



## What can Human Rights do for Health & Health Equity in South Africa?

Leslie London

As South Africa enters its second decade of democracy, we find that health gains anticipated in 1994 remain unrealized for the majority of our people, particularly the poorest in society. Why is it that, despite a Constitution hailed as the most progressive in the world, a victorious liberation movement and a set of governmental and non-governmental institutions designed to promote human rights in our society, we have failed to translate the provisions of our Bill of Rights into reality? To understand this contradiction, we need to understand, firstly, what are human rights; secondly, the relationship between health and human rights; and, thirdly, how human rights commitments can be translated into health-generating conditions and material gains in health for those who need it most. There are potential contradictions between a human rights approach and broad strategies for Primary Health Care, but these arise because of an incomplete or selective understanding of human rights, sometimes deliberately so, intended to further neo-liberal or imperialist political agendas.

### What are human rights?

Human rights can be described as claims (material or social) that individuals make on society that are essential for their dignity and well-being. Rights are usually incorporated in national and international law (although Apartheid South Africa flouted this). The impetus for developing a human rights infrastructure was the revelation of the atrocities committed by the Nazis in World War II. As a result, the United Nations adopted the Universal Declaration of Human Rights (UDHR) based on the idea that "all human beings are born free and equal in dignity and rights." Unlike principles of medical ethics, once a treaty is ratified by a state, it becomes law and binds its conduct.

A human rights approach implies the use of rights as a set of standards to develop policy; or to monitor and analyse policy to hold governments accountable; or as a lobbying and advocacy tool to mobilise civil society.

However, human rights are not a uniformly understood set of concepts and principles and there is much dispute about rights. Two broad categories of rights emerged following the UDHR, civil and political rights (like traditional freedoms of speech, movement, the vote etc) and socio-economic rights (to housing, water,

health, education etc). Driven primarily by Cold War political agendas this is a false dichotomy, since rights are indivisible. One cannot enjoy civil and political rights unless socio-economic conditions are such that you are adequately clothed, educated, fed and healthy enough to exercise civil and political rights.

Another criticism is that rights are generally framed as belonging to individuals, who are seen to exist in isolation, a typical Western philosophical tradition. In contrast, traditional societies are constructed on a web of relations - social, economic, cultural and political - in which humans exist as social beings and where social interactions, clashes and conflicts, form the basis of social relations. This has given rise to some suspicion of rights as a culturally imposed practice. Although the origins of human rights law are based on Western philosophical traditions, an increasing number of non-Western societies have come to identify with the idea that all people enjoy fundamental rights and are entitled to respect and dignity, and that the state has an obligation to realize rights. The paradigm of human rights practice is therefore contested and sustained effort is necessary to ensure it has a meaningful global impact.

### Human Rights and Health

The Alma Ata Declaration on PHC presupposes health as a right. International human rights law focuses on the rights of access to health care and to resources essential for health (housing, food security etc), making health one of several socio-economic rights. Our Constitution guarantees not only the right of access to health care but also the right of access to housing, sufficient food, water, social security, information, basic education and a range of other social and material needs essential for good health.

Health is also related to human rights in a set of operational relationships. For example, health services can impact on people's rights, either positively (e.g. through affording them access to health care, or control over their bodies) or negatively (by depriving them of access to health care, or dignity in the way they may be treated as patients). Secondly, human rights violations themselves result in health impacts. South Africa was witness to numerous deaths in detention as a result of torture and security force action. Apartheid planning



lead to massively increased rates of death and disability from preventable diseases amongst black South Africans, particularly in rural areas. Human rights and health interventions are inseparable features of the PHC approach. Both are essential to maximize human well-being.

### Potential contradictions

To say that human rights are good and desirable is easy but simplistic. Potential contradictions can arise between the human rights and public health approaches to addressing health problems. In public health we try to put in place policies that will benefit the most people for a given amount of resources (a utilitarian approach). To promote equity, we will try to ensure that such policies address the needs of people who are most vulnerable to ill-health.

A rights approach challenges government to meet its constitutional obligations. If considered to be an individual entitlement, a lobby group may successfully use human rights claims to secure resources for their particular programme, which then prevents the state from using these resources for other people's basic needs. This is the core of an anti-rights argument used by several South African government officials and leaders to oppose the Treatment Access Movement for ARVs for people living with HIV/AIDS.

However, this is an unhelpful polarization of what is a much more complex and nuanced issue. Human rights are also about justice and anti-discrimination and are far more than just individual entitlements. It is, after all, not property rights or contract law we are talking about, but principles that recognize all people's inherent entitlements to dignity and respect. Rights are therefore powerful tools against discrimination. They are pro-justice and can be instrumental in driving pro-poor policies. Moreover, public health policies are rarely dichotomous choices. Since when do we choose to do TB treatment or Hepatitis immunization? In real life, we look at a package of basic needs and decide on an optimal level of resources allocated to different programmes. Discrimination, vulnerability and marginalization are the key criteria in making such choices and are as important to a human rights approach as they are in (progressive) public health.

The question therefore is not whether a human rights approach is better than a public health approach or vice versa, but rather how does a human rights approach maximize public health and conversely, how does a public health programme advance human rights?

### Rights for the poor and marginalized

Human rights are products of struggle. We recognise that human rights make an essential contribution (positively or negatively) to struggles around power. Rights can be deployed as much in defence of privilege as they can be used to advance the interests of the poor and marginalised. We have seen how big companies can use rights machinery (e.g. Freedom of Information) to silence publication of critical research results, to oppose regulation and to threaten or implement litigation to achieve their goals.

Therefore, we cannot judge the role of human rights in advancing pro-poor choices and social justice without understanding the institutional context in which human rights operate. If human rights mechanisms prioritise the needs of the poor and the marginalised then rights become powerful mechanisms with which to advance democracy. If they do not have this authority, those with power between and within countries can easily co-opt rights in the service of those who already benefit from inequity.

### How do rights mechanisms put the poor first?

Evidence from research conducted for EQUINET<sup>1</sup> suggests that human rights approaches are powerful tools to support social justice and institutional transformation. But this is conditional on whether rights are set in a group context, where operationalising rights is a proactive engagement to assist those most affected (specifically the vulnerable), and where rights are seen as a complete spectrum of civil, political and socio-economic rights. Public health concerns for equity then become entirely consonant with human rights. Synergy between public health and human rights arises from social processes inherent in building community capacity to interface with the state in a way that secures collective rights.

Several key themes emerged from the case studies:

- Rights alone are not enough, but need to be coupled with community engagement. The success of a human rights approach should be judged not simply on the decision of a court, but on the extent to which individuals and communities are engaged in redress of their problems.
- Rights, appropriately applied, can strengthen community engagement. Not only are human rights strengthened by an active civil society, but

<sup>1</sup>EQUINET (Network on Equity in Health in Southern Africa)  
<http://www.equinet africa.org/Resources/downloads/EquinetDiscussionPaper14.pdf>



human rights mechanisms need to reinforce the opportunities for organisation and mobilisation in civil society.

- Human rights are the strongest guarantors of effective equity-promoting impacts, particularly where they strengthen the collective agency of the most vulnerable groups
- Rights approaches can and should also address the public-private divide in health, which is a key driver of inequity. Moreover, human rights approaches provide additional opportunities for mobilising resources outside the health sector
- Lastly, access to information and transparency are key contextual requirements for human rights approaches to build health equity

### **South Africa's Democracy, Globalisation, Health, and Human Rights**

South African civil society, though much weaker now than during the heyday of anti-apartheid resistance, has achieved a set of institutional mechanisms which many expect to place the interests of the poor and marginal first. Two examples are, a Constitutional Court operating within a framework of a Bill of Rights and a Human Rights Commission hopefully attuned to the needs of the poorest. However, we operate in a world where globalisation is touted as the universal human good, in spite of unprecedented increases in global inequality, injustice, oppression, and rising levels of poverty and deprivation. Human rights discourse is increasingly mobilized by powerful countries as a tool of foreign policy, rather than as a mechanism for redress of global or national inequalities. For example, US interventions in the Middle East have been presented as "restoring" formal democracy, and "liberating" peoples oppressed by dictatorial regimes. US-dominated international lending agencies have focused on "good governance" criteria as part of loan agreements, emphasizing civil and political rights within a human rights paradigm. Yet, neither the US, IMF nor World Bank have exhibited any intention of acting to restore countries' sovereignty so that developing country governments are able to meet their socio-economic rights obligations. Indeed, US foreign and economic policies and those of international lending and trade institutions have systematically undermined the capacity of national governments to act independently to advance the socio-economic rights of their peoples.

As Professor Shivji argues, this "double-standards in human rights discourse, and the unequal power relations which underlie it, is not fully appreciated if

human rights are presented as apolitical, asocial and ahistorical values inherent in us all because we are human beings... Thus the way human rights are prioritised and categorised is itself open to debate, demonstrating the ideological nature of human rights discourse. Like all ideological discourses, half-truths and untruths are presented as absolute truths and whole truths. We should be wary therefore of a perspective on human rights which does not treat human rights in the context of history and social struggles."

What does this say for South Africa today, where it is not just the HIV epidemic responsible for increasing levels of inequity visible in South African society? We have political leaders who have lived through the struggle for liberation but are now having to balance service delivery with neoliberal global forces. These forces prioritise governance-related rights that do not challenge power relations at national or international level. As a result, human rights discourse in post-apartheid South Africa has been uneven in its expression, in some cases boldly asserting socio-economic entitlements (e.g. expanding the child support grant). At other times there was a retreat from a rights-based approach to basic services (e.g. privatisation of water and electricity), with ministers preferring to focus on service delivery in their public pronouncements than on their constitutional obligation to assure socio-economic rights.

Lessons from elsewhere in Southern Africa indicate that unless civil society is active and strengthened in ways that hold government accountable, human rights claims will have little systemic impact on health equity. The success of a human rights approach should be judged not only on the court decisions, on the policies adopted, or even on the implementation of pro-poor policies, but also on the capacity of human rights strategies to strengthen the agency of the least powerful in society to act in their own interests, individually and collectively.

Acknowledgements: Professor Issa G. Shivji, Professor Of Law, University Of Dar Es Salaam, Tanzania for his article "Perspectives On Human Rights" in PAMBAZUKA News, volume 80, Thu, 19 Sep 2002.