

International Human Rights Law and Right to Health Care



Law

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ABSTRACT

Every person has the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. Any meaningful and effective plan to implement health care must adhere to certain principles, derived from the internationally recognized right to the highest attainable standard of health. States have the primary obligation to protect and promote human rights. Human rights obligations are defined and guaranteed by international customary law and international human rights treaties, creating binding obligations on the States that have ratified them to give effect to these rights. Taking care of the health of our fellow travelers on the planet should be a fundamental shared responsibility. It is inhuman to leave people sick because there is no money for their treatment. Health care is a human right indeed.

Human rights ensure protection to every man, woman, youth and child. Each individual has without discrimination of any kind the human right to the highest attainable standard of physical and mental health. Enjoyment of the human right to health is vital to all aspects of a person's life and well-being, and is crucial to the realization of many other fundamental human rights and freedoms. Government has an obligation to ensure that health services are available, accessible, acceptable, and of good quality for all people. The government also has an obligation to prevent denial of access to health care for any persons, including prisoners or detainees, minorities, asylum seekers, and illegal immigrants.

Part I, para 5 The Vienna Declaration and Programme of Action, states that "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

The Universal Declaration of Human Rights is one of the documents the United Nation uses to advance human rights all around the world. While it is not legally binding, the document stands as a common standard of achievement for all people and all nations. Article 25 (1) of this declaration states: "Everyone has the 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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

The right to health is a fundamental part of our human rights and to live a life in dignity. The preamble of Constitution of the World Health Organization, defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". It further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." Now this definition has been extended to include the ability to lead a socially and economically productive life. Although these rights have been internationally recognized for over 65 years, they are currently not guaranteed in most part of the world.

Likewise, Article 12 of the U.N. International Covenant on Economic, Social, and Cultural Rights (1966) reads:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall in-

clude those necessary for:

- (a) The provision for the reduction of the still birth 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.

Declaration of Alma-Ata, 1978 affirms the crucial role of primary health care, which addresses the main health problems in the community, providing promotive, preventive, curative and rehabilitative services accordingly (Art. VII). It stresses that access to primary health care is the key to attaining a level of health that will permit all individuals to lead a socially and economically productive life (Art. V) and to contributing to the realization of the highest attainable standard of health.

Many international conventions have proclaimed the necessity of right to health care as human right. There are many different United Nations human rights institutions and agencies. All have the common aim of promoting and protecting internationally agreed human rights - civil, cultural, economic, political and social. These rights were first proclaimed in the Universal Declaration of Human Rights. Every person on the globe is equally entitled to enjoy them, and the task given to the High Commissioner is to strengthen the efforts of the United Nations to implement all of them. The High Commissioner is the principal UN official with responsibility for human rights and is accountable to the Secretary- General.

WHO responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence based policy options, providing technical support to countries, and monitoring and assessing health trends (Art. 2). It gives WHO extensive powers to establish health-related standards.

In its resolution 2002/31, the Commission on Human Rights created the mandate of Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. They are:

- Gather, request, receive and exchange right-to-health information from all relevant sources;
- Maintain a dialogue and discuss possible cooperation with all relevant actors, including Governments, United Nations bodies, specialized agencies and programmes, in particular WHO and UNAIDS, as well as NGOs and international financial institutions;
- Report on the status throughout the world of the right to health, including laws, policies, good practices and obstacles;
- Make recommendations on appropriate measures that promote and protect the right to health.

The Special Rapporteur can also receive complaints from individuals or NGOs, which, if deemed credible and serious, he could raise with Governments.

The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights has stated that the Right to health should include: safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, gender equality, the right to prevention, treatment and control of diseases, access to essential medicines, equal and timely access to basic health services.

Health services, goods and facilities must be provided to all without any discrimination. Non-discrimination and equality are fundamental human rights principles and critical components of the right to health. States have an obligation to prohibit and eliminate discrimination on all grounds and ensure equality to all in relation to access to health care and the underlying determinants of health.

The most prevalent misconception is that the State has to guarantee us good health. But the right to health is not the same as the right to be healthy. Health care can be provided under different systems like public, private, or jointly. All players in the health care system, whether public or private, have human

rights obligations, and must be accountable to the people. The government is ultimately responsible for ensuring that both public agencies and private companies make health care decisions based on health needs, not on profit margins or other factors. As long there is access for all, including those who cannot afford to pay we can say that right to health care is protected. These rights were to include “the right to adequate medical care and the opportunity to achieve and enjoy good health” and “the right to adequate protection from the economic fears of old age, sickness, accident, and unemployment.” States must make every possible effort, within available resources, to realize the right to health and to take steps in that direction without delay.

Medical care for citizens shall be based on principles of social equity, so that minimally sufficient medical care (free and paid) and places of rest and recreation, without regard to material wealth, place of residence, or occupation, shall be available to everyone. The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.

For millions of people throughout the world, the full enjoyment of the right to health still remains a distant goal. Moreover, in many cases, especially for those living in poverty, this goal is becoming increasingly remote.

REFERENCE

The Vienna Declaration and Programme of Action, also known as VDPA, is a human rights declaration (A/CONF.157/23), adopted by consensus at the World Conference on Human Rights on 14–25 June 1993 in Vienna. | Preamble to the constitution of the WHO as adopted by the International Health conference, New York, 1946. | In Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, in Articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and in article 24 of the Convention on the Rights of the Child of 1989. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples' Rights of 1981 (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 10). Similarly, the right to health has been proclaimed by the Commission on Human Rights, as well as in the Vienna Declaration and Programme of Action of 1993 The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv), The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 (c), The 2006 Convention on the Rights of Persons with Disabilities: art. 25. Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991), Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), Universal Declaration on the Human Genome and Human Rights (1997), International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version and other international instruments. | The Covenant was adopted by the United Nations General Assembly in its resolution 2200A (XXI) of 16 December 1966. It entered into force in 1976 and by 1 December 2007 had been ratified by 157 States.