

# The right to health: a toolkit for health professionals

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## THE RIGHT TO HEALTH: A TOOLKIT FOR HEALTH PROFESSIONALS

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## **The Aims of this toolkit**

The right to the highest attainable standard of physical and mental health is a fundamental human right, protected by international law. This toolkit lays out what this right means for health professionals and their associations. Although the right to health is legally grounded, this toolkit is not about the law. It shows the practical meaning and significance of the right to health in the day-to-day work of health professionals and their associations. It gives concrete examples based on current health practice.

Many health professionals are already working in ways that promote the right to health. Developing an understanding of the right to health does not entail the adoption of a different way of working. The right to health is a practical tool for health professionals that sets their day-to-day practice within a universally accepted framework of values.

The right to health does not ask governments to commit resources they do not possess to the provision of health care. It asks those who make decisions that affect people's health – be they health professionals, private corporations or public bodies – to promote and protect health, and to understand and to justify the effects of their decisions.

## WHAT IS THE RIGHT TO HEALTH?

### Not a 'right to be healthy'

The right to health is not a right to be *healthy*. The state cannot provide people with protection against every possible cause of ill health or disability such as the adverse consequences of genetic diseases, individual susceptibility or the adoption of unhealthy lifestyles. Nor is it a limitless right to receive medical care for any and every illness or disability. It is a right to the enjoyment of a variety of facilities and conditions that are necessary for good health. These can be divided into two basic components: those related to *health care* and those related to *general living conditions affecting health*, such as safe water, food, sanitation and shelter. More specifically, the right to health can be understood as a right to an effective and integrated health system, encompassing health care and other determinants of health.<sup>1</sup>

### A broad concept of health

The right to health recognises that both health care and social conditions are important parts of health.<sup>2</sup> These include factors such as gender, age differences and resource distribution, poor sanitary conditions as well as events that may damage health such as violence and armed conflict. The right to health is related to other human rights such as the right to food, housing, education, and safe working conditions.

## **What does a human rights approach to health imply?**

Human rights are particularly concerned about disadvantaged individuals and groups. In the UK context for example, they highlight the needs of those who have suffered discrimination such as people with mental health problems, asylum seekers and those in custodial settings.

Take immunisation programmes. In a human rights framework health immunisation is not simply a necessary medical requirement for children and a responsible public health measure; it is a right of all children, with corresponding government obligations. A government's immunisation programme cannot therefore be bargained away because of financial constraints without overwhelming justification. The bearer of rights, in this case the child, is the focus.

A human rights approach ensures that the necessary resources are given to those who have the greatest needs. It exposes situations where public funds are being used to build yet more hospitals in large cities, or where expensive equipment is being purchased for elective procedures that benefit only the wealthy or urban populations, while rural populations or vulnerable groups are denied even the minimum standard of health care.

## Female genital mutilation

Female genital mutilation (FGM) is a collective term used for a range of practices involving the removal or alteration of parts of healthy female genitalia. FGM can be an extremely painful procedure with both immediate and long term health risks, including haemorrhage, tetanus, septicaemia and even death. The practice of FGM clearly violates a woman's right to health. It can cause long-term sexual and reproductive problems and has been shown to increase mortality during childbirth. FGM is typically performed on girls between 4 and 15, although it is sometimes carried out on new babies and women prior to marriage. The procedure is often performed in unsterile conditions without anaesthesia.

It is sometimes argued that, as it would minimise some of the health risks, FGM should be performed by doctors in sterile conditions with anaesthesia. The practice constitutes a clear violation of human rights and the participation of healthcare workers in the procedure would legitimate this cruel and harmful practice.



## **Key elements of the right to health**

### *Accountability*

By signing international human rights treaties that affirm the right to health, a state agrees to be accountable to the international community, as well as its citizens, for the fulfilment of its obligations.

### *Participation*

The right to participate in decision-making is a guiding principle of all human rights. A human rights approach to health emphasizes that good health services can only be achieved if people participate in their design and delivery. The involvement of communities has been shown to increase the likelihood that the needs of the community will be met more effectively and thus contribute to achieving better health.

Participation helps ensure that the health system is responsive to the particular health needs of disadvantaged groups.<sup>3</sup>

## **Mental health**

The right to health does not differentiate between mental and physical health. They are both central to human wellbeing. In reality, this is not often recognised. Despite the significant social and economic burden of mental illness, provision for mental health often comes a very poor second to physical illness. Mentally disordered individuals are often subject to multiple inequities, and to significant burdens of stigmatisation and marginalisation. In many parts of the world, there are disproportionate restrictions on the freedom of the mentally disordered. In the absence of resources, harsh restraint is used. Realising the right to health means refusing to discriminate against the mentally ill at all levels.

## Standards of health care services

The right to health imposes four essential standards on health care services: availability, accessibility, acceptability and quality.<sup>4</sup>

**Availability** of services requires that public health and health care facilities are available in sufficient quantity, taking into account a country's developmental and economic condition.

The health system has to be accessible to all. **Accessibility** has four overlapping dimensions:

- **Non-discrimination:** health facilities, goods and services must be accessible to all, especially the most vulnerable.
- **Physical accessibility:** health facilities, goods and services must be within safe physical reach of all parts of the population.
- **Economic accessibility (affordability):** health services must be affordable for all.
- **Information accessibility:** accessibility includes the right to seek, receive, and impart information concerning health issues. For example, governments must ensure that young people have access to sexual and reproductive health education and information presented in an unbiased manner.

**Acceptability** requires that health services are ethically and culturally appropriate, i.e. respectful of individuals, minorities, peoples, and communities, and sensitive to gender and life-cycle requirements.

**Quality** requires that health services must be scientifically and medically appropriate and of the highest quality.

### **'Costing' the implementation of the right to health**

Many governments argue that fulfilment of the right to health is costly. But to a large extent it involves no more than ensuring that available resources are distributed as effectively as possible and that people do not suffer adverse health effects from discrimination. Even on a small health budget, for example, countries can design health systems to improve access to services for poor, vulnerable, or otherwise disadvantaged groups.

## Learning from Sri Lanka

Fulfilling the right to health is not just about money. Despite its status as a 'less-developed' country, Sri Lanka has achieved impressive results in health, nutrition and family planning with levels of public health expenditure lower than countries with similar incomes whose health outcomes are considerably worse. Current life expectancy is 73 years, compared to a regional average of only 61 years, infant mortality is around 16 per 1,000 births, fertility is near replacement level, and the population growth rate is less than 1 percent a year and falling. The maternal mortality ratio, at 30 deaths per 100,000 live births, is well below that of countries with similar levels of per capita income. Targeted investment in health systems, education, information and a focus on marginalized groups have all proved effective. The right to health is not about how much money a country has to spend, but how it spends it.

## WHAT DOES THE RIGHT TO HEALTH MEAN FOR HEALTH PROFESSIONALS AND THEIR ASSOCIATIONS?

Professional associations are a diverse group of organisations. Likewise health professionals work in a variety of contexts, and differ in their role and influence. Not everything outlined here will be applicable either to every health professional or to all professional associations. In some cases, it might be more profitable for health professionals to work with development or health charities, or other non-governmental organisations to further human rights goals. While some of the recommendations given below can be put into effect immediately, others will remain aspirational. Nevertheless, health professionals come into contact with human rights-related issues in a variety of contexts ranging from everyday clinical practice to participation in the shaping of health policies at the national and international levels.

### **A human rights-based approach to professional practice**

Human rights impose duties on both governments and those in their direct employment. Health professionals working in public health institutions share a direct responsibility to realise the right to health. The most effective way for the majority of health professionals to fulfil their obligations under the right to health is to ensure that they provide the highest possible standard of care and treatment in a way that respects the fundamental dignity of each of their patients. This involves a number of interrelated factors including:

- Being honest, polite and respectful to all patients without discrimination
- Ensuring professional skills are maintained to the highest possible level
- Respecting the autonomy and dignity of patients and their right to self-determination
- Providing up-to-date and relevant information without discrimination to support patients' decision-making
- Respecting patient confidentiality
- Treating patients to the highest ethical standards

However, there are several types of human rights abuse that may involve the direct participation of health practitioners. These include: some forms of torture, administration of the death penalty, facilitating cruel and inhuman physical punishment, forced feeding, sedation against the will of the person in question, illegal organ trade, female genital mutilation and other harmful traditional practices, forced sterilisation and other coercive reproductive health practices.<sup>5</sup>

Another area that involves a heightened risk of human rights abuse is scientific experimentation involving human subjects, and in particular experimentation that involves members of vulnerable groups. While medical research and clinical testing is indisputably a force for the good, it can be misused and should be approached with care, ensuring that relevant national and international ethical codes are respected.

Some professional associations, and some medical academics, may be in a position where they can influence the medical curriculum. Where possible they should try to *promote human rights education* and consider whether they can:

- Examine the curricula of medical and other health professional training schools, together with the educational requirements of licensing bodies for granting a licence to practice, to identify whether they include appropriate instruction in medical ethics and human rights;
- Advocate, in co-operation with professional associations and licensing bodies, the adoption of an ethical and human rights approach to health care in the training of health professionals at all levels;
- Include within the curricula of medical schools, a component on the legislative framework of the right to health.



## **The importance of good communication**

For the overwhelming majority of health professionals, the most significant immediate impact they can have on their patients' enjoyment of the right to health is to provide them with the highest available standards of care. An essential component of this is good communication. Respecting the dignity of patients requires listening and talking to patients in a way that recognises their unique individuality, seeing them as people rather than as the conveyors of illness or disease. It means understanding and respecting that people vary in their information needs, and in their ability to absorb information, particularly when ill or under stress. Special consideration should be given to individuals whose communication abilities may be impaired. Where health professionals take time to listen to patients, sympathetically discuss their fears and concerns, and provide relevant information in a supportive and caring manner, health outcomes and patient satisfaction are improved. This is a universal experience. Human rights protect and promote the integrity and dignity of all human beings. In the context of the relationship between health professionals and their patients, this demands good communication.

## **Reacting to human rights violations perpetrated by others**

Some health professionals have privileged access to sensitive information about the conduct of public authorities such as governments, military or law enforcement officers or prison personnel. This provides a valuable opportunity to promote human rights.

Where possible, professional associations should work to ensure that health professionals are aware of the channels through which they can draw attention to the information they have identified and documented. For example, familiarity with ombudsmen institutions, national human rights institutions, the UN system of treaty body reporting, and the work of the UN Special Rapporteurs is essential in this regard.<sup>6</sup> Due respect must always be accorded to confidential information relating to patients.

In their regular practice, health professionals may also encounter evidence of occasional or systemic discrimination that violates the right to health. Such patterns of discrimination should be documented and reported to appropriate authorities.

## **A human rights-based approach to participating in the management of health care systems and shaping of health policies**

Some health professionals, individually and as members of professional associations, work as advisers in the organisation and delivery of health services. Where possible, it is important that health professionals work with governments to ensure that these services are respectful of human rights. They can do this both as *partners* and as *watchdogs* of governments. Action could include reviewing existing legislation, policies and practices and helping to shape health policies at the national level. Health professionals can similarly give valuable input to the human rights treaty monitoring process, either by contributing to government reports to the UN bodies or by presenting or contributing to a shadow report.<sup>7</sup>

## Age discrimination in the United Kingdom – a right to health approach

Ageism is a bias against a person because of his or her age, regardless of other factors such as ability, experience or background. It can be a major barrier to the wellbeing of older and younger people alike. Ageism is as harmful as other prejudices such as sexism, racism, homophobia and religious discrimination. *Age discrimination* occurs when such prejudices are allowed to effect law, policy and practice. Direct age discrimination in health occurs when older people face barriers to services which are not supported by clinical evidence. Often age discrimination is not expressed through explicit policies, but rather through negative attitudes towards ageing. This is harder to expose and eliminate.

### Age discrimination should be tackled in the following ways:

#### Health professionals:

- *'See the individual'* – don't let age stereotypes detract from seeing older patients as unique.
- *Good communication* – listen to patients, give them time and 'permission' to get their views across.
- *Seek patient feedback* – patient feedback and participation should be sought throughout the delivery and management of care at all levels.

- *Adhere to standards of good practice* – ensure that national standards of good practice are implemented and adhered to.
- *Training* – staff should receive discrimination awareness training.

### **National Medical Associations (NMAs):**

- *Professional standards* – NMAs should work to ensure the highest standards of clinical and ethical practice are observed.
- *Medical education* – NMAs should work to ensure that medical ethics and human rights become core parts of the medical curriculum and that age discrimination is specifically addressed at all levels of medical education.
- *Influencing* – NMAs should lobby their government to create primary legislation which outlaws age discrimination.

## WHAT DOES THE RIGHT TO HEALTH MEAN FOR GOVERNMENTS?

Health professionals working with the right to health also need to be familiar with the obligations that it imposes on governments. The right to health, like all human rights, imposes three levels of obligations on governments. These are the obligations to *respect*, to *protect*, and to *fulfil*.

***The obligation to respect*** implies a duty of the state not to violate the right to health by its actions.<sup>8</sup>

- The state must refrain from denying or limiting equal access for all persons, including prisoners, detainees, minorities, asylum seekers and illegal immigrants;
- The state must refrain from censoring, withholding or intentionally misrepresenting accurate health-related information, including sexual health education and information.

***The obligation to protect*** implies a duty of the state to prevent violations of the right to health by others. It must take measures which prevent third parties from interfering with or violating the right to health.

- The government must introduce and enforce appropriate controls for the marketing of medical equipment and medicines by third parties;
- The government must ensure that medical practitioners and other health professionals meet appropriate recognised standards of education, skill and ethical codes of conduct.

**The obligation to fulfil** means that governments must act in order to ensure that rights can be enjoyed.

- The government must focus on rectifying existing imbalances in the provision of health facilities, goods and services. For example, it should allocate sufficient public resources to the most deprived regions in the country, in particular to the poor and otherwise vulnerable and disadvantaged groups.
- The government must promote activities that benefit good health and ensure the dissemination of appropriate information.

### **Immediate and progressive obligations**

Given the differences between countries, fully realising the right to health will need variable amounts of time and resources. The most appropriate measures to implement the right to health will also vary from one country to another. While international law sets out the various state obligations, each government must determine for itself which measures are the most suitable for complying with these obligations. However, beyond a certain point the same basic minimum standards must apply everywhere. These are the immediate obligations. Governments are also under an obligation to put in place policies to progressively realise the right to health. As more resources are made available, so governments have to fulfil more of their responsibilities.

## **Universal access to antiretrovirals in the Eastern Cape**

In rural South Africa, the chronic shortage of health care workers was recognised as a major impediment to the delivery of antiretrovirals, particularly in remote areas. The Government, working with the charitable organisation Médecins sans Frontières, managed to achieve universal access to antiretroviral therapy in one of the poorest and remotest parts of South Africa without compromising quality of care. Antiretroviral therapy was provided at clinic level, with a variety of access points for testing and treatment, together with ensuring both proximity and acceptability of services, thereby ensuring much faster enrolment of people into treatment programmes, with good clinical outcomes and excellent patient retention. The strong community ownership of, and participation in, health care delivery has helped support the quality of health services. Following a gradual handover of resources and responsibilities to the Department of Health, Médecins sans Frontières is now withdrawing from Lusikisiki.<sup>9</sup>



## Core obligations

Core obligations are intended to ensure that people everywhere are provided with, at the very least, the minimum conditions under which they can live in dignity; enjoy the basic living conditions needed to support their health; and be free from avoidable mortality. Core obligations require immediate and effective measures and are not subject to progressive implementation.

In the case of **health care**, governments must provide:

- immunisation against major infectious diseases;
- measures to prevent, treat and control epidemic and endemic diseases;
- essential medicines, as defined by WHO's Action Programme on Essential Medicines;
- reproductive, maternal (pre-natal and post-natal) and child health care;
- essential primary health care as described in the Alma-Ata Declaration;<sup>10</sup>
- access to health facilities without discrimination;
- equitable distribution of all health facilities, goods and services.

In the case of **underlying determinants of health**, governments must provide:

- access to the minimum amount of food that is sufficient, nutritionally adequate and safe, to ensure their freedom from starvation and malnutrition; and
- access to basic shelter, housing and sanitation, together with an adequate supply of safe and potable water.

In the case of **health education and information**, governments must provide:

- education and access to information about the main health problems in the community, including methods of prevention and control; and
- appropriate training for medical and other health professionals, including education in health and human rights.

Governments must also adopt and implement a **national public health strategy and action plan**, based on epidemiological evidence, which takes into account the health concerns of the whole population.

### International obligations arising from the right to health

International human rights law makes it clear that the responsibility of states includes *international assistance and co-operation*.<sup>11</sup> This is required where the fulfilment of government obligations is beyond the scope of available resources, and the international community must assume some responsibility, for example by contributing to development aid or following responsible trade policies.

Depending on the availability of resources, developed countries should promote access to essential health facilities, goods and services in resource-poor countries and provide the necessary aid when required.<sup>12</sup> In all cases of international assistance and co-operation, priority must be given to the fulfilment of *core obligations* arising from the right to health.

## SUMMING UP:

### Basic consequences of a human rights approach to health

- Increased accountability of governments for health;
- Increased attention to the health needs of the poor and otherwise vulnerable and disadvantaged groups, and to the correction of unacceptable imbalances between the health status of different population groups;
- Focus is placed on achieving and maintaining an effective and integrated health system, encompassing health care and the underlying determinants of health, which is responsive to local *and* national priorities, and accessible to all;
- More participatory approaches to the provision of health services and the determinants of health;
- Governments cease imposing retrogressive measures in health-related legislation and budgetary and administrative practices;
- Governments honour concrete obligations to provide immediately for the minimum standards that are essential to enjoyment of the right to health (i.e. core obligations);
- Governments accept that they have obligations to take progressive steps towards realising the right to health and immediately take steps to set the stage for progress. This includes the setting of goals (indicators) and targets that will demonstrate progress;
- Governments must comply with duties regarding international assistance and co-operation, both individually as providers of international aid and as members of international organisations;
- All members of society, including health professionals, have responsibilities regarding the realisation of the right to health.

## References

- 1 Hunt P. Report of the Special Rapporteur of the Commission on Human Rights on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Sixty-second session of the United Nations Human Rights Commission, Agenda item 10, E/CN.4/2006/48: para 4.
- 2 It is noteworthy that the Convention on the Rights of the Child, one of the most widely ratified international human rights treaties, specifically refers to a broad vision of the right to health which includes: the right to health care facilities; adequate food; drinking water; environmental health; access to information; and the prohibition of harmful traditional practices.
- 3 Hunt P. Report of the Special Rapporteur, E/CN.4/2006/48. Ibid: para 7.
- 4 See UN CESCR General Comment 14 The Right to the Highest Attainable Standard of Health.
- 5 An excellent source on all of these areas of human rights concern for health professionals is the BMA publication *Human Rights and the Medical Profession, Handbook for a changing agenda*. Zed Books in association with the BMA, 2001.
- 6 “Since 1979, special mechanisms have been created by the United Nations to examine specific country situations or themes from a human rights perspective. The United Nations Commission on Human Rights has mandated experts to study particular human rights issues. These experts now constitute what are known as the United Nations human rights mechanisms or mandates, or the system of special procedures. Although the mandate holders have different titles, such as special rapporteur, special representative or independent expert, each is considered as an ‘expert on mission’ within the meaning of the 1946 Convention on Privileges and Immunities of the United Nations.” OHCHR. Seventeen frequently asked questions about UN Special Rapporteurs.  
  
<http://www.un.or.th/ohchr/2007/hrs/special-procedures.htm>.
- 7 For guidance on participating in the UN treaty monitoring process, see: Asher J. *The Right to Health: A Resource Manual for NGOs*. London: Commat. 2004: pp 127-141.

- 8 In exceptional circumstances of urgent public health concerns such as the need to contain outbreaks or epidemics of serious infectious diseases, the state's obligation to respect can be superseded. An example would be the necessity to quarantine an individual with open pulmonary tuberculosis who refuses treatment, so as to prevent the spread of infection and secure public health. However such measures by government must be temporary and fully justifiable. All such exceptions must conform to the Siracusa principles. See: United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities. Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights. E/CN.4/1985/4. 1985.
- 9 Achieving and sustaining universal access to antiretrovirals in rural areas: the primary health care approach to HIV services in Lusikisiki, Eastern Cape. Médecins sans Frontières: Cape Town, 2006.
- 10 The International Conference on Primary Health Care was convened in Alma-Ata, Kazakhstan, in 1978, and was attended by virtually all the member nations of the World Health Organization (WHO) and UNICEF. The Alma-Ata Declaration of 1978 emerged as a major milestone of the twentieth century in the field of public health, and it identified primary health care as the key to the attainment of the goal of Health for All.
- 11 International assistance and co-operation can be seen as reflecting and affirming principles of global equity and shared responsibility which underpin contemporary models of development assistance, the Millennium Declaration being a case in point.
- 12 CESCR. Ibid: para 39.

## Further information and useful organisations:

### Inter-Governmental Organisations

#### African Commission on Human and Peoples' Rights

48 Kairaba Avenue  
P.O. Box 673  
Banjul  
The Gambia

Tel.: +220 4392 962  
Fax.: +220 4390 764  
E-mail: [achpr@achpr.org](mailto:achpr@achpr.org)  
<http://www.achpr.org>

#### European Court of Human Rights

67075 Strasbourg-Cedex  
France

Tel.: +33-3-88 4120 18  
Fax: +33-3-88 41 27 30  
<http://www.echr.coe.int/>

#### Inter-American Commission on Human Rights

1889 F St., NW,  
Washington, D.C.  
USA 20006

Tel.: +1-202-458 6002  
Fax: +1-202-458 3992  
E-mail: [cidhoea@oas.org](mailto:cidhoea@oas.org)  
<http://www.cidh.oas.org/>

Office of the UN High Commissioner for Human Rights

OHCHR-UNOG  
CH 1211 Geneva 10,  
Switzerland

Tel.: +41-22-917 9000  
Fax: +41-22-917 9022  
E-mail: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)  
<http://www.unhchr.ch/>

UN Special Rapporteur on the Right to the Highest Attainable Standard of Health  
c/o Office of the High Commissioner for Human Rights (above)

Fax: +4122 917 9003  
E-mail for urgent appeals: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)  
<http://www.ohchr.org/english/issues/health/right/index.htm>

UN Voluntary Fund for Victims of Torture

Secretariat of UN Voluntary Fund for Victims of Torture  
UNVFVT  
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<http://www.ohchr.org/english/about/funds/torture/>

## Non-Governmental Organisations and Professional Associations

### Amnesty International

1 Easton St  
London  
WC1X 0DW

Tel.: +44 20 7413 5500  
Fax: +44 20 7956 1157  
E-mail: [amnestyis@amnesty.org](mailto:amnestyis@amnesty.org)  
<http://www.amnesty.org/>

### Human Rights Watch

350 Fifth Avenue, 34th Floor  
New York, NY

0118-3299 USA  
Tel.: +1-212-290 4700  
Fax: +1-212-736 1300  
E-mail: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)  
<http://www.hrw.org/>

### International Committee of the Red Cross

19 Avenue de la Paix  
CR 1202 Geneva  
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E-mail: [webmaster.gva@icrc.org](mailto:webmaster.gva@icrc.org)  
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### Medical Foundation for the Care of Victims of Torture

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[www.torturecare.org.uk](http://www.torturecare.org.uk)

### Physicians for Human Rights

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### World Health Organisation

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### World Medical Association

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