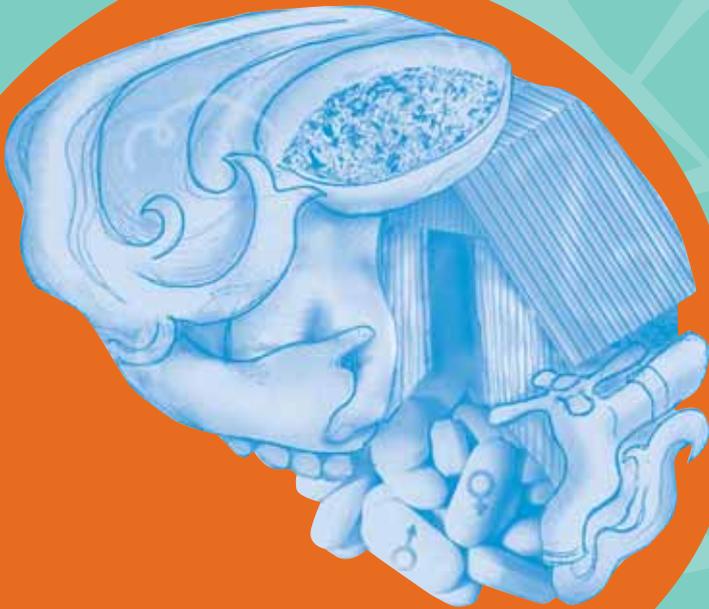


Our right to the highest attainable standard of health



Foreword by Adriaan van Es and Paul Hunt

Foreword

After decades of neglect, the right to the highest attainable standard of health is beginning to attract the attention it richly deserves. States, health professionals, intergovernmental organisations, mainstream human rights organisations, development groups and others are beginning to take it seriously.

They are beginning to grasp that the right to the highest attainable standard of health is not only a slogan, but also a practical tool for strengthening health policies, programmes and projects. Increasingly, they are recognising that health and human rights share much common ground and reinforce each other.

We have no doubt that the right to the highest attainable standard of health can empower disadvantaged individuals and populations. It can help to save lives and reduce suffering. But if this fundamental human right is to realise its potential, it has to be widely known and well understood.

This briefing aims to provide a very short, concise and accessible introduction to the right to the highest attainable standard of health. We hope it will encourage you to read more – and the end of the briefing suggests where you might look.

Many thanks to all those who made this publication possible, with a special thank you to Shane Kelleher.

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*UN Special Rapporteur on the
right to the highest attainable
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>> The right to the highest attainable standard of health is not only a slogan, but also a practical tool for strengthening health policies, programmes and projects.

Photo credits:

Left: Photograph © 2006 Pradeep Tewari, courtesy of Photoshare:
A polio-affected boy participates in an athletic meet organized for slum children by the NGO Pustak in Chandigarh, India.

Right: Photograph © 2005 Lynette Leibach, courtesy of Photoshare:
Isaac enjoys his role as food garden volunteer – especially harvesting the proof of his hard work; The Imbizo Men's Health Project, South Africa.



The scope of the right to health is not confined to health care •
What are the key elements of our right to health?

A fundamental human right

>> Our health is dependent upon many factors other than health care. These include access to safe water, food, sanitation and shelter, as well as freedom from discrimination.

Our right to the highest attainable standard of health is a fundamental human right. Human rights are protected by international law. They protect our dignity as human beings.

Key terms

The terms the “right to the highest attainable standard of health” and “right to health” are used as a convenient abbreviation for the more accurate formulation of the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Good health cannot be fully ensured by States as it is influenced by some factors which are in whole or in part outside States’ control, such as individual susceptibility to ill-health and adoption of unhealthy lifestyles.

Although this document is about the right to health, many other human rights, such as the right to life and the right to be free from discrimination, also contribute to the protection of our health. The right to health is a crucial component of the growing health and human rights movement.

Our health is dependent upon many factors other than health care. These include access to safe water, food, sanitation and shelter, as well as freedom from discrimination. Our right to health includes both our right to health care and our right to these other essential conditions for health.

The scope of the right to health is not confined to health care

In 2004, the UN Special Rapporteur on the right to the highest attainable standard of health visited Peru. As well as going to hos-

pitals and clinics, he visited overcrowded urban areas lacking safe drinking water and adequate sanitation, where the incidence of water-borne diseases and acute diarrhoea is high, especially among children. He went to communities poisoned by lead ore and contaminated by toxic waste. Also, he examined the impact of poverty and discrimination on the health of individuals and communities.

In short, the right to health not only encompasses health care, but also the essential conditions of health. The implementation of the right to health demands that a range of sectors and levels of government work closely together.

Source: UN Special Rapporteur on the right to the highest attainable standard of health, report on mission to Peru, 2005.

What are the key elements of our right to health?

We are entitled to the provision of health care and other essential conditions for health within easy reach, whether we live in an urban or rural area, in sufficient quantity and of good quality.

An important aspect of our right to health is that both health care and the other essential conditions for health must be affordable to all without discrimination.

We are entitled to give and to receive information about health matters. We are also entitled to confidentiality and privacy regarding our own health status.

We are entitled to participate in decision-making and policy formulation relating to our health at local, national and international levels. Steps must be taken to enable the participation of all individuals and communities, including the most disadvantaged.



4 Our right to the highest attainable standard of health

Community participation and the right to health • Is the right to health the same in developed and developing countries?

Participation at community and government level

Community participation and the right to health

Originally initiated by a local organisation of poor workers and farmers in Rajasthan, *jan sunvais*, or public hearings, have now become an established means for citizens to scrutinize public records and to hold government officials to account for negligence or for misappropriation of public funds. The hearings are now supported by the national government and have spread to urban areas. Some focus specifically on the right to health. The Indian National Human Rights Commission has shown a particular interest in the issue of the right to health and has assumed responsibility for conducting some public hearings. For example, in 2004, five regional public hearings were convened by the National Human Rights Commission. Other local hearings were arranged with the participation of State human rights commissions.

This process culminated in a national public hearing in New Delhi. At these hearings, individuals presented testimonies of denial of health care. Activists and non-governmental organisations (NGOs) expressed their concerns about failure to respect human rights. Senior State health officials were present at all of these hearings to take note of and respond to testimonies. These hearings mobilised communities around the right to health, raised awareness of appropriate standards for health services and highlighted structural deficiencies in the provision of health care.

Source: *Human Rights, Health and Poverty Reduction Strategies*, World Health Organisation, 2005.

Our right to health may also be viewed as a right to a functioning system of health protection rather than simply in terms of buildings, doctors, nurses, medicines, water and sanitation. While this system cannot guarantee that all of us will be healthy, it must provide everyone with an equal chance to enjoy the highest achievable standard of both physical and mental health.

As equal human beings, the right to health belongs to every one of us. Our chances of enjoying good health must not be unfairly disadvantaged because of our sex, race, religion, age, language, colour, disability, health status (e.g. HIV/AIDS), national or social origin, sexual orientation, political or other opinion, property, birth, civil, political, social or other status as this is incompatible with our right to health. Also, health services must be provided in a manner which respects the diversity of our different cultures.

Is the right to health the same in developed and developing countries?

Sometimes, particularly in developing countries, our government may genuinely be unable to afford to safeguard all aspects of our right to health at once. In such cases, the government is not obliged to ensure every aspect of our right to health at the same time. However, it must prepare and implement a national health strategy and action plan for securing our right to health more fully over time.

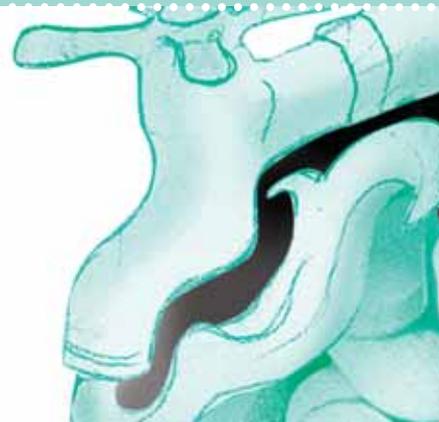
All governments are obliged to continuously improve the enjoyment of the right to health; they must identify clear indicators and benchmarks in their national health strategy and action plan and ensure the collection of relevant

>> Our right to health may also be viewed as a right to a functioning system of health protection rather than simply in terms of buildings, doctors, nurses, medicines, water and sanitation.

Photo credits:

Left: Photograph © 2005 D. Hinrichsen, courtesy of Photoshare: Surgical team corrects a fistula at University Hospital, Dhaka, Bangladesh.

Right: Photograph © 2006 Steven Nowakowski, courtesy of Photoshare: A nurse at Mutzing District Hospital, Papua New Guinea, administers a needle to a young child to help stop preventable diseases.



Monitoring national budgets for compliance with the right to health •
Who is responsible for ensuring our right to health?

Taking responsibility

>> Our government must ensure that hospitals, clinics, doctors, nurses, equipment and medicines are fairly distributed around the country on the basis of genuine health needs.

data for measuring progress over time. Such data must be broken down on the basis of major social classifications (e.g. sex and ethnicity) to enable us to ascertain whether any particular group is unfairly disadvantaged.

When resources are limited, our government must always give first priority to the most basic health needs of our population. These basic needs include ensuring that everyone has adequate food, safe water, sanitation, shelter and essential medicines. In times of hardship, our government must pay particular attention to protecting the most vulnerable sections of our population.

Whether we live in a developed country or in a developing country, our government must ensure that hospitals, clinics, doctors, nurses, equipment and medicines are fairly distributed around the country on the basis of genuine health needs. Our government is not permitted to distribute health resources in a way which unfairly disadvantages people on the basis of their ethnicity, sex, religion or any other illegitimate grounds.

Monitoring national budgets for compliance with the right to health

In Mexico, an NGO named Fundar has undertaken pioneering work in developing a methodology with which to analyse the compatibility of national budgets with the right to health. The Mexican budget was examined to see how well it reflected the government's human rights obligations and, in particular, the main components of the right to health. Results showed that not only was

the Ministry of Health failing to spend its full allocation but that areas with a high proportion of marginalised people were in fact receiving fewer per capita resources for maternal care and immunizations than average.

Very little funding was being allocated to the infrastructure needed for remote communities to access health centres. In short, the budget analysis revealed a failure to comply with the obligation to progressively realise the right to health using maximum available resources, to provide health care within easy reach of everyone and to ensure that everyone is free from discrimination in the enjoyment of their right to health.

Source: Health care: A question of human rights, not charity, Fundar 2002, reported in Human Rights, Health and Poverty Reduction Strategies, World Health Organisation, 2005.

If we live in the developed world and a developing country is not able to fulfil its duty to safeguard the most basic health needs of its people, our own government has a special obligation to assist that developing country to meet the basic health needs of its people.

Who is responsible for ensuring our right to health?

The main legal responsibility for securing our right to health rests with States. However, international organisations, companies, health professionals and family members also have the power to influence the enjoyment of our right to health, either for better or for worse.

Everyone must take responsibility to ensure that their actions, or inaction, do not prejudice our right to health.



6 Our right to the highest attainable standard of health

Companies and the right to health • How do we hold to account those responsible for ensuring our right to health?

Accountability

Companies and the right to health

South Africa has one of the highest HIV/AIDS prevalence rates in the world. In 1997, legislation was enacted to enable the government to reduce the price of essential medicines. In 2001, a body representing the pharmaceutical industry took the South African government to Court in an effort to prevent the implementation of the 1997 Act.

The Treatment Action Campaign (TAC), an NGO representing the interests of people in South Africa living with HIV/AIDS, campaigned vigorously in support of the legislation in the run up to the Court hearing. The Court allowed TAC to submit evidence defending the South African government. Growing public outrage about the profits made by the pharmaceutical industry from essential medicines, which were unaffordable to South Africa's poor, resulted in the body representing the pharmaceutical industry withdrawing its legal proceedings. The price of many essential medicines for people with HIV/AIDS dropped sharply as a result.

How do we hold to account those responsible for ensuring our right to health?

All human rights demand effective accountability. Those who are responsible for securing our right to health must be accountable at the

national and international levels. While States are permitted to choose different forms of accountability, all accountability mechanisms must be accessible, transparent and effective.

At the national level, accountability mechanisms fall into various categories. For example, it may be possible to pursue a complaint and seek a legally binding decision in the Courts if the right to health or another relevant right (e.g. the right to freedom from discrimination) is enshrined in our domestic laws or in our Constitution. A National Human Rights Commission or Ombuds which is independent from the government may be empowered to make inquiries into complaints and to issue authoritative recommendations. Political accountability mechanisms, such as parliamentary committees which scrutinize draft laws, may be incorporated into our country's parliamentary system.

Another way to advance our right to health is to ensure that it is integrated in all relevant policy making processes including policies for poverty reduction and international development. A policy approach also demands vigilant accountability and monitoring mechanisms including but not limited to some of those previously mentioned. It may include use of publicly available human rights impact assessments to anticipate the likely impact of a proposed policy upon the right to health. A policy approach also requires the use of indicators and benchmarks to measure whether policies advance the right to health over time.

>> While States are permitted to choose different forms of accountability, all accountability mechanisms must be accessible, transparent and effective.

Photo credits:

Left: Photograph © 2005 Emilija Miljkovic, courtesy of Photoshare: A grandmother prepares beans for the winter in the village of Vasilj in the south of Serbia.

Middle: Photograph © 2006 Hang Hybunna, courtesy of Photoshare: Brothers Sorn Rith and Sorn Sith live disabled by polio in a cottage in Kampong Trach District, Kampot Province, Cambodia.

Right: Photograph © 2005 Stéphane Janin, courtesy of Photoshare: A young girl in a remote village in Stung Treng province, Cambodia, practises handwashing, following hygiene advice provided by Pharmaciens Sans Frontières.



Integrating the right to health into policy making •
Regional accountability and the right to health

**Integrating
the right to health
into policy making**

In 2005, the UK Department for International Development (DfID) Health Resource Centre publishes a paper, *Developing a Human Rights Approach to Maternal Mortality*.

The paper observed that, despite longstanding global initiatives for reducing maternal mortality, over 500,000 maternal deaths still occurred each year.

DfID attributed this to the systematic violation of women's rights including their right to health, the low status of women and failing health systems. DfID argued that a rights-based approach could help policymakers to focus on the economic, social, cultural and political forces that made it harder for poor women to access maternal health care, and especially emergency obstetric care.

DfID claimed that focussing on technical interventions in isolation would not have the required impact on maternal mortality rates and that more support was needed in order to improve health service delivery in general, and to address issues outside of the health sector relating to the status of women which exposed women to avoidable risks of maternal death.

Source: K Hawkins, K Newman, D Thomas, C Carlson, *Developing a Human Rights-Based Approach to Addressing Maternal Mortality*, DfID Health Resource Centre, 2005.

At the international level, if our government is a party to a treaty which enshrines the right to health, accountability mechanisms commonly fall into three groups. First, our government may be obliged to submit periodic reports to a treaty body responsible for monitoring compliance with the treaty, such as the UN Committee on Economic, Social and Cultural Rights. This Committee reviews the reports received from States and "shadow reports" received from NGOs before issuing observations about the States' compliance with their obligations. Preparing accurate and authoritative "shadow reports" is a vital role for NGOs.

Second, in relation to some, but not all, treaties, individuals are entitled to submit complaints to the relevant treaty body after pursuing the matter at the domestic level. Third, some treaties contain an inquiry mechanism authorising the relevant treaty body to investigate and report on gross or systematic violations of a particular right which come to its attention. Even if our government has not ratified a treaty enshrining the right to health, it may still be possible to access some accountability mechanisms at the international level. For example, UN Special Rapporteurs are independent experts appointed by the UN Human Rights Council in relation to a particular country or a theme, such as the right to health. A Special Rapporteur may request a State to respond to complaints of human rights violations which the Special Rapporteur receives from individuals, irrespective of whether that State is a party to one or more human rights treaties.

**Regional accountability
and the right to health**

In Africa, the Americas and Europe, regional treaties also provide opportunities to hold our governments to account in relation to the right to health.

For example, the Ogoni community in Nigeria alleged that the military government had violated the right to health, the right to a clean environment, and several other human rights by condoning and facilitating the operations of oil companies in Ogoniland. A complaint was submitted by NGOs under the African Charter on Human and Peoples' Right to the African Commission on Human and Peoples' Rights on behalf of the Ogoni community.

The Commission ruled that the Ogoni people had suffered violations of their right to health and to a clean environment as a result of the government's failure to prevent pollution and ecological degradation. It also decided that the government's failure to monitor oil activities, involve local communities in decisions and provide material benefits for the Ogoni people also violated the African Charter. The Commission issued orders to cease attacks on the Ogoni people, to investigate and prosecute those responsible for the attacks, to provide compensation to victims, to provide environmental and social impact assessments in the future and to provide information on health and environmental risks

Source: *50 Leading Cases on Economic, Social and Cultural Rights*, Centre on Housing Rights and Evictions, 2003.



Further resources

Selected manuals and commentaries:

25 Questions and Answers on Health and Human Rights World Health Organisation, 2002

Fact Sheet on The Right to Health World Health Organisation (forthcoming). These publications of the World Health Organisation, and also others related to health and human rights, can be accessed at: www.who.int/hhr/activities/publications/en/

The Right to Health: a Resource Manual for NGOs Asher, Judith, 2004 www.shr.aas.org/Right_to_Health_Manual/index.shtml

United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health, initial report on sources and content of the Right to Health E/CN.4/2003/58

United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health, report on mission to Uganda E/CN.4/2006/48/Add.2

United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health, report on progress and obstacles to the health and human rights movement, in addition to cases on the right to health and other health-related rights A/HRC/4/28. These and other reports of the Special Rapporteur can be accessed at www2.essex.ac.uk/human_rights_centre/rth/

Fact Sheet on the Right to Health Office of the High Commissioner for Human Rights www.ohchr.org (forthcoming)

Selected international treaties and declarations and commentaries:

The documents listed below are available at www.ohchr.org

Article 25, Universal Declaration of Human Rights, 1948

Article 12, International Covenant on Economic, Social and Cultural Rights, 1966

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (The Right to Health), 2000

Articles 11.1(f) and 12, Convention on the Elimination of All Forms of Discrimination Against Women, 1979

General Recommendation No. 24 of the Committee on the Elimination of Discrimination Against Women (Women and Health), 1999

Article 5(e)(iv), International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 24, Convention on the Rights of the Child, 1989

The Millennium Development Goals, United Nations www.undp.org

Selected regional treaties:

Article 16, African Charter on Human and Peoples' Rights, 1981 www.achpr.org

Article 10, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 1988 www.cidh.org

Article 11, European Social Charter, 1961 (as amended) www.coe.int

Some organisations working on health and human rights:

Averting Maternal Death and Disability Program, Mailman School of Public Health, Columbia University www.amddprogram.org

Center for Economic and Social Rights www.cesr.org

Centre for Reproductive Rights (CRR) www.crlp.org

Francois Xavier Bagnoud Center for Health and Human Rights, Harvard University www.hsph.harvard.edu/xfbcenter

Fundar www.fundar.org.mx

Health and Human Rights Division, University of Cape Town www.hhr.uct.ac.za

International Federation of Health and Human Rights Organisations www.ifhhro.org

International Network for Economic, Social and Cultural Rights www.escr-net.org

People's Health Movement www.phmovement.org

Physicians for Human Rights www.phrusa.org

Program on International Health and Human Rights, Harvard School of Public Health www.hsph.harvard.edu/pihhr/

Realizing Rights: The Ethical Globalization Initiative www.realizingrights.org

Right to Health Unit, Human Rights Centre, Essex University www2.essex.ac.uk/human_rights_centre/rth/

Treatment Action Campaign www.tac.org.za

The University of New South Wales' Initiative for Health and Human Rights (IHHR) www.ihhr.unsw.edu.au

United Nations Children Fund (UNICEF) www.unicef.org

United Nations Office of the High Commissioner for Human Rights (OHCHR) www.ohchr.org

United Nations Population Fund (UNFPA) www.unfpa.org

The Joint United Nations Programme on HIV/AIDS (UNAIDS) www.unaids.org

United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health, www.ohchr.org/english/issues/health/right/index.htm

Wemos Foundation www.wemos.nl

World Health Organisation www.who.int

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