

Comparative analysis: human rights and the organic laws of health

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Abstract

This article presents a comparative analysis between the human rights described in the *Universal Declaration of Human Rights* and Organic Laws 8,080/1990 and 8,142/1990, which regulate the Brazilian Unified Health System. The three documents were related and compared, the first, an international one and the other two of national character, to identify humanistic and ethical values in the legal framework of Brazilian public health. Discussions on this topic are fundamental so health professionals can identify the gaps between theory and hospital practice, thus ensuring the rights of patients.

Keywords: Bioethics. Human rights. Unified Health System.

Resumo

Análise comparativa: direitos humanos e as leis orgânicas da saúde

Este artigo realiza uma análise comparativa entre os direitos humanos descritos na *Declaração Universal de Direitos Humanos* e as Leis Orgânicas 8.080/1990 e 8.142/1990, que regulamentam o Sistema Único de Saúde. O método se baseou na associação e comparação dos três documentos, sendo o primeiro de nível internacional e os demais de cunho nacional, a fim de identificar valores humanísticos e éticos nas bases legais da saúde pública brasileira. Discussões acerca dessa temática são fundamentais para que profissionais da saúde identifiquem lacunas entre teoria e prática hospitalar e, dessa forma, garantam os direitos dos pacientes.

Palavras-chave: Bioética. Direitos humanos. Sistema Único de Saúde.

Resumen

Análisis comparativo: los derechos humanos y las leyes orgánicas de la salud

Este artículo realiza un análisis comparativo entre los derechos humanos descritos en la *Declaración Universal de los Derechos Humanos* y las Leyes Orgánicas 8.080/1990 y 8.142/1990, que regulan el Sistema Único de Salud en Brasil. El método se basó en la asociación y comparación de los tres documentos, con el primero de ámbito internacional y los otros de carácter nacional, con el fin de identificar valores humanísticos y éticos en las bases jurídicas de la salud pública brasileña. Las discusiones sobre este tema son esenciales para que los profesionales de la salud puedan identificar lagunas entre teoría y práctica en el hospital y, de esa manera, garantizar los derechos de los pacientes.

Palabras clave: Bioética. Derechos humanos. Sistema Único de Salud.

The authors declare no conflict of interest.

The *Universal Declaration of Human Rights* (UDHR) emerged in 1948, within a sad and deplorable context of atrocities and genocide of minorities that took place during World War II. The declaration consists of ideals that aim to guide the conduct of society and government action, in addition to the prescription of laws that guarantee the protection of human rights¹. The document recognizes that dignity, freedom of speech and equality before the law are conditions due to everyone, regardless of age, sex, color or nationality^{1,2}.

The Brazilian Unified Health System (SUS), in turn, was created in 1988 by the Brazilian Federal Constitution with the aim of guaranteeing access to health care for the entire population. For those born in the early 20th century in Brazil, the creation of principles that democratized health care certainly seemed like a utopia, since the population at the time was vulnerable to several epidemics. Diseases such as polio, malaria and tuberculosis were responsible for the death of a significant portion of the population, especially among the lower classes, who depended exclusively on philanthropic work³. In contrast to this situation, in 1990 the federal government issued Organic Laws 8,080/1990 and 8,142/1990⁵, with the purpose of affirming the principles and guidelines of SUS, so that the state became responsible for guaranteeing the right of access to health care.

Although the UDHR and the SUS Organic Laws emerged in different contexts and with different primary definitions, the three documents share guidelines that promote the guarantee of essential human rights, especially access to health care^{1,6}. Understanding the rights of access to health care makes it possible to identify gaps between theory and practice, enabling health professionals and the general population to demand improvements and actively participate in the construction of changes to solve such deficits. Therefore, it is necessary to identify the ethical values present in the legal framework of Brazilian public health and how they are aligned with the humanistic world view suggested by UDHR⁴.

Thus, this study aims to compare the rights described in UDHR and Organic Laws 8,080/1990 and 8,142/1990, which regulate SUS.

Method

Initially, the three documents, all available online, were researched and read in full. Then, the authors independently compared the UDHR articles with the SUS Organic Laws to identify similarities and differences. The articles chosen by each author were selected separately and any disagreements were resolved with discussions on the topic. A brief literature review was also carried out to support the study. Lastly, the selected articles were critically analyzed from a bioethical viewpoint to identify relevant points in common between the different documents.

Discussion

It is known that humans need basic rights for a harmonious and fair living^{1,7}. Thus, it is important to observe whether national health policies provide dignified and egalitarian behavior, as set forth in UDHR⁷. Several aspects are similar between the laws that regulate SUS and UDHR, as shown in the following examples.

Universal access to health

Article 2 of UDHR advocates that rights are inherent to all humans, regardless of any distinction such as color, age, belief, among others, so that everyone may live in a dignified way⁷. Likewise, one of the main values of SUS is universalization, aiming to provide care to the Brazilian people as a whole, regardless of financial, religious or racial conditions^{4,8}. In fact, Chapter V of Law 8,080/1990 is dedicated to the rights to health of indigenous peoples, a population that has been long neglected⁴. Thus, health care is seen as a fundamental right of all Brazilian citizens.

The following topics quote the articles of UDHR and Law 8,080/1990 that deal with universal access to health:

- a. Article 2 – UDHR: *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status*⁷;

- b. Article 21 – UDHR: *Everyone has the right to equal access to public service of their country*⁷;
- c. Art. 7 – Law 8,080/1990: *Public health actions and services (...) are developed in accordance with the provisions of Article 198 of the Federal Constitution, also complying with the following principles: (...) I – universal access to health services at all levels of care; (...) IV – equality of health care, without prejudice or privileges of any kind (...)*⁴.

Health determinants and requirements

Health was once viewed merely as a state of absence of disease; however, the current concept of health is much more complex and refined, with humans seen as biopsychosocial beings^{9,10}. This requires analyzing the biological and psychological issues and social relationships of individuals in order to fully assess patients' health.

Both Article 24 of UDHR and Article 3 of Law 8,080/1990⁴ provide that health depends on social determinants, in addition to physiological issues and factors such as housing, leisure, work and transportation¹⁰⁻¹². The main focus of the cited UDHR article is the right to rest, leisure, reasonable limitation of working hours and periodic holidays with pay, whereas Law 8,080/1990 also includes the importance of transport, access to education, income and the environment. Therefore, several factors need to be considered to fully meet the basic needs of each individual¹⁰⁻¹².

The following topics quote the articles related to health requirements described in UDHR and Law 8,080/1990:

- a. Article 24 – UDHR: *Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay*⁷;
- b. Article 3 – Law 8,080/1990: *Health levels express the country's social and economic organization, health determinants and requirements being, among others, food, housing, basic sanitation, environment, work, income, education, physical activity, transport, leisure and access to essential goods and services. (...) Also related to health are the actions that (...) are intended to guarantee conditions of physical, mental and social well-being to people and communities*⁴;
- c. Article 7 – Law 8,080/1990: *Public health actions and services (...) are developed in accordance*

*with the guidelines provided in Article 198 of the Federal Constitution, also complying with the following principles: (...) X – integration of health, environment and basic sanitation actions at executive level; (...)*⁴.

Popular participation

Humans are complex and changeable. Therefore, as society changes, the way of addressing health and public policy must also change^{1,6}. In order to understand and serve everyone fairly, both UDHR and Laws 8,080/1990 and 8,142/1990 note the need for popular participation in periodic decision processes, as shown in the following articles:

- a. Article 21 – UDHR: *Everyone has the right to take part in the government of their country, directly or through freely chosen representatives*⁷;
- b. Article 1 – Law 8,142/1990: *The Health Conference shall meet every four years with representatives of the various social segments to evaluate the health situation and propose guidelines for the formulation of health policy at the corresponding levels (...)*⁵.

Guarantee of comprehensive therapeutic care

The universalization of the rights of citizens is extremely important. However, for everyone to access these rights fairly it is necessary to promote equity, since society is heterogeneous and hence each group and social class has different demands^{6,8,13,14}.

In this respect, UDHR and the SUS Organic Laws note that certain sections of the population require support, as opposed to others. SUS, for example, provides comprehensive therapeutic care, including pharmaceutical—unlike many countries, such as the United States, where such services are paid for, increasing social inequalities¹⁵. The following topics describe articles that address the subject:

- a. Article 25 – UDHR: *Everyone has the right to a standard of living adequate for the health and well-being of themselves and of their family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, illness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control*⁷;

- b. Article 6 – Law 8,080/1990: *The following are also included within the sphere of the Unified Health System (SUS): (...) comprehensive therapeutic assistance, including pharmaceutical care*⁴;
- c. Article 19-M – Law 8,080/1990: *Comprehensive therapeutic assistance (...) consists of: (...) II – offering therapeutic procedures at home, outpatient facilities and hospitals (...)*⁴;
- d. Art. 19-N – Law 8,080/1990: (...) I – *clinical protocol and therapeutic guideline: (...) establishes criteria for the diagnosis of the disease or health problem; the recommended treatment, with medication and other appropriate products, when applicable; the recommended dosages; clinical control mechanisms; and monitoring and follow-up of therapeutic results (...)*⁴.

Realization of rights

Even today, the number of people who suffer from poor health care is remarkable, especially in terms of prevention and primary care, but also in more specialized matters, such as surgical procedures⁶. Unfortunately, many Brazilians die waiting for their rights to be realized¹⁴. Many aspects of the SUS Organic Laws are similar to those of UDHR, but there is a failure to fully realize rights, as provided in the following articles:

- a. Article 28 – UDHR: *Everyone is entitled to a social and international order in which the*

*rights and freedoms set forth in this Declaration can be fully realized*⁷;

- b. Article 2 – Law 8,080/1990: Health is a fundamental human right, and the State must provide the indispensable conditions for its full realization⁴.

Final considerations

The aim of this comparative analysis was to understand the norms that underpin health-related human rights. A full reading of UDHR and the SUS Organic Laws made it possible to achieve this goal, thanks to the congruences between the documents. They clearly revealed the emphasis on universal access to health care, without any type of discrimination between people, regardless of their sexual, religious and cultural position; on the importance of health determinants and requirements; on the need for popular participation; and on the availability of medical care^{4,5}.

It was observed that important ethical principles in the Brazilian public health system coincide with those described in UDHR¹⁶. Thus, limitations related to enforcing the legislation are the great problem to be faced^{10,13}—that is, often what is set forth cannot be implemented due to issues such as inadequate management, lack of structure and hospital supplies, among others.

References


1. Baets A. O impacto da Declaração Universal dos Direitos Humanos no estudo da história. *História da Historiografia* [Internet]. 2010 [acesso 4 abr 2022];3(5):86-114. DOI: 10.15848/hh.v0i5.200
2. Reis RR. Os direitos humanos e a política internacional. *Revista de Sociologia e Política* [Internet]. 2006 [acesso 4 abr 2022];(27):33-42. DOI: 10.1590/S0104-44782006000200004
3. Santos NR. SUS, política pública de Estado: seu desenvolvimento instituído e instituinte e a busca de saídas. *Ciênc Saúde Colet* [Internet]. 2013 [acesso 4 abr 2022];18(1):273-80. DOI: 10.1590/S1413-81232013000100028
4. Brasil. Lei nº 8.080, de 19 de setembro de 1990. Dispõe sobre as condições para a promoção, proteção e recuperação da saúde, a organização e o funcionamento dos serviços correspondentes e dá outras providências. *Diário Oficial da União* [Internet]. Brasília, nº 182, p. 18055-9, 20 set 1990 [acesso 3 ago 2022]. Seção 1. Disponível: <https://bit.ly/3paxC0l>
5. Brasil. Lei nº 8.142, de 28 de dezembro de 1990. Dispõe sobre a participação da comunidade na gestão do Sistema Único de Saúde e sobre as transferências intergovernamentais de recursos financeiros na área

- da saúde. Diário Oficial da União [Internet]. Brasília, nº 249, p. 25694-5, 31 dez 1990 [acesso 3 ago 2022]. Seção 1. p. 25694. Disponível: <https://bit.ly/3OYY1Zk>
6. Viacava F, Oliveira RAD, Carvalho CC, Laguardia J, Bellido JG. SUS: oferta, acesso e utilização de serviços de saúde nos últimos 30 anos. Ciênc Saúde Colet [Internet]. 2018 [acesso 4 abr 2022];23(6):1751-62. DOI: 10.1590/1413-81232018236.06022018
 7. Organização das Nações Unidas. Declaração Universal dos Direitos Humanos [Internet]. Adotada e proclamada pela Assembleia Geral das Nações Unidas (resolução 217 A III) em 10 de dezembro 1948. 1948 [acesso 4 abr 2022]. Disponível: <https://uni.cf/2TsPK7X>
 8. Carvalho AI, Barbosa PR. Políticas de Saúde: fundamentos e diretrizes do SUS [Internet]. Florianópolis: Departamento de Ciências da Administração/UFSC; 2014 [acesso 4 abr 2022]. Disponível: <https://bit.ly/3A3KGLf>
 9. Scliar M. História do conceito de saúde. Physis [Internet]. 2007 [acesso 4 abr 2022];17(1):29-41. DOI: 10.1590/S0103-73312007000100003
 10. Pereira TTSO, Barros MNS, Augusto MCNA. O cuidado em saúde: o paradigma biopsicossocial e a subjetividade em foco. Mental [Internet]. 2011 [acesso 4 abr 2022];9(17):523-36. Disponível: <https://bit.ly/3zx7Qb6>
 11. Mateus CG. Direitos fundamentais sociais e relações privadas: o caso do direito à saúde na Constituição brasileira de 1988 [dissertação] [Internet]. Porto Alegre: Pontifícia Universidade Católica do Rio Grande do Sul; 2007 [acesso 4 abr 2022]. Disponível: <https://bit.ly/3vAPNj2>
 12. Brasil. Lei nº 12.864, de 24 de setembro de 2013. Altera o caput do art. 3º da Lei nº 8.080, de 19 de setembro de 1990, incluindo a atividade física como fator determinante e condicionante da saúde. Diário Oficial da União [Internet]. Brasília, nº 186, p. 5, 25 set 2013 [acesso 4 ago 2022]. Seção 1. Disponível: <https://bit.ly/3zzU87h>
 13. Martin LM. Os direitos humanos nos códigos brasileiros de ética médica: ciência, lucro e compaixão em conflito. São Paulo: Loyola; 2002.
 14. Carvalho RE. O direito de ter direitos. In: Secretaria de Educação a Distância. Salto para o futuro: Educação Especial: Tendências atuais [Internet]. Brasília: Ministério da Educação, SEED; 1999 [acesso 4 abr 2022]. p. 17-26. Disponível: <https://bit.ly/3vE8Ed7>
 15. Marques RM. O direito à saúde no mundo. In: Marques RM, Piola SF, Roa AC, organizadores. Sistema de saúde no Brasil: organização e financiamento [Internet]. Rio de Janeiro: ABrES; 2016 [acesso 4 abr 2022]. p. 11-36. Disponível: <https://bit.ly/3bq4mPI>
 16. Brasil. Lei nº 12.401, de 28 de abril de 2011. Altera a Lei nº 8.080 de 19 de setembro de 1990, para dispor sobre a assistência terapêutica e a incorporação de tecnologia em saúde no âmbito do Sistema Único de Saúde – SUS. Diário Oficial da União [Internet]. Brasília, nº 81, p. 1-2, 29 abr 2011 [acesso 4 ago 2022]. Seção 1. Disponível: <https://bit.ly/3vCccwl>

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