellbeing; torture is often used as a political tool to discourage people from meaningful participation in or resistance to government. Second, and beyond these serious problems, it is increasingly evident that violations of many more, if not all, human rights have negative effects on health. For example, the right to information may be violated when cigarettes are marketed without governmental assurance that information regarding the harmful health effects of tobacco smoking will also be available. The health cost of this violation can be quantified through measures of tobacco-related preventable illness, disability and premature death, including excess cancers, cardiovascular and respiratory disease [14]. Assessment of rights violations' health impacts is in its infancy. Progress will require: a more sophisticated capacity to document and assess rights violations; the application of medical, social science and public health methodologies to identify and assess effects on physical, mental and social well-being; and research to establish valid associations between rights violations and health impacts. Identification of health impacts associated with violations of rights and dignity will benefit both health and human rights fields [11]. Using rights violations as an entry point for recognition of health problems may help uncover previously unrecognized burdens on physical, mental or social well-being. From a human rights perspective, documentation of health impacts of rights violations may contribute to increased societal awareness of the importance of human rights promotion and protection. The concept of an inextricable relationship between health and human rights also has enormous potential practical consequences [5]. For example, health professionals could consider using the International Bill of Human Rights as a coherent guide for assessing health status of individuals or populations; the extent to which human rights are realized may represent a better and more comprehensive index of well-being than traditional health status indicators. Health professionals would also have to consider their responsibility not only to respect human rights in developing policies, programs and practices, but to contribute actively from their position as health workers to improving societal realization of rights. Health workers have long acknowledged the societal roots of health status; the human rights linkage may help health professionals engage in specific and concrete ways with the full range of those working to promote and protect human rights and dignity in each society.

International instruments and human rights system

Abortion laws have evolved through courts and human rights tribunals around the world interpreting human rights to recognize, and sometimes to deny, women's rights of access to abortion services and information. Courts and human rights tribunals among themselves often reflect different views on the legitimate use of law [18]. One view is that law is an acceptable instrument to express and enforce the moral prohibition of abortion, by including criminal sanctions. Another view is that the demonstrable consequences of attempting to restrict abortion by the application of criminal sanctions are detrimental to women. They often compel continuation of pregnancies that cost women their lives or health, or lead to unskilled interventions in pregnancy that bear the same costs. Criminal sanctions are therefore rejected, on grounds of their dysfunctions. Modern evolution of abortion law associates enforcement of repressive legislation with non-democratic governments and authoritarian religious institutions that are scornful of egalitarian "rights talk." They are fearful that women's achievement of their reproductive choices would subvert governmental and institutional pro-natalist policies, and are indifferent to the harmful impact of punitive measures on the lives of women and families [3]. Legal approaches concerned to minimize harms to health from unplanned pregnancies accommodate abortion, but recognize how resourceful programs of sex education and family planning can reduce its incidence [6]. Countries such as South Africa that have newly come to democracy based on an enfranchised electorate, where those who employ political power are accountable to the electorate, are taking initiatives to situate their abortion legislation within frameworks that implement principles of respect for women's human rights that are internationally recognized. There are, of course, some modern democracies whose abortion laws remain expressed primarily in restrictive, criminally focused terms. Movement towards legal reform is not universal, and remains resisted within some democratic political establishments, particularly when leading members of their ruling elites and judiciaries are in thrall to religious authorities that have no commitment to democratic reform of conservative laws. Legislatures and judiciaries respectful of women's views, including those that hear women's voices from within their own memberships, are progressively molding legislation and its interpretation sympathetically to women's interests in health, and in observance of human rights [13]. As women become equal citizens with men in their societies, it is anticipated that abortion concerns will evolve from placement within

criminal or penal codes, to placement within health or public health legislation, and eventually to submergence within laws serving goals of human rights, social justice, and the individual dignity of control over one's own body. Governments should therefore require health service providers to be adequately trained and equipped to deliver safe services. The World Health Organization is working to provide technical and policy guidance to governments to ensure safe and accessible abortion services [2]. Laws and policies designed to limit information about safe abortion techniques and training of non-physicians in their use, in order to preserve the deterrent effect on women of the dangers of unlawful abortion, offend legal and humanitarian provisions against cruel and unusual punishment. Further, there is a denial of human rights when post-abortion care to avoid repeat abortions is obstructed [7]. This can be due to unavailability or inaccessibility of lawful services, so that women can avail themselves only of clandestine, unskilled abortion services that are delivered without their education for future avoidance. The most recent stage in evaluation of abortion laws, motivated by human rights considerations, has been implicit in the concept of reproductive health, because the right to the highest attainable standard of health, of which reproductive health is part, is central to the protection and promotion of human rights. In practice, human rights are interrelated and interdependent, since a violation of any one is frequently a violation of another. Indeed, the very conventions that express these rights are themselves interrelated. Not only individual rights but also the national constitutions and international conventions that express them may be permeable. Human rights tribunals hearing complaints of discrimination under one human rights convention may consider whether there has been discrimination with respect to rights protected in other conventions [1]. Assessment is needed of compliance with human rights at different levels, including clinical care, the operation of health systems, and the influence of underlying social, economic, and legal conditions. These levels are not necessarily distinct and often overlap. Failure to respect women's human rights at one level can cause or exacerbate failure at another level. Social science, epidemiological, and legal research can be drawn upon to conduct a human rights assessment of abortion services. In addition, Concluding Observations of human rights treaty monitoring committees and human rights fact-finding reports often indicate what more needs to be done to bring laws, policies and practices into compliance with human rights standards. Examples are explored below of information that a human rights needs assessment might include when addressing the three levels of clinical care, organization of health systems, and underlying social, economic, and legal conditions [6].

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