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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)
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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