

The Right to Health

Introduction

The World Health Organization (WHO) was established in 1948. According to the WHO Constitution the objective of the Organization is 'the attainment by all peoples of the highest possible level of health' (article 1), and health is defined as a 'state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.¹ The same year the WHO was established, the United Nations General Assembly (UNGA) adopted the Universal Declaration on Human Rights (UDHR) proclaiming everyone's right to 'a standard of living adequate for the health and well-being of himself and his family' which includes the right to food, clothing, housing and medical care (article 25). In 1966, the UNGA adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force in 1976. Article 12 of ICESCR enshrines 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. The Committee monitoring the implementation of the ICESCR has extensively elaborated on States parties' obligations in relation to article 12. The Committee has specified that the right to health is closely related to, and dependent upon, the realization of other human rights, contained both in the ICESCR and other human rights instruments, such as the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information and the freedoms of association, assembly and movement.²

There are several other instruments, although not legally binding, that are relevant to ensuring the human right to health, such as: the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 in Vienna, Austria³; the Programme of Action of the International Conference on Population and Development adopted during the International Conference on Population and Development in 1994 in Cairo, Egypt⁴; the Programme of Action of the World Summit for Social Development adopted during the World Summit for Social Development in 1995 in Copenhagen, Denmark⁵; the Action



for Equality, Development and Peace adopted during the Fourth World Conference on Women in 1995, in Beijing, China⁶; and the Millennium Declaration adopted during the Millennium Summit in 2000 in New York, USA⁷, from which the Millennium Development Goals derive.

Furthermore, the Special Rapporteurs, Independent Experts or Working Groups of the Human Rights Council, formerly the United Nations Commission on Human Rights,⁸ also consider issues relevant to the right to health. Most importantly, there is the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.⁹ In addition, other Special Rapporteurs, Independent Experts or Working Groups deal with issues which are relevant to the right to health such as: housing; arbitrary detention; sale of children, child prostitution and child pornography; extreme poverty; food; indigenous people; internally displaced persons; migrants; minority issues; racism; torture and other cruel, inhuman or degrading treatment or punishment; adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes; trafficking in persons, especially in women and children; and violence against women, its causes and consequences. Reports by these Special Rapporteurs, Independent Experts or Working Groups are formulated to assist all States, whether or not parties to specific human rights instruments.

¹ Preamble to the WHO Constitution.

² General Comment 14, *The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 3.

³ UN Doc. A/CONF.157/23.

⁴ UN Doc. A/CONF.171/13.

⁵ UN Doc. A/CONF.166/9.

⁶ UN Doc. A/CONF.177/20/Rev. 1.

⁷ UN Doc. A/RES/55/2.

⁸ The United Nations Commission on Human Rights has been replaced by the United Nations Human Rights Council as per United Nations General Assembly resolution A/RES/60/251 adopted on 15 March 2006. The Commission on Human Rights ceased to exist on 16 June 2006, see press release at: www.un.org/News/Press/docs/2006/ecosoc6192.doc.htm

⁹ A position currently held by Mr Paul Hunt (Australia).





Linkages between the right to health and other human rights

All human rights are inextricably linked and the enjoyment of one right may have implications, negative or positive, on the enjoyment of other human rights. Accordingly, it is important to understand the health implications of implementing human rights other than the specific right to health. It is possible to discern at least three such linkages: violations of human rights may have serious health implications, e.g. violations of the right not to be tortured; health policies and programmes can promote or violate human rights in the ways that they are designed or implemented, e.g. if health policies or programmes discriminate against a certain group of people; and the vulnerability to and impact of ill health can be reduced by taking steps to respect, protect and fulfil human rights, e.g. by ensuring adequate housing, access to clean and potable water and access to information on diseases.¹⁰ The fulfilment of all human rights positively influences an individual's enjoyment of his/her right to health. Having considered these linkages, it is important to note that the right to health does not, however, mean the right to be healthy, but rather that governments and public authorities are obliged to put in place policies and action plans that will, in the shortest time possible, lead to available and accessible health care for all.¹¹ Following are further examples of how the right to health is linked with other human rights.

¹⁰ *25 questions and answers on health and human rights*. Health and human rights publication series, issue no. 1 July 2002, WHO, p. 8, question 3.

¹¹ United Nations High Commissioner for Human Rights, Mary Robinson (1997–2002), cited in *25 questions and answers on health and human rights*. Health and human rights publication series, issue no. 1, July 2002, WHO, p. 9, question 4.

Right to education

Primary health care, for example, includes the need to educate people on existing health problems and methods for preventing and controlling them. The right to education is also closely linked to the right to access information related to health and health problems.

Freedom of expression (which includes the freedom to seek, receive and impart information in any form)

In the case of disease outbreaks it is essential that information regarding the disease is permitted to be widely distributed and is in a language understood by the person(s) affected. Similarly, in the case of environmental or natural disasters it is vital that the affected population receives timely information. Moreover, considering a particular group such as migrants, it has been found that one of the reasons they do not make use of health services effectively and do not take action themselves to prevent illness is due to the lack of information about what is available or about health in general.¹²

Right to liberty of movement

This right may be of relevance, for example, in cases of environmental disasters or pollution where people must be permitted to move freely within a country.

Right to non-discrimination (without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status)

This right applies to health in various ways, but in particular to ensuring that everyone has the right to the highest attainable standard of physical and mental health without any form of discrimination.

Right of peaceful assembly and the freedom of association, including forming and joining trade unions

One of the benefits of, for example, being a member of a workers' association or trade union is that these institutions are able to safeguard employees' work conditions as well as their right to health at the workplace.

Right to privacy (no one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence)

This right ensures, for example, that medical records are treated with confidentiality, i.e. that such information is not seen or used by unauthorized persons.

¹² *International migration, health and human rights*, Health and human rights publication series, issue no. 1 July 2002, WHO, p. 9, question 4.

International migration, health and human rights, Health and human rights publication, issue no. 4, December 2003, WHO, p. 28.