



THE RIGHT TO HEALTH

The right to health means that governments must generate conditions in which everyone can be as healthy as possible. Such conditions range from ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food. The right to health does not mean the right to be healthy.

The right to health has been enshrined in numerous international and regional human rights treaties as well as national constitutions all over the world.

Examples of UN human rights treaties:

- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Convention on the Rights of the Child (CRC), 1989

Examples of regional human rights treaties:

- European Social Charter, 1961
- African Charter on Human and Peoples' Rights, 1981
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador), 1988.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without the distinction of race, religion, political belief, economic or social condition. (WHO Constitution)

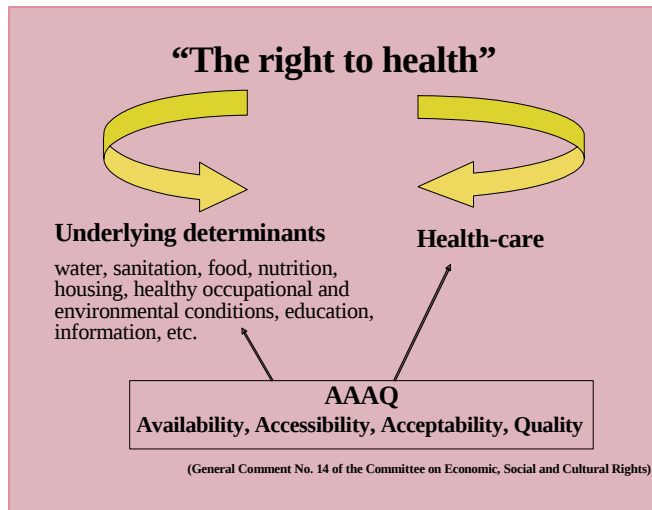
The International Covenant on Economic, Social and Cultural Rights (1966) in Article 12 states that steps for the realization of the right to health include those that:

- ✓ reduce infant mortality and ensure the healthy development of the child;
- ✓ improve environmental and industrial hygiene;
- ✓ prevent, treat and control epidemic, endemic, occupational and other diseases;
- ✓ create conditions to ensure access to health care for all.

To clarify and operationalize the above provisions, the UN Committee on Economic, Social and Cultural Rights which monitors compliance with the ICESCR adopted a General Comment on the Right to Health in 2000.

The General Comment sets out that the right to health extends not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including on sexual and reproductive health.

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... medical care and necessary social services. (Article 25 (1) Universal Declaration of Human Rights)



According to the General Comment the right to health contains four elements:

- **Availability.** Functioning public health and health care facilities, goods and services, as well as programmes in sufficient quantity.
- **Accessibility.** Health facilities, goods and services accessible to everyone, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:
 - ✓ non-discrimination,
 - ✓ physical accessibility,
 - ✓ economical accessibility (affordability),
 - ✓ information accessibility.
- **Acceptability:** All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, as well as sensitive to gender and life-cycle requirements.
- **Quality:** Health facilities, goods and services must be scientifically and medically appropriate and of good quality.

The right to health, like all human rights, imposes on the State Party 3 types of obligations:

Respect: This means simply not to interfere with the enjoyment of the right to health.

Protect: This means ensuring that third parties (non-state actors) do not infringe upon the enjoyment of the right to health.

Fulfil: This means taking positive steps to realize the right to health.

According to the General Comment, the right to health also has a "core content" referring to the minimum essential level of the right. Although this level cannot be determined in the abstract as it is a national task, key elements are set out to guide the priority setting process. Essential primary health care; minimum essential and nutritious food; sanitation; safe and potable water; and essential drugs are included in the core content. Another core obligation is the adoption and implementation of a national public health strategy and plan of action. This must address the health concerns of the whole population; be devised, and periodically reviewed, on the basis of a participatory and transparent process; contain indicators and benchmarks by which progress can be closely monitored; and give particular attention to all vulnerable or marginalized groups.

States Parties must take steps forward in conformity with *the principle of progressive realization*. This imposes an obligation to move forward as expeditiously and effectively as possible, individually and through international assistance and co-operation, to the maximum of available resources. In this context, it is important to distinguish the *inability* from the *unwillingness* of a State Party to comply with its right to health obligations.