

EXPERT GROUP ON HUMAN RIGHTS
AND BIOTECHNOLOGY CONVENED BY
THE UN HIGH COMMISSIONER FOR
HUMAN RIGHTS:
Conclusions on Human Reproductive
Cloning

*UNHCHR's Expert Group on Human Rights and
Biotechnology*

At the request of the United Nations High Commissioner for Human Rights, a Group of Experts on Human Rights and Biotechnology met in Geneva on 24 and 25 January 2002. The terms of reference for the meeting were twofold: The first was to consider possible issues on which the High Commissioner and her Office (OHCHR) might provide follow-up to the UNESCO Universal Declaration on the Human Genome and Human Rights (UDHGHR).¹ The second was to consider more generally the issues and areas for action deserving priority in the work of the High Commissioner and OHCHR in the area of human rights and biotechnology (limited to issues related to human genomics). The Experts identified three broad areas of priority: benefit-sharing and patenting of genetic material; discrimination; and issues related to gender and sex. In

The Expert Group included Professor S. K. Brahmachari, Centre for Biochemical Technical Technology, India; Justice Michael Kirby, High Court of Australia; Professor Bartha Maria Knoppers, University of Montreal, Canada; Professor Stephen P. Marks, François-Xavier Bagnoud Center for Health & Human Rights, USA; Mme Nicole Questiaux, Présidente de la Conférence Permanente Européenne des Comités Nationaux d'Éthique, France; Dr. Daniel Tarantola, World Health Organization, Geneva, Switzerland; Professor Huanming Yang, Beijing Genomics Institute, China.

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addition, they considered the issue of reproductive human cloning in light of the United Nations General Assembly decision to commence negotiations for a possible international treaty ban on the procedure.^{2,3}

The UDHGHR, Biotechnology, Human Rights, and Ethics

The UDHGHR is the principal text of the United Nations system in the area of human biotechnology and human rights. Together with the guidelines for its implementation adopted in 1999, the UDHGHR set out a framework for dealing with new human rights issues posed by advances in technology relating to the human genome.⁴ In doing so, it complemented the ethical approach that had in the past been applied to medical and biotechnological dilemmas.

The Experts discussed the complex relationship between ethical and human rights approaches, both of which share common foundations in respect for human dignity and in a belief in the inherent autonomy of the individual and the integrity of each human being. While often complementary, the norms created by ethics are not necessarily the same as human rights norms. Moreover, the application of ethical norms and of human rights to a given situation can produce very different results. Recognition and appreciation of the similarities and differences between the two approaches are of great importance in the field of biotechnology where the two approaches are commonly applied simultaneously.

The Experts considered the concept of a human rights-based approach (RBA) to issues of biotechnology. An RBA involves the viewing of a particular issue from the perspective of the rights and obligations imposed by international human rights norms. An RBA is applied to an increasing number of fields of endeavor as the full extent of human rights obligations are becoming clearer (a good example is the rise of a right-based approach to development programming).⁵ In casting relations between actors in terms of rights and obligations, an RBA does the following:

- places emphasis on participation of individuals in decision making;

- introduces accountability for actions and decisions, which can allow individuals to complain about decisions affecting them adversely;
- seeks nondiscrimination of all individuals through the equal application of rights and obligations to all individuals;
- empowers individuals by allowing them to use rights as leverage for action and legitimizing their “voice” in decision making; and
- links decision making at every level to the agreed human rights norms at the international level as set out in the various human rights covenants and treaties.

An RBA to biotechnology thus looks at all the relevant human rights of all actors involved and, in the case of conflict, will seek to balance the various rights in order to maximize respect for all rights and rights holders.

The prominence of both ethical and human rights approaches to biotechnology is largely related to its subject matter, which is often the very basic components of human life. On such issues there are a number of competing views that are community-, religion-, or culture-specific. On some matters, resolution or agreement among these competing views may well be impossible. In this regard, the Experts noted the central role played by consensus building, particularly that of achieving a level of consensus before taking normative action. A balance must thus be struck between responding to the increasing pressures to act normatively in this area (particularly in response to market-driven pressures to exploit biotechnological techniques commercially) and the need to reach a consensus before so acting.

Human rights thus have a highly nuanced role to play in the area of biotechnology. A human rights approach will not provide all the solutions to the complex dilemmas now before us. It is, however, a crucial component in dealing with these dilemmas and needs to be increasingly recognized as such. The Experts considered that a large amount of work remains to be done in analyzing advances in biotechnology from a human rights perspective. OHCHR is

uniquely placed in terms of its mandate and expertise either to undertake or to coordinate this analysis. In doing so, it should work in close collaboration with other selected specialized agencies of the United Nations.

The fast-moving nature of biotechnological developments has implications for both ethical and human rights approaches. It means that any formal steps taken to regulate the technology must be carefully considered. Such regulation should avoid being technology-specific as far as possible, if it is to avoid being made redundant by new technological “breakthroughs.” Conversely, and as far as is possible, efforts should not be wasted in regulating a technique that may eventually prove to be impossible or unfeasible in practice.

The increasing commercial, legal, and social importance of biotechnological procedures suggests that they should be the concern of a number of international institutions. The Experts, several of whom were members or past members of the International Bioethics Committee, recognized the lead role played by UNESCO in this area, particularly in relation to scientific and ethical evaluations of developments within the field. Similarly, the World Health Organization plays a crucial role in translating the developments into the medical and public-health fields.

Biotechnology issues are moving more and more into the mandates of a number of other agencies and institutions. In particular, the Experts identified the World Trade Organization, the World Intellectual Property Organization, the United Nations Population Fund, the Food and Agriculture Organization, and the United Nations Conference on Trade and Development as actors with whom OHCHR should also cooperate and seek new initiatives in the area of biotechnology.

Reproductive Human Cloning

Human cloning—for reproductive purposes in particular—is perhaps the area of biotechnology with the highest current potential for controversy, as evidenced by the level of attention in the media and in policymaking fora at international and national levels. Recent developments in tech-

nology suggest that reproductive cloning techniques, used somewhat successfully in relation to animals, might soon be applied to human beings. Were they to be successfully applied, a cloned child could be produced that would have a genetic makeup identical (or virtually identical) to that of another individual or embryo. The concerns these possible developments raise for the general public are understandable. Were individuals to be given a real power to create genetic copies of themselves or of others, fundamental issues concerning human dignity and identity would arise.

Balanced with these concerns are a number of issues that need to be addressed. First, the response to the problems arising from reproductive human cloning should not confuse the issue of cloning technology in general, and the possibilities offered by therapeutic cloning in preventing and fighting disease. Second, as reproductive technologies assist couples in establishing families, there must be a serious and detailed analysis of the reasons why reproductive cloning gives cause for concern.

The Experts agreed that a core concern in this area is that of determinism. While individuals have always used a variety of techniques in an attempt to ensure certain qualities in their offspring, the current challenge for the international community is to decide how far individuals should be allowed to use biotechnology to determine traits of their children, for example, to secure resistance to certain diseases or the presence of certain physical features. Without adopting a deterministic point of view, to this end, the Experts saw a need for actors, including the High Commissioner, to make a clear case for the benefits of diversity in humankind.

As noted above, a human rights approach cannot by itself provide the answers to these questions. It can, however, ensure that the voices and interests of each interested actor are built into the debate and are taken into account. This is particularly relevant in relation to women, children, and all those seeking to realize their right to health. Moreover, a rights-based approach protects the legitimate interests of those seeking to benefit from technological advancements. This has been widely recognized.⁶

The birth of a cloned human being has not yet been achieved. The possible consequences of such a procedure are not entirely clear. There is in the view of the Experts, a general need for caution in considering a legal response. Premature attempts at prohibition and comprehensive regulation would have disadvantages that would be difficult to correct once an international convention were to be adopted. However in the context of the United Nations, a momentum appears to have formed concerning the need for an international legal instrument dealing with reproductive human cloning. The General Assembly has decided to establish an ad hoc committee to "consider the elaboration of an international convention against the reproductive cloning of human beings."^{7,8}

As a result of this development, the issue of reproductive human cloning should be accorded priority in the work of OHCHR. In doing so, the fundamental goal should be to ensure that the human rights aspects of the issue are identified and effectively introduced into the debate of the Ad Hoc Committee and into the wider international and public debate. In particular, there is a need to undertake a serious and detailed human rights analysis of the issues involved in reproductive human cloning.

If a treaty ban is negotiated, extreme care should be taken in drafting the definition of the proscribed activity. There are two primary concerns: (i) that too broad a definition will result in the proscription of therapeutic techniques that appear to be essentially beneficial to humankind and are supportive of an individual's rights to health and life and (ii) that a definition that is in some way linked to current scientific techniques risks being inapplicable to future and as yet unknown techniques.

If a treaty ban is negotiated, attention must also be focused on implementation and monitoring of the obligations parties assume under the treaty so that no more is prohibited than can be effectively implemented. In this regard, the danger of driving the proscribed activity into unregulated environments must be addressed.

The Experts considered that an effective way of overcoming many of the problems and shortcomings of a legal ban

on cloning techniques identified above would be to focus the ban on an individual's intention to copy genetically another human being rather than to focus on the technique itself.

References

1. As requested by the Commission on Human Rights in its resolution 2001/71.
2. The section of the Expert's Conclusions that considers reproductive human cloning is excerpted here.
3. United Nations, GA Res. A/56/PV.85, 12 December 2001.
4. UNESCO, Implementation of the Universal Declaration of the Human Genome and Human Rights (UDHGHR), resolution 16; UDHGHR, resolution 17, 29th Session of the General Conference, 11 November 1997.
5. For an overview of rights-based approaches to development, see, for example, www.unhchr.ch/development/approaches.
6. See, for example, UDHGHR, Article 12, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 15.
7. See note 3.
8. This Report does not take into account substantive developments in the Ad Hoc Committee since the meeting of the Expert Group.