

# Science and Human Rights Program



# The Contributions and Limitations of a Human Rights Approach to Health

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# Human Rights

- Internationally recognized norms applying equally to all people
- Derive from human dignity and worth
- International human rights instruments – set of normative and legal standards
- governments are held responsible for protecting and promoting human rights

# A series of major human rights instruments enumerate a right to health:

- The Universal Declaration of Human Rights states that “everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services...”
- International Covenant on Economic, Social and Cultural Rights (ICESCR) “recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

## Article 12 of ICESCR mandates:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

# Related provisions in other international rights instruments:

## International Covenant on Civil and Political Rights (ICCPR)

- (1) recognizes an inherent right to life
- (2) seeks to protect human subjects by affirming that no one shall be subjected without his or her free consent to medical or scientific experimentation

# International Convention on the Elimination of All Forms of Racial Discrimination

- (1) prohibits and eliminates racial discrimination in all its forms
- (2) guarantee the right of everyone, without distinction as to race, color, national or ethnic origin, the enjoyment of the right to public health and medical care

# The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- (1) directs state parties to take all appropriate measures to eliminate discrimination against women in the field of health care
- (2) mandates that states parties ensure equality of access to health care services including those related to family planning, pregnancy, confinement, and the post-natal period, granting free services where necessary.

# The Convention on the Rights of the Child

- (1) take appropriate measures to diminish infant and child mortality
- (2) ensure the provision of necessary medical assistance and health care with emphasis on primary care
- (3) combat disease and malnutrition, provide clean drinking water
- (4) combat the dangers and risks of environmental pollution

Similar provisions appear in several regional human rights instruments:

- The European Social Charter (1961)
- The African (Banjul) Charter on Human and Peoples' Rights (1981)
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (1988)

## Six requirements for the right to health be a meaningful and effective commitment:

- (1) Conceptual clarity both nature of entitlement and government obligations;
- (2) Political commitment to implement its requirements
- (3) Effective monitoring strategies
- (4) Indicators and standards
- (5) Access to good quality, disaggregated data
- (6) Models of how to achieve – best practices

# Progressive Realization

ICESCR mandates states parties:

“...***to take steps***, individually and through international assistance and cooperation, especially economic and technical, to the ***maximum of its available resources***, with a view ***to achieving progressively the full realization of the rights*** recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

# General Comment No. 14 on the Right to the Highest Attainable Standard Of Health

- Inclusive conception of the right to health – availability of timely and appropriate health care and the underlying determinants of health
- Updates the Covenant by emphasizing the need for a gender perspective and a comprehensive national strategy for eliminating discrimination against women
- Emphasizes the importance of the participation of the population in all health –related decision-making at the community, national, and international levels

# Set four standards or criteria:

- **Availability**
- **Accessibility**
  - (1) Nondiscrimination
  - (2) Safe physical reach of all sections of the population, especially vulnerable of marginalized groups;
  - (3) Affordability; and
  - (4) Information accessibility, the right to seek, receive and impart information and ideas concerning health issues.
- **Acceptability** refers to the requirement that all health facilities, goods, and services be respectful of medical ethics and culturally appropriate.
- **Quality** is the parallel need for health facilities, goods, and services to be scientifically and medically appropriate and of good quality.

# Concept of Core Minimum Obligations

- (1) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (2) To ensure for everyone access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger;
- (3) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;

- (4) To provide essential drugs, as from time to time defined by WHO's Action Programme on Essential Drugs;
- (5) To ensure equitable distribution of all health facilities, goods, and services;
- (6) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include mechanisms, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action is devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

**In the next paragraph the Committee goes on to confirm that obligations of comparable priority also include the following:**

- (1) To ensure reproductive, maternal (pre-natal and post-natal) and child health care;
- (2) To provide immunization against the community's major infectious diseases;
- (3) To take measures to prevent, treat and control epidemic and endemic diseases;

- (4) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;
- (5) To provide appropriate training for health personnel, including education on health and human rights.

# Violations Approach

- Violations of obligations to respect the right to health
- Violations of obligations to protect
- Violations of core obligations to fulfill

# Development of Indicators

- Right to health indicators derives from, reflects, and is designed to monitor the realization of specific right to health norms with a view to holding a duty-bearer account
- Right to health indicators are closely related to human rights provisions and principles – nondiscrimination, equality, focus on vulnerable and disadvantaged groups;
- Capable of assessment on a disaggregated basis

American Association for Advancement of Science Project Goal to develop three types of indicators, manuals to explain how to use, and field test

- Structural indicators – to address whether or not key structures, systems, and mechanisms are in place to realize the right to health (qualitative/ yes/no indicators);

- Process indicators – to provide quantitative information to evaluate government inputs and the manner in which health policies are implemented;
- Outcome indicators – that measure coverage and performance of system (time series)

# Best Practices

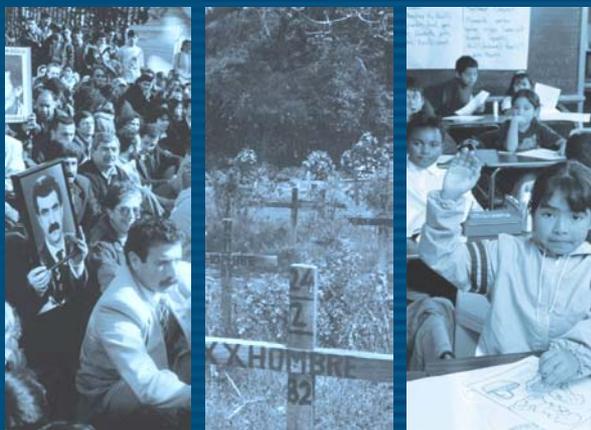
- Priority of the UN Special Rapporteur on Right to Health
- Goal to identify good or best practices to implement the right to health
- Particular focus on improving access and health status of poor and vulnerable groups
- Offer positive models

# Conclusion

Existence of an internationally defined right to health has been significant:

- Framed health as a public or social good in an era in which health services are increasingly treated as a commodity.

- Offers the normative standards of a “human rights approach.”
  - government responsibility
  - Focus on the needs of the most disadvantaged and vulnerable communities
  - Nondiscrimination
  - Health care should be affordable and publicly financed at least for those who cannot otherwise gain access;
  - Importance of public participation in setting priorities



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