The Right to Health: An Introduction

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ABSTRACT: The right to the highest attainable standard of health is a fundamental human right that encompasses the right to healthcare and determinants of health. This paper defines the right to health and examines what it means in practice. It outlines current issues that are being examined through a right-to-health perspective, including recent developments. An appendix describes leading organisations working to advance the right to health.

KEY WORDS:

Introduction
The aim of this introductory working paper is to provide a general overview of the right to health and what it might mean in practice, and outline key recent developments. It is also a positioning paper for the Health and Human Rights Group. An appendix describes some leading organisations working for this right.

Health and human rights are integrally and inextricably interlinked. Respecting, protecting and fulfilling people’s rights to health is closely associated with people’s right to development, and leads to flourishing lives.[1] For example, standards of health are higher when people are able to enjoy their rights to participation, non-discrimination, education, and an adequate standard of living. The vast inequities in health throughout the world result from “a toxic combination of poor social policies and programmes,
unfair economic arrangements and bad politics” [2, p. 9] - such policies, programmes and economic arrangements are violations of human rights.[3]

**What is the right to health?**
The right to the highest attainable standard of health is recognised in the United Nations Declaration on Human Rights,[4] and made more explicit in the Covenant on Economic, Social and Cultural Rights.[5] It is affirmed in other core international human rights treaties about racism, and the rights of women, children, migrant workers and persons with disabilities;[6-9] the Declaration on the Rights of Indigenous Peoples;[10] and in key global health agreements including the constitution of the World Health Organisation (WHO), the Declaration of Alma Ata, the Bangkok Charter for Health Promotion, and the WHO Framework Convention on Tobacco Control.[11-14]

Every country in the world has agreed to be bound under international law to at least one human rights treaty that includes the right to health. Thus, all States are obligated by international human rights law to progressively realize people’s rights to health. Fulfilling these rights is also a matter of justice, humanitarianism, professional ethics, and ensuring effective and sustainable health systems.

In Aotearoa New Zealand, *hauora* (health and wellbeing) is one of the *taonga* guaranteed to all citizens under Te Tiriti o Waitangi – as is health equity. Indigenous concepts of health encompass a collective and individual perspective and a holistic understanding. Thus the right to health cannot be seen in isolation from rights to indigeneity, self-determination, culture, language, land, and the natural environment.[15, 16]

Current understandings of the application of ‘the right to health’ have been strongly influenced by the work of Jonathan Mann and others in the 1980s and 1990s,[17] who argued that the response to the HIV/AIDS epidemic should be seen as much a human rights issue as a communicable disease issue. Efforts to end discrimination were essential for addressing HIV/AIDS,
and highlighted that public health and human rights are complementary approaches to improving health and wellbeing.[18]

In 2000, the United Nations Committee on Economic, Cultural and Social Rights (the independent expert monitoring body established to monitor States’ compliance with the Convention) made an authoritative statement on what the right to the highest attainable standard of health entails. In General Comment No 14, the Committee said that the right to health is not a right to be healthy, but “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 . . . (It) is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health.”[19] The United Nations Committee on the Rights of the Child in a just released General Comment, also said the right to health is an inclusive right, including the right of children to grow to their full potential.[20]

Half of the Millennium Development Goals are directly about health. A right to health approach challenges the means that are used to deliver the Goals, to ensure the benefits accrue to those who are most vulnerable and disadvantaged, ensure participation, and use accountability mechanisms to enhance the effectiveness of vertical programmes.[21, 22]

New Zealand has ratified the International Covenant on Economic, Social and Cultural Rights and the Conventions on the Elimination of All Forms of Racial Discrimination, the Elimination of Discrimination against Women, the Rights of the Child, and the Rights of Persons with Disabilities, all of which include the right to health. However in ratifying the Convention on the Rights of the Child in 1993, New Zealand made, and still maintains, a reservation that it could distinguish between children according to their legal authority to be in New Zealand.[23] Children who are not citizens or legally resident have substantially reduced eligibility for publicly funded health services.[24] The Committee on the Rights of the Child has repeatedly urged New Zealand to withdraw this reservation.[25-27]
In consultation to develop New Zealand’s first human rights action plan, the right to health was the right given the highest priority by participants. The New Zealand legislative framework, policy and practice, and key issues have been described by Bell and the Human Rights Commission.[28-30] New Zealand’s right-to-health obligations under the International Covenant on Economic, Social and Cultural Rights and other human rights treaties are broad and encompass various elements of domestic legislation and regulations - for example, the Code of Rights under the Health and Disability Commissioner Act focuses on aspects of health care delivery which is just one aspect of the right to health.

The right to health in practice

The right to health provides a framework that can be used across disciplines, communities and cultures (and, indeed, with sectors outside health) for developing, delivering and evaluating health-related policies, services and programmes to ensure they are robust, sustainable, effective, and equitable.

Paul Hunt, the first United Nations Special Rapporteur (independent expert) on the right to the highest attainable standard of health,\(^1\) has clarified what the right to health means in practice. Hunt argues that more traditional human rights techniques of activism and litigation are insufficient on their own (although judicial and quasi-judicial processes can be useful in vindicating human rights) and encourages a complementary inter-disciplinary policy approach including new human rights tools such as indicators, benchmarks

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\(^1\) Paul Hunt is a New Zealand and British national, a Professor at the Human Rights Centre at Essex University, England, and Adjunct Professor at the School of Law at Waikato University. He was nominated by the New Zealand Government and elected by the United Nations General Assembly to the UN Committee on Economic, Social and Cultural Rights from 1999 to 2002. He was UN Special Rapporteur on the Right Health from 2002 to 2008 and currently works part-time on human rights issues with WHO. In 2012 he led two New Zealand workshops on the right to health, which were organized by the Health Promotion Forum, Auckland University Centre for Development Studies, and the University of Otago Wellington Public Health Summer School.
and rights impact assessment, alongside strengthening international jurisprudence. [31-33] Rights-based approaches are being used to improve the design of health programmes, especially by strengthening health systems,[34-38] and provide a framework for action on the determinants of health.[3, 39, 40]

In comparison with civil and political rights, there is little jurisprudence around economic, social and cultural rights. Although Judicial processes may be complex, costly and of little immediate practical help to improving health, [41] they are increasingly being used in some countries, especially in South America.[42]

Hunt et al developed a useful 10 part analytical framework to describe States’ right-to-health obligations, for use in the design, delivery and evaluation of services:

• States must comply with national and international human rights laws, norms and standards.
• States must act to progressively realize the right to health over time. Full realisation of the right requires sufficient resources. But States must make progress, have a plan, benchmarks and indicators.
• Some obligations – such as the duty to avoid discrimination - must be put into effect immediately.
• Health services, goods and facilities must be available, accessible, acceptable, and of good quality.
• States must recognize both freedoms and entitlements about health – for example freedom from discrimination and entitlement to decent food, clean water and sanitation.
• States have duties to respect, protect and fulfill the right to health – which means states must actively do things to ensure people can enjoy their right to health, not to do things which interfere with people’s right to health, and must stop others interfering with people enjoying their right to health.
• Special attention must be given to issues of non-discrimination, equality and vulnerability. These are issues that are central to ideas of human
rights, just as they are in health. The right to health gives rise to the government’s obligation to ensure an equitable health system and equitable access to the determinants of health.

- Individuals and groups must be able to take part in designing services that are for them, and in the development of policies that affect them.
- States have right-to-health obligations around international assistance and co-operation.
- States must have effective, transparent and accessible mechanisms for monitoring and accountability around the right to health, and, in turn, are accountable to the international community.[33]

**Recent developments**

There is growing appreciation that a right to health approach that keeps the continual strengthening of the health system as its focus, is an equitable and sustainable way of fulfilling human rights obligations - and an effective way of ensuring health systems are equitable and sustainable [see, for example, 33, 34, 38].

There is increasing recognition - and jurisprudence - that sexual and reproductive rights are an integral part of the right to health. Sexual and reproductive health rights include maternal health, access to contraceptive methods and safe abortion services, and protection from sexual assault [37, 43].

What the right to health means for mothers and children is receiving growing attention. Recent reports from the UN High Commissioner on Human Rights have given technical guidance on applying human rights approach in implementing policies and programmes to reduce preventable maternal mortality and morbidity,[36] and stressed “that the survival, protection, growth and development of children in good physical and emotional health are the foundations of human dignity and human rights.”[44] The UN Committee on the Rights of the Child recent General Comment about the right to health says it is “an inclusive right extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also a
right to grow and develop to their full potential, and live in conditions that enable them to attain the highest standard of health by implementing programmes that address the underlying determinants of health.” [20] The right to health, especially strengthening implementation, accountability mechanisms and the determinants of health, is the subject of the March 2013 Human Rights Council annual meeting on the rights of the child.[45]

The human rights and health equity movements have considerable opportunities to work together to realise joint goals of improving health through addressing inequities in power and resources, with both utilising the discourse, evidence base and policy momentum of health equity and right-to-health indicators, benchmarks and legal standing.[40]

Largely in response to the persistent state of global health inequities, and driven by the Joint Action Learning Initiative (a broad-based civil society collaboration, www.jalihealth.org), work is being done to strengthen global and national accountability by calling for a Framework Convention on Global Health. This aims to achieve international consensus based on the right to health on what are essential health services and goods, shared national and international responsibilities including towards the world’s poor people, and the associated required global governance structures.[46, 47]

Enjoyment of the “right to health will increasingly depend on the right to a safe environment and a stable climate,”[48] especially as the health impacts of climate change and environmental degradation are experienced disproportionately and inequitably by people in low income countries and vulnerable groups such as children.[49-52]

**Conclusion**

The right to health is more than just a legally binding covenant that places obligations primarily on states; it is also a compelling practical tool that can assist people working in health care to provide accessible and acceptable quality health services to all people. It supports evidence-informed ethical professionalism, sound leadership, humanitarianism, and sustainable
development. It promotes participatory approaches and accountability that can be used to address many health issues and problems.

**Appendix: Some leading organisations working to advance the right to health**

The oversight of international human rights treaties is with the United Nations, which mandates the Office of the High Commissioner for Human Rights and the treaty monitoring bodies. States must report every five years on their progress towards realization of human rights, and shadow reports from civil society are received, by the monitoring Committees and the Human Rights Council (the principal intergovernmental human rights body within the United Nations).

Monitoring of States’ obligations about the right to health comes from the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the Right to Health. It is also a responsibility of the Human Rights Council, and other treaty bodies and special mandate-holders. The United Nations Permanent Forum on Indigenous Issues, whose past work ensured the establishment of the Declaration on the Rights of Indigenous Peoples, has a mandate to advise the Economic and Social Council, including discussing the health rights of indigenous peoples.

UNICEF and the World Health Organisation (WHO) are key multinational organisations promoting the right to health. Since 1996, UNICEF has recognised that its work is based on the Conventions on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women. WHO was involved in consultation on General Comment 14 and has become more proactive in promoting rights-based approaches. Within WHO, the Health and Human rights team works to advocate for and integrate a human rights-based approach to health into the activities of WHO and its members, and international development.[53]

There is interest in the right to health from international development
organisations and funders as they incorporate human rights approaches. For example, the World Bank Institute’s Health Team has a project about equity and the right to health in Latin America. There is considerable Latin American support for human rights approaches because of the history of oppressive regimes - which brings together health practitioners, decision-makers, civil society and the judiciary.[54, 55]

National statutory human rights organisations also promote the right to health. In New Zealand, the Health and Disability Commissioner has responsibilities to protect and advocate for the rights of individual consumers [56] and the Children’s Commissioner and Human Rights Commission have advocated for rights to health services and the determinants of health [see, for example, 30, 57].

Recognition of the right to health has been, and is, largely driven by the efforts of academia and non-governmental organisations. The People’s Health Movement is a widespread network of health activists calling for “health for all now” as a human right, and builds the right-to-health movement through networking, support for local activism, mobilization and capacity building [58-61]. Within international health, leadership comes from the People’s Health Movement, consumers organizing around particular issues, and health professionals – such as the Amnesty International Health Professional Network (www.amnesty.org), the International Federation of Medical Students Associations (IFMSA, www.ifmsa.org) and Médecins Sans Frontières (MSF, www.msf.org), who all advocate, inform, educate, and promote human rights approaches to the provision of health services. The International Federation of Health and Human Rights Organisations (IFHHR, www.ifhhro.org) offers networking, training, consultancy and advocacy.

There are also civil society networks that provide information, training, advocacy, research and advice around the right to health as part of their wider work on economic, social, cultural and other human rights. These include the Child Rights Information Network (CRIN, www.crin.org), the International Network for Economic, Social and Cultural Rights (ESCR-Net, www.escr-
net.org) and the Center for Economic and Social Rights (CESR, www.cesr.org). Many human rights advocacy organisations within countries link to these networks and promote the right to health alongside other human rights.

The leading academic journal about the right to health is the online free Health and Human Rights (www.hhrjournal.org) which emphasises critical scholarship and action-oriented review [62]. Paul Farmer, a leader in delivering community-based high quality health services in resource-poor settings, is the Editor-in-Chief. Health and Human Rights comes out of the François-Xavier Bagnoud (FXB) Center for Health and Human Rights at Harvard University (www.harvardfxbcenter.org), the first academic centre that focused exclusively on health and human rights. It offers highly regarded teaching, research, and advisory services to advocates and policy-makers. There are an increasing number of academic centres focusing on health and human rights.

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