

## Towards full realization of the right to health: challenges and opportunities

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## RIGHT TO HEALTH MANDATE

- Mandate established in 2002. Paul Hunt (2002-2008), Anand Grover (2008-2014)
- This mandate is a part of UN Special Procedures mechanism
- Objectives:
  - Promote and clarify right to health and rights-based approach to health
  - Identify good practices, inform about challenges and obstacles, provide recommendations
- Not right to be healthy, but right to the enjoyment of the highest attainable standard of physical and mental health
- Not just right to medical care, but also right to determinants of health
- Working methods: country missions, thematic reports to UN GA and HRC, communications, non-mandated activities
- <http://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx>

## The right to health normative framework

- Freedoms and entitlements
- Progressive realization / immediate effect
- Participation
- Non-discrimination
- Healthcare (AAAQ)
- Social determinants
- Obligations: respect, protect and fulfil
- Accountability
- International cooperation

**“The human rights framework provides a more useful approach for analyzing and responding to modern public health challenges than any framework thus far available within the biomedical tradition.”**

**Jonathan Mann**

Health and human rights, HIV/AIDS physician & advocate

## **THEMES (2002-2014)**

- Indicators and benchmarks
- Health systems
- Health and human rights movement
- Access to essential medicines
- Sexual and reproductive rights
- Vulnerable groups – HIV/AIDS, LGBT, disability, substance use, elderly, migrants
- Underlying determinants

## **WAY FORWARD (2014 - 2020 ): CHALLENGES AND OPPORTUNITIES**

- Address existing **imbalances and power asymmetries** within and beyond healthcare systems
- Transition from Millennium Development Goals (MDGs) to **Sustainable Development Goals SDGs). Agenda 2030**. Universal health coverage. Report to UN GA (2016)
- **Life Cycle Approach** – importance of investing in health of children and adolescents. Reports to UN HRC and GA (2015). The need to **move beyond sheer survival**. Investing in services and interventions that promote the right to healthy emotional and social development is not a luxury. Importance of early childhood and adolescence.
- **Mental health and emotional well-being for all in all ages**

## **WAY FORWARD (2014 - 2020 ): CHALLENGES AND OPPORTUNITIES**

- Report on corruption in health sector and right to health (2017 – GA). Making healthcare policies and systems transparent and accountable, to ensure equitable healthcare. “Choosing wisely” initiative - preventing excessive use of medical interventions.
- Report on deprivation of liberty (detention) and right to health (2018 – HRC)
- Report on people on the move (refugees, asylum seekers) and right to (mental) health (2018 – GA)
- Next reports – on social determinants of mental health, on role of investing in health workforce and role of academic medicine and medical education

## **Issues of importance to medical doctors and their organizations**

- Dual loyalty
- Importance of human rights based approach (HRBA)
- Migration of doctors
- Criminalization of impartial healthcare
- Primary care vs specialized medicine
- Initiative to prevent excessive use of diagnostic and curative interventions (e.g., “choosing wisely”)
- Palliative care
- Special issues: solitary confinement, forced feeding

## Mental health as a new priority

- The need to invest more - but how?
- Main principles of the CRPD
- Psychiatry and human rights – issues of coercion and overuse of biomedical interventions
- Importance of psychosocial interventions
- Different understanding of human rights and dignity
- Social determinants of mental health
- What about psychiatry and medicine as a social science? (R. Virchow)

## Mental health promotion

- Social and environmental determinants of mental health (including psychosocial/emotional environment)
- All forms of inequalities and violence have negative impact to mental health
- States need to invest in enabling non-discriminatory and non-violent environments in all settings (family, school, workplace, community, healthcare services, society at large)
- Full implementation of a human rights based approach is an obligatory pre-condition of effectively investing in mental health (including promotion, prevention, treatment, rehabilitation, recovery)
- Crucial role of civil society, including organizations of users and ex-users of mental health services

## Convention on the right of persons with disabilities (CRPD)

- Dignity and autonomy
- Equality and non-discrimination
- Effective participation and inclusion
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity
- Social vs medical model: obstacles are outside, they need to be removed through empowerment, inclusion, participation and non-discrimination

## A need for meaningful debate: dignity, substitute decision making, deprivation of liberty and involuntary treatment

### **Prevailing view among psychiatric profession and policy makers:**

Psychiatrists as experts decide when they should step in with using non-consensual measures (coercion) for the purposes of medical necessity or prevention of dangerousness. This is their duty, even if against will, and thus to secure right to health. Psychiatry is a specific field, in which such exceptions are unavoidable.

Only through providing treatment it can be ensured that persons with psychosocial disabilities continue living in dignity.

Special cases of emergencies are emphasized

### **Prevailing view among human rights advocates and UN mechanisms:**

Substituted decision making, deprivation of liberty and forced treatment, based on the CRPD, should be banned. Alternative approaches should be developed and replicated. There should be no exceptions, as exceptions, allowed by the law, use to turn into the rule and pave the way to the global situation when mental healthcare services continue to be an unacceptable space for systemic human rights violations.

Dignity cannot be compatible with practices of forced placement and treatment which may amount to ill-treatment and torture.

## Actions to be prioritized on the way to moving towards elimination of non-consensual measures

- (a) Mainstream alternatives to coercion in policy with a view to legal reform;
- (b) Develop a well-stocked basket of non-coercive alternatives in practice;
- (c) Develop a road map to radically reduce coercive medical practices, with a view to their elimination, with the participation of diverse stakeholders, including rights holders;
- (d) Establish an exchange of good practices between and within countries;
- (e) Scale up research investment and quantitative and qualitative data collection to monitor progress towards these goals.

## Issues for serious debate and search of rights-compliant solutions

- If there is no hierarchy of rights, and if a right to receive effective treatment and a right to be free from violence and ill-treatment are equally important, how then to proceed in situation of psychiatric emergencies?
- Changes in normative framework in post – CRPD era. No need for mental health laws?
- Is the argument of applying too often non-consensual measures because of “dangerousness” strong enough?
- Is the argument of applying too often non-consensual measures because of “medical necessity” strong enough?
- Supported vs. substitute decision making
- Mental health disorders, conditions or diversities?
- What could be a new role and mission of psychiatry in the new paradigm of right-compliant mental health services?
- WHO Comprehensive mental health plan 2013-2020
- WHO Quality rights initiative

## Conclusion

- Human rights based approach (HRBA) is effective way for realization of the right to health
- Social, economic, cultural, civil and political rights are equally important for realization of the right to health
- Universal declaration of human rights (1948) - 70 years
- In the “post-truth” era it is of vital importance to strengthen HRBA and public health approach based on evidence