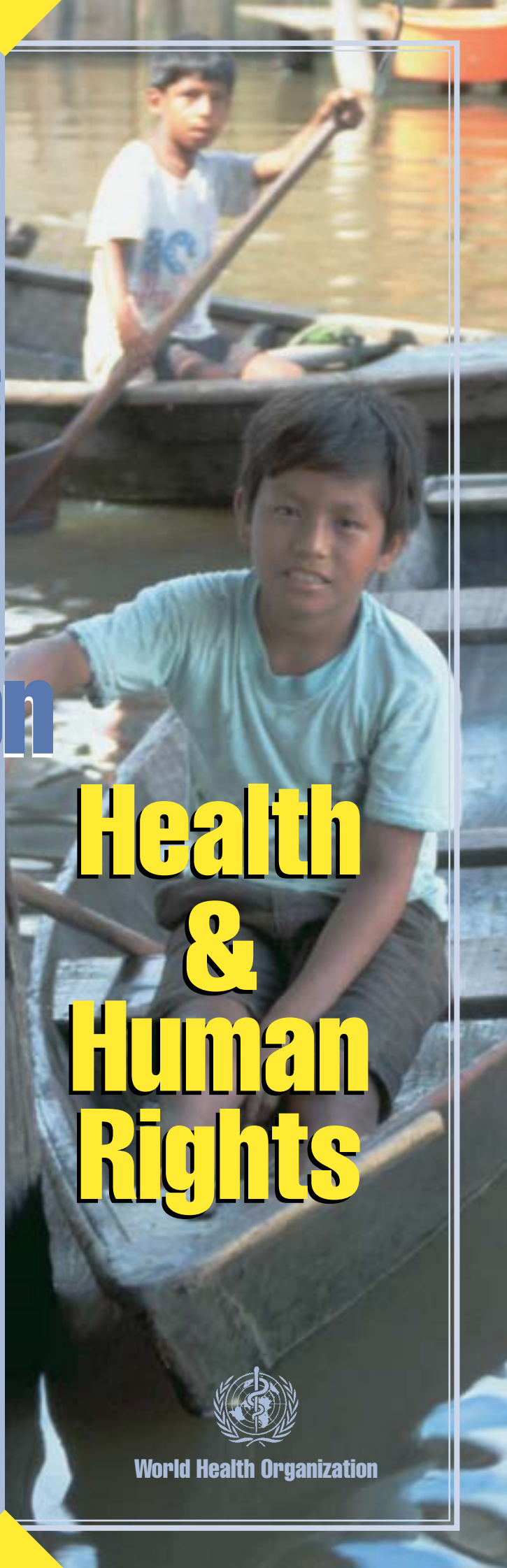
25 Questions & Answers on Health & Human Rights



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25 Questions & Answers on Health & Human Rights

World Health Organization

"It is my aspiration that health will finally be seen not as a blessing to be wished for, but as a human right to be fought for."

United Nations Secretary General, Kofi Annan

Foreword

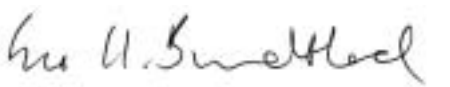
The enjoyment of the highest attainable standard of health as a fundamental right of every human being was enshrined in WHO's Constitution over fifty years ago. In our daily work, WHO is striving to make this right a reality for everyone, paying particular attention to the poorest and most vulnerable.

The human rights discourse provides us with an inspirational framework as well as a useful guide for analysis and action. The United Nations human rights mechanisms provide important avenues towards increasing accountability for health.

Attention to human rights is growing worldwide. WHO is actively engaged in increasing its understanding of human rights in relation to health. We are learning from other United Nations agencies, the international community, and other stakeholders.

It is in this context that WHO has launched the *Health and Human Rights Publication Series*. We have chosen *25 Questions and Answers* as the first in this series, suggesting answers to key questions which explore the linkages between different aspects of health and human rights.

I hope this *Q & A* will provide guidance to a broad audience interested in the relationship between health and human rights.



Gro Harlem Brundtland
Geneva
July 2002

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Abbreviations and Acronyms

ACC	Administrative Committee on Coordination
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
CCA	Common Country Assessment
CCPOQ	Consultative Committee on Programme and Operational Questions
CDF	Comprehensive Development Framework
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CERD	International Convention on the Elimination of All Forms of Racial Discrimination (1963)
CRC	Convention on the Rights of the Child (1989)
ECOSOC	Economic and Social Council
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights (1966) and its two Protocols (1966 and 1989)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
ILO	International Labour Organisation
IMF	International Monetary Fund
NGO	Non-Governmental Organization
OHCHR	United Nations Office of the High Commissioner for Human Rights
PAHO	Pan-American Health Organization
PRSP	Poverty Reduction Strategy Paper
UN	United Nations
TRIPS	Trade Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights (1948)
UNDP	United Nations Development Programme
UNDAF	United Nations Development Assistance Framework
UNGASS	United Nations General Assembly Special Session
UNICEF	United Nations Children's Fund
WANAHR	World Alliance for Nutrition and Human Rights
WHO	World Health Organization
WTO	World Trade Organization

Section 1: Health & Human Rights Norms and Standards

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Q.1 What are human rights?

Human Rights:[1]
- Are guaranteed by international standards;
- Are legally protected;
- Focus on the dignity of the human being;
- Protect individuals and groups;
- Oblige states and state actors;
- Cannot be waived or taken away;
- Are interdependent and interrelated;
- Are universal.[2]

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity.[3] They encompass what are known as civil, cultural, economic, political and social rights. Human rights are principally concerned with the relationship between the individual and the state. Governmental obligations with regard to human rights broadly fall under the principles of ***respect, protect and fulfil***.[4]

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights.[5]

Q.2 How are human rights enshrined in international law?

In the aftermath of World War II, the international community adopted the Universal Declaration of Human Rights (UDHR, 1948). However, by the time that States were prepared to turn the provisions of the Declaration into binding law, the Cold War had overshadowed and polarised human rights into two separate categories. The West argued that civil and political rights had priority and that economic and social rights were mere aspirations. The Eastern bloc argued to the contrary that rights to food, health and education were paramount and civil and political rights secondary. Hence two separate treaties were created in 1966 – the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Since then, numerous treaties, declarations and other legal instruments have been adopted, and it is these instruments that encapsulate human rights.

- International human rights treaties are binding on governments that ratify them;
- Declarations are non-binding, although many norms and standards enshrined therein reflect principles which are binding in customary international law;
- United Nations conferences generate non-binding consensual policy documents, such as declarations and programmes of action.

(1) Administrative Committee on Coordination (ACC); The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System; approved on behalf of the ACC by the Consultative Committee on Programme and Operational Questions (CCPOQ) at its 16th Session, Geneva, March 2000.

(2) This means that they apply to everyone everywhere.

(3) Human Rights: A Basic Handbook for UN Staff issued by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Staff College Project, 1999, p.3.

(4) In turn, the obligation to fulfil contains obligations to facilitate, provide and promote (Section II.33, footnote 23 of General Comment 14 on the right to the highest attainable standard of health adopted by the Committee on Economic, Social and Cultural Rights in May 2000), (E/C.12/2000/4, CESCR dated 4 July 2000).

(5) Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, Vienna, 14-25 June 1993, paragraph 5, (United Nations General Assembly document A / CONF. 137/23).

> *"It was never the people who complained of the universality of human rights, nor did the people consider human rights as a Western or Northern imposition. It was often their leaders who did so."*
>
> United Nations Secretary-General, Kofi Annan

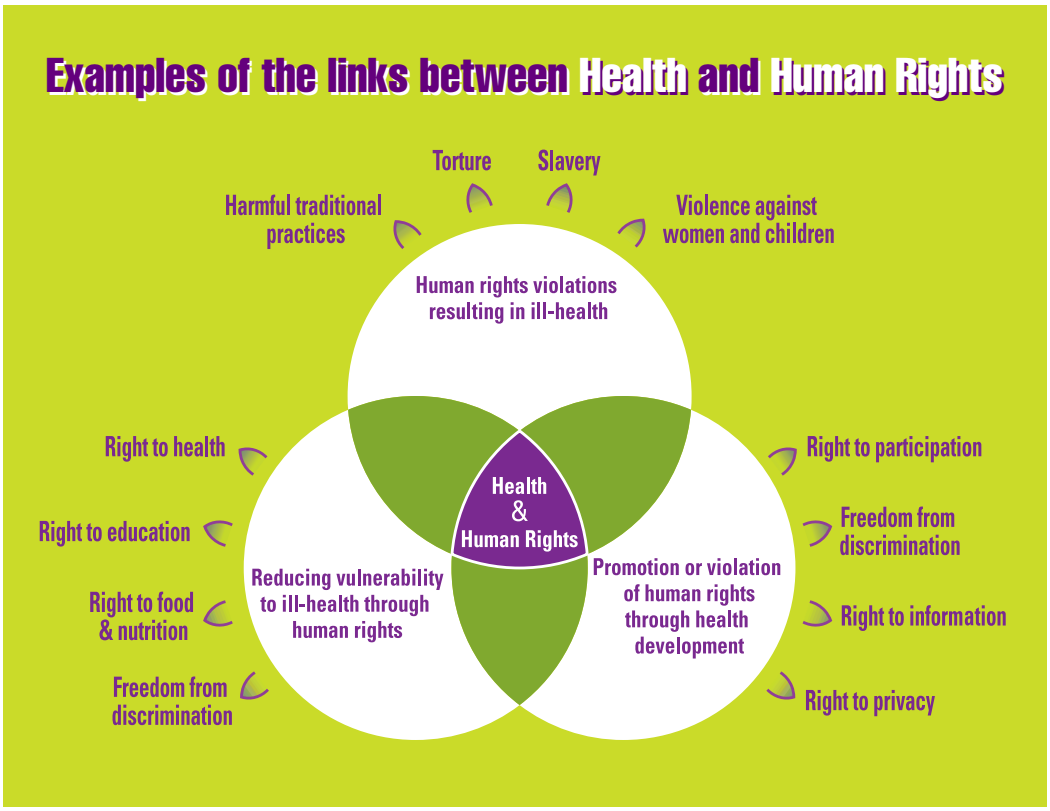
Q.3 What is the link between health and human rights?

There are complex linkages between health and human rights:

- Violations or lack of attention to human rights can have serious health consequences; [6]
- Health policies and programmes can promote or violate human rights in the ways they are designed or implemented;
- Vulnerability and the impact of ill health can be reduced by taking steps to respect, protect and fulfil human rights.

The normative content of each right is fully articulated in human rights instruments. In relation to the right to health and freedom from discrimination, the normative content is outlined in Questions 4 and 5, respectively. Examples of the language used in human rights instruments to articulate the normative content of some of the other key human rights relevant to health follows:

- **Torture:** "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." [7]
- **Violence against children:** "All appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse..." shall be taken. [8]
- **Harmful traditional practices:** "Effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children" shall be taken. [9]
- **Participation:** The right to "…active, free and meaningful participation." [10]



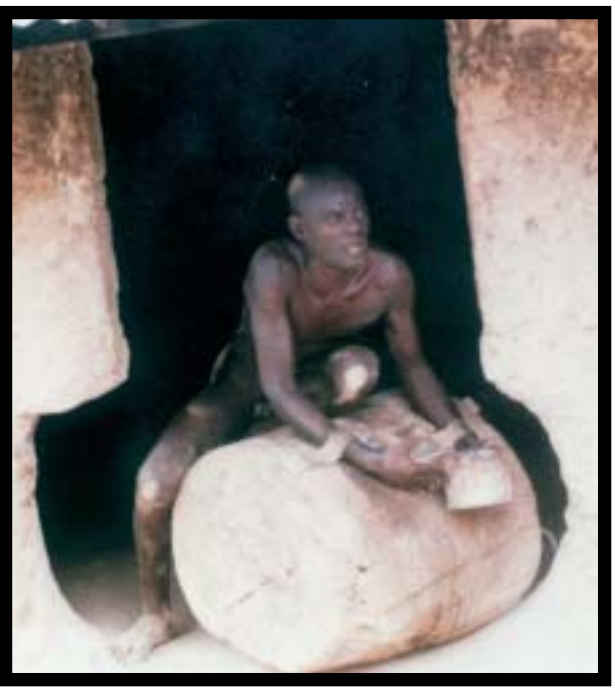
(6) Mann J, Gostin L, Gruskin S, Brennan T, Lazzarini Z, and Fineberg HV, "Health and Human Rights," *Health and Human Rights: An International Journal*, Vol. 1, No. 1, 1994.

(7) Article 7, ICCPR. The prohibition of torture is also articulated in other human rights instruments, including the CAT and article 37 of the CRC.

(8) Article 19, CRC. The prohibition of violence against women is also articulated in the Declaration on the Elimination of Violence Against Women, 1993.

(9) Article 24, CRC. The prohibition of harmful traditional practices against women is also articulated in the Declaration on the Elimination of Violence Against Women, and General Recommendation 24 on Women and Health of the Committee on the Elimination of all forms of Discrimination Against Women, 1999.

(10) Article 2, Declaration on the Right to Development, 1986. The right to participation is also articulated in other human rights instruments, including article 25 of the ICCPR, article 15 of the ICESCR, article 5 of CERD, articles 7, 8, 13 and 14 of CEDAW, and articles 3, 9 and 12 of the CRC.



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- **Information:** "Freedom to seek, receive and impart information and ideas of all kinds." (11)
- **Privacy:** "No one shall be subjected to arbitrary or unlawful interference with his privacy..." (12)
- **Scientific progress:** The right of everyone to enjoy the benefits of scientific progress and its applications. (13)
- **Education:** The right to education, (14) including access to education in support of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents. (15)
- **Food and nutrition:** "The right of everyone to adequate food and the fundamental right of everyone to be free from hunger…" (16)
- **Standard of living:** Everyone has the right to an adequate standard of living, including adequate food, clothing, housing, and medical care and necessary social services. (17)
- **Right to social security:** The right of everyone to social security, including social insurance. (18)

Persons suffering from mental disabilities are particularly vulnerable to discrimination. Not only does this impact negatively on their ability to access appropriate treatment and care but the stigma associated with mental illness means that they experience discrimination in many other aspects of their lives, affecting their rights to employment, adequate housing, education, etc.

The United Nations Resolution on the Protection of Persons with Mental Illness, prohibits discrimination on the grounds of mental illness. (19)

(11) Article 19, ICCPR. The right to information is also articulated in other human rights instruments, including articles 10, 14 and 16 of the CEDAW, and articles 13, 17 and 24 of the CRC.

(12) Article 17, ICCPR. The right to privacy is also articulated in other human rights instruments, including article 16 of CEDAW, and article 40 of the CRC.

(13) Article 15, ICESCR.

(14) Article 13, ICESCR. The right to education is also articulated in other human rights instruments, including article 5 of CERD, articles 10 and 16 of CEDAW, and articles 19, 24, 28 and 33 of the CRC.

(15) Article 24, CRC.

(16) Article 11, ICESCR. The right to food is also articulated in other human rights instruments, including article 12 of CEDAW, and article 27 of the CRC.

(17) Article 25 UDHR and article 11 ICESCR.

(18) Article 9, ICESCR. The right to social security is also articulated in other human rights instruments, including article 5 of CERD, articles 11, 13 and 14 of CEDAW, and article 26 of the CRC.

(19) 18 February 1992, UN General Assembly Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 1 (A/RES/46).

(20) *Basic Documents*, Forty-third Edition, Geneva, World Health Organization, 2001. The Constitution was adopted by the International Health Conference in 1946.

(21) WHA51.7, annex.

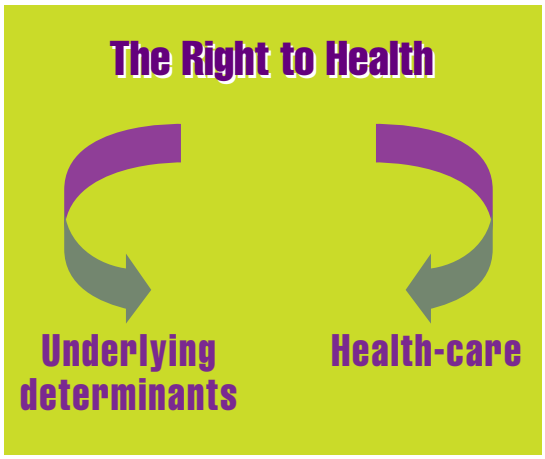
Q.4 What is meant by "the right to health"?

> *"The right to health does not mean the right to be healthy, nor does it mean that poor governments must put in place expensive health services for which they have no resources. But it does require governments and public authorities to put in place policies and action plans which will lead to available and accessible health care for all in the shortest possible time. To ensure that this happens is the challenge facing both the human rights community and public health professionals."*
>
> United Nations High Commissioner for Human Rights, Mary Robinson

The right to the highest attainable standard of health (referred to as "the right to health") was first reflected in the WHO Constitution (1946) (20) and then reiterated in the 1978 Declaration of Alma Ata and in the World Health Declaration adopted by the World Health Assembly in 1998. (21) It has been firmly endorsed in a wide range of international and regional human rights instruments. (22)

The right to the highest attainable standard of health in international human rights law is a claim to a set of social arrangements – norms, institutions, laws, an enabling environment – that can best secure the enjoyment of this right. The most authoritative interpretation of the right to health is outlined in Article 12 of the ICESCR, which has been ratified by 145 countries (as of May 2002). In May 2000, the Committee on Economic, Social and Cultural Rights, which monitors the Covenant, adopted a General Comment on the right to health. (23) General Comments serve to clarify the nature and content of individual rights and States Parties' (those states that have ratified) obligations. The General Comment recognized that the right to health is closely related to and dependent upon the realization of other human rights, including the right to food, housing, work, education, participation, the enjoyment of the benefits of scientific progress and its applications, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.

Further, the Committee interpreted the right to health as an inclusive right extending 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.



The General Comment sets out four criteria by which to evaluate the right to health: [24]

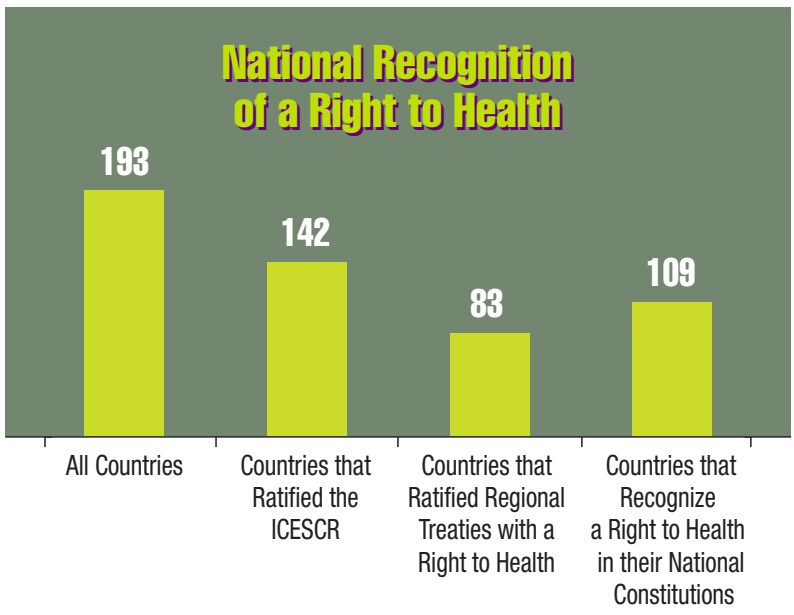
(a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity. [25]

(b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:
- Non-discrimination; [26]
- Physical accessibility; [27]
- Economic accessibility (affordability); [28]
- Information accessibility. [29]

(c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) *Quality*. Health facilities, goods and services must be scientifically and medically appropriate and of good quality [30].

The following graph illustrates the number of countries that recognize the right to health at different levels:



Source: Eleanor D. Kinney, *The International Human Right to Health: What Does This Mean For Our Nation And World?* Indiana Law Review, Vol. 34, page 1465, 2001.

(22) The human right to health is recognized in numerous international instruments. Article 25(1) of the UDHR affirms that "everyone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing, and medical care and necessary social services." The ICESCR provides the most comprehensive article on the right to health in international human rights law. According to article 12(1) of the Covenant, States Parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", while article 12(2) enumerates, by way of illustration, a number of "steps to be taken by the States Parties "... to achieve the full realization of this right". Additionally, the right to health is recognized, *inter alia*, in the CERD of 1963, the CEDAW of 1979 and in the CRC of 1989. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised, the African Charter on Human and Peoples' Rights of 1981 and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (the Protocol entered into force in 1999). Similarly, the right to health has been proclaimed by the Commission on Human Rights and further elaborated in the Vienna Declaration and Programme of Action of 1993 and other international instruments.

(23) General Comment 14.

(24) General Comment 14.

(25) This should include the underlying determinants of health, such as safe and potable drinking-water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

(26) Health facilities, goods and services must be accessible to all, in law and in fact, without discrimination on any of the prohibited grounds.

(27) Health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS, including in rural areas.

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Q.5 How does the principle of freedom from discrimination relate to health?

Vulnerable and marginalized groups in societies tend to bear an undue proportion of health problems. Overt or implicit discrimination violates a fundamental human rights principle and often lies at the root of poor health status. In practice, discrimination can manifest itself in inadequately targeted health programmes and restricted access to health services.

Discrimination manifests itself in a complex variety of ways, which may directly or indirectly, impact upon health. For example, the Declaration on the Elimination of Violence against Women recognizes the link between violence against women and the historically unequal power relations between men and women.[31]

The prohibition of discrimination does not mean that differences should not be acknowledged, only that different treatment – and the failure to treat equal cases equally – must be based on objective and reasonable criteria intended to rectify imbalances within a society.

In relation to health and health-care the grounds for non-discrimination have evolved and can now be summarized as proscribing "any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health."[32]

"Public health practice is heavily burdened by the problem of inadvertent discrimination. For example, outreach activities may 'assume' that all populations are reached equally by a single, dominant-language message on television; or analysis 'forgets' to include health problems uniquely relevant to certain groups, like breast cancer or sickle cell disease; or a problem 'ignores' the actual response capability of different population groups, as when lead poisoning warnings are given without concern for financial ability to ensure lead abatement. Indeed, inadvertent discrimination is so prevalent that all public health policies and programmes should be considered discriminatory until proven otherwise, placing the burden on public health to affirm and ensure its respect for human rights."

Jonathan Mann[33]

(28) Health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all.

(29) Accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(30) This requires, inter *alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

(31) Declaration on the Elimination of Violence against Women, 85th plenary meeting, 20 December 1993, (A/RES/48/104), preamble.

(32) General Comment 14.

(33) The Hastings Center Report, Volume 27, No.3, May-June 1997, p. 9.

Q.6 What international human rights instruments set out governmental commitments?

Governments decide freely whether or not to become parties to a human rights treaty. Once this decision is made, however, there is a commitment to act in accordance with the provisions of the treaty concerned. The key international human rights treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICCPR, 1966) further elaborate the content of the rights set out in the Universal Declaration of Human Rights (UDHR, 1948), and contain legally binding obligations for the governments that become parties to them. Together these documents are often called the "International Bill of Human Rights."

Building upon these core documents, other international human rights treaties have focused on either specific groups or categories of populations, such as racial minorities,[34] women[35] and children,[36] or on specific issues, such as torture.[37] In considering a normative framework of human rights applicable to health, human rights provisions must be considered in their totality.

The Declarations and Programmes of Action from United Nations world conferences such as the World Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994), the World Summit for Social Development (Copenhagen, 1995), the Fourth World Conference on Women (Beijing, 1995) and the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001), provide guidance on some of the policy implications of meeting government's human rights obligations.

Every country in the world is now party to at least one human rights treaty that addresses health-related rights, including the right to health, and a number of rights related to conditions necessary for health.

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Q.7 What international monitoring mechanisms exist for human rights?

The implementation of the core human rights treaties is monitored by committees of independent experts known as treaty monitoring bodies, created under the auspices of and serviced by the United Nations. Each of the six major human rights treaties has its own monitoring body which meets regularly to review State Party reports and to engage in a "constructive dialogue" with governments on how to live up to their human rights obligations. Based on the principle of transparency, States are required to submit their progress reports to the treaty bodies, and to make them widely available to their own populations. Thus reports can play an important catalytic role, contributing to the promotion of national debate on human rights issues, encouraging the engagement and participation of civil society, and generally fostering a process of public scrutiny of governmental policies. At the end of the session, the treaty body makes concluding observations which include recommendations on how the government can improve its human rights record. Specialized agencies such as WHO can play an important role in providing relevant health information to facilitate the dialogue between the State Party and the treaty monitoring body.

(34) International Convention on the Elimination of All Forms of Racial Discrimination, 1963.
(35) Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
(36) Convention on the Rights of the Child, 1989.
(37) Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

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Other mechanisms for monitoring human rights in the United Nations system include the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights. These bodies appoint special rapporteurs and other independent experts and working groups to monitor and report on thematic human rights issues (such as violence against women, sale of children, harmful traditional practices, and torture) or on specific countries. In addition, the post of High Commissioner for Human Rights was created in 1994 to head the United Nations human rights system. The High Commissioner's mandate extends to every aspect of the United Nations human rights activities: monitoring, promotion, protection and coordination.

Regional arrangements have been established within existing regional intergovernmental organizations. The African regional human rights instrument is the African Charter on Human and Peoples' Rights, which is located within the Organization of African Unity. The regional human rights mechanism for the Americas is located within the Organization of American States and is based upon the American Convention of Human Rights. In Europe, a human rights system forms a part of the Council of Europe. Key human rights instruments are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.[38] The 15 member state organization — the European Union — has detailed rules concerning human rights issues and has integrated human rights into its common foreign policy. In addition, the Organization for Security and Cooperation in Europe (OSCE), a 55 member state organization, has separate mechanisms and agreements. In the Asia-Pacific region, extensive consultations among Governments are underway concerning the possible establishment of regional human rights arrangements.

The collaboration between PAHO/WHO and the Inter-American Commission on Human Rights (IACHR, the body responsible for overseeing the American Convention on Human Rights) concerning the rights of persons with mental disabilities, is an example of the key role specialized agencies can play within international monitoring mechanisms. PAHO/WHO offers technical opinions and assistance on the interpretation of the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man, in light of international standards on mental disability rights. In turn, the IACHR incorporates these standards into final reports of relevant individual cases and in country reports. As a result of this technical assistance, the IACHR has issued the Recommendation for the Promotion and Protection of the Rights of the Mentally Ill (28 February 2001).[39]

(38) http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm.

(39) This recommendation was included in the IACHR annual report (2001), constituting the first time the latter has devoted a section to mental disability rights.

Q.8 How can poor countries with resource limitations be held to the same human rights standards as rich countries?

Steps towards the full realization of rights must be deliberate, concrete and targeted as clearly as possible towards meeting a government's human rights obligations. (40) All appropriate means, including the adoption of legislative measures and the provision of judicial remedies as well as administrative, financial, educational and social measures, must be used in this regard. This neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question.

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The principle of *progressive realization* of human rights (41) imposes an obligation to move as expeditiously and effectively as possible towards that goal. It is therefore relevant to both poorer and wealthier countries, as it acknowledges the constraints due to the limits of available resources, but requires all countries to show constant progress in moving towards full realization of rights. Any deliberately retrogressive measures require the most careful consideration and need to be fully justified by reference to the totality of the rights provided for in the human rights treaty concerned and in the context of the full use of the maximum available resources. In this context, it is important to distinguish the *inability* from the *unwillingness* of a State Party to comply with its obligations. During the reporting process the State Party and the Committee identify indicators and national benchmarks to provide realistic targets to be achieved during the next reporting period.

Q.9 Is there, under human rights law, an obligation of international cooperation?

Malaria, HIV/AIDS and tuberculosis are examples of diseases which disproportionately affect the world's poorest populations, placing a tremendous burden on the economies of developing countries. In this regard, it should be noted that although the human rights paradigm concerns obligations of States with respect to individuals and groups within their own jurisdictions, where the human rights instruments refer to the State's resources, they include international assistance and cooperation.

In accordance with Articles 55 and 56 of the Charter of the United Nations, international cooperation for development and the realization of human rights is an obligation of all States. Similarly, the Declaration on the Right to Development (42) emphasizes an active programme of international assistance and cooperation based on sovereign equality, interdependence, and mutual interest. (43)

In addition, the ICESCR requires each State who is party to the Covenant to "take steps, individually and through international assistance and cooperation, especially

(40) ICESCR General Comment 3 on the nature of States Parties obligations adopted by the Committee on Economic, Social and Cultural Rights, Fifth Session 1990 (E/1991/23).

(41) ICESCR, Article 2 (1).

(42) Adopted by the General Assembly in its resolution 41/128 of 4 December 1986.

(43) Declaration on the Right to Development, Article 3, adopted by General Assembly resolution 41/128 of 4 December 1986.

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economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized [herein]." (44)

In this spirit, "the framework of international cooperation" is referred to, which acknowledges, for instance, that the needs of developing countries should be taken into consideration in the area of health. The role of specialized agencies is recognized in human rights treaties in this context. For example, the ICESCR stresses that "international action for the achievement of the rights ... includes such methods as ... furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned." (45)

Q.10 What are governmental human rights obligations in relation to other actors in society?

As government roles and responsibilities include increased reliance on non-state actors (health insurance companies, etc.), governmental health systems must ensure the existence of social safety nets and other mechanisms to ensure that vulnerable population groups have access to the services and structures they need.

The obligation of the State to *protect* human rights means that governments are responsible for ensuring that non-state actors act in conformity with human rights law within their jurisdiction. Governments are obliged to ensure that third parties conform with human rights standards by adopting legislation, policies and other measures to assure adequate access to health care, quality information, etc., and an accessible means of redress if individuals are denied access to these goods and services. An example of this is the obligation of governments to ensure the regulation of the tobacco industry in order to protect its population against infringements of the right to health, the right to information, and other relevant human rights provisions.

In the corporate and NGO contexts, (46) there is a proliferation of voluntary codes which reflect international human rights norms and standards. Increasing attention to the human rights implications of work in the private sector has resulted in human rights being placed higher on the business agenda, with several businesses beginning to incorporate concern for human rights into their daily operations. (47)

(44) ICESCR, Article 2.
(45) ICESCR, Article 23.
(46) In the area of humanitarian assistance, for example, the Sphere Project's (draft) Charter on Minimum Humanitarian Standards in Disaster Relief provides a comprehensive catalogue of technical standards for NGO and other international relief workers on matters such as food, nutrition, water and sanitation, based upon international human rights law.
(47) http: // www.unglobalcompact.org.

Section 2: Integrating Human Rights in Health

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Q.11 What is meant by a rights-based approach to health?

A rights-based approach to health refers to the **processes** of:

- *Using human rights as a framework for health development.* [48]
- *Assessing and addressing the human rights implications of any health policy, programme or legislation.*
- *Making human rights an integral dimension of the design, implementation, monitoring and evaluation of health-related policies and programmes in all spheres, including political, economic and social.*

Substantive elements to apply, within these processes, could be as follows:

✓ Safeguarding ***human dignity***.

✓ Paying attention to those population groups considered most vulnerable in society. [49] In other words, recognizing and acting upon the characteristics of those affected by health policies, programmes and strategies — children (girls and boys), adolescents, women, and men; indigenous and tribal populations; national, ethnic, religious and linguistic minorities; internally displaced persons; refugees; immigrants and migrants; the elderly; persons with disabilities; prisoners; economically disadvantaged or otherwise marginalized and/or ***vulnerable groups***.

✓ Ensuring health systems are made ***accessible*** to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

✓ Using a ***gender*** perspective, recognizing that both biological and sociocultural factors play a significant role in influencing the health of men and women, and that policies and programmes must consciously set out to address these differences.

A rights-based approach to health entails recognizing the individual characteristics of the population groups concerned. In all actions relating to children, for example, the guiding principles of the Convention on the Rights of the Child should be applied. These include:

- The best interests of the child shall be a primary consideration;
- The views of the child shall be given due weight.

✓ Ensuring ***equality and freedom from discrimination***, advertent or inadvertent, in the way health programmes are designed or implemented.

[48] See Question 3 for an explanation of the links between health and human rights.

[49] Many are spelt out in specific human rights instruments, such as the International Labour Organisation Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169, 1989) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).

✓ *Disaggregating* health data to detect underlying discrimination.

✓ Ensuring free, meaningful, and effective *participation* of beneficiaries of health development policies or programmes in decision-making processes which affect them.

✓ Promoting and protecting the *right to education* and the right to seek, receive and impart *information* and ideas concerning health issues. However, the right to information should not impair the right to *privacy*, which means that personal health data should be treated with confidentiality.

It has been demonstrated that "respect for human rights in the context of HIV/AIDS, mental illness, and physical disability leads to markedly better prevention and treatment. Respect for the dignity and privacy of individuals can facilitate more sensitive and humane care. Stigmatization and discrimination thwart medical and public health efforts to heal people with disease or disability". (50)

✓ Only limiting the exercise or enjoyment of a right by a health policy or programme as a last resort, and only considering this legitimate if each of the provisions reflected in *the Siracusa principles* is met.(51) (See Question 13).

✓ Juxtaposing the human rights implications of any health legislation, policy or programme with the desired public health objectives and ensuring the *optimal balance* between good public health outcomes and the promotion and protection of human rights.

✓ Making *explicit linkages to international human rights norms and standards* to highlight how human rights apply and relate to a health policy, programme or legislation.

✓ Making the attainment of the *right to the highest attainable standard of health* the explicit ultimate aim of activities, which have as their objective the enhancement of health.

✓ Articulating the concrete government *obligations* to respect, protect and fulfil human rights.

✓ Identifying *benchmarks and indicators* to ensure monitoring of the progressive realization of rights in the field of health.

(50) Eds. Mann J, Gruskin S, Grodin M, Annas G, Health and Human Rights: A Reader, (Routledge, 1999), Introduction, para. 4.

(51) The Siracusa principles on the limitation and derogation provisions in the international covenant on civil and political rights. UN Doc. E/CN.4/1985/4, Annex.

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✓ Increasing *transparency* in, and *accountability* for, health as a key consideration at all stages of programme development.

✓ Incorporating *safeguards* to protect against majoritarian threats upon minorities, migrants and other domestically "unpopular" groups, in order to address power imbalances. For example, by incorporating redress mechanisms in case of impingements on health-related rights.

Possible "ingredients" in a rights-based approach to health:

Right to health
Information
Gender
Human dignity
Transparency
Siracusa principles

Benchmarks and indicators
Accountability
Safeguards
Equality and freedom from discrimination
Dissaggregation

Attention to vulnerable groups
Participation
Privacy
Right to education
Optimal balance between public health goals and protection of human rights
Accessibility
Concrete government obligations
Human rights expressly linked

Q.12 What is the value-added of human rights in public health?

Overall, human rights may benefit work in the area of public health by providing:

- Explicit recognition of the highest attainable standard of health as a "human right" (as opposed to a good or commodity with a charitable construct);
- A tool to enhance health outcomes by using a human rights approach to designing, implementing and evaluating health policies and programmes;

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- An "empowering" strategy for health which includes vulnerable and marginalized groups engaged as meaningful and active participants;
- A useful framework, vocabulary and form of guidance to identify, analyze and respond to the underlying determinants of health;
- A standard against which to assess the performance of governments in health;
- Enhanced governmental accountability for health;
- A powerful authoritative basis for advocacy and cooperation with governments; international organizations; international financial institutions; and in the building of partnerships with relevant actors of civil society;
- Existing international mechanisms to monitor the realization of health as a human right;[52]
- Accepted international norms and standards (e.g. definitions of concepts and population groups);
- Consistent guidance to states as human rights cross-cut all United Nations activities;
- Increased scope of analysis and range of partners in countries.

Q.13 What happens if the protection of public health necessitates the restriction of certain human rights?

There are a number of human rights that cannot be restricted in any circumstance such as freedom from torture and slavery, and freedom of thought, conscience and religion. Limitation and derogation clauses in the international human rights instruments recognize the need to limit human rights at certain times.

Public health is sometimes used by states as a ground for limiting the exercise of human rights.

A key factor in determining if the necessary protections exist when rights are restricted is that each one of the five criterion of the Siracusa Principles must be met. Even in circumstances where limitations on grounds of protecting public health are basically permitted, they should be of limited duration and subject to review.

The Siracusa Principles

Only as a last resort can human rights be interfered with to achieve a public health goal. Such interference can only be justified when all of the narrowly defined circumstances set out in human rights law, known as the Siracusa Principles, are met:

- The restriction is provided for and carried out in accordance with the law;
- The restriction is in the interest of a legitimate objective of general interest;
- The restriction is strictly necessary in a democratic society to achieve the objective;
- There are no less intrusive and restrictive means available to reach the same objective; and
- The restriction is not drafted or imposed arbitrarily, i.e. in an unreasonable or otherwise discriminatory manner.

Interference with freedom of movement when instituting quarantine or isolation for a serious communicable disease — for example, Ebola fever, syphilis, typhoid or untreated tuberculosis — are examples of restrictions on rights

[52] See Question 7.

that may, under certain circumstances, be necessary for the public good, and therefore could be considered legitimate under international human rights law.[53] By contrast, a state which restricts the movements of, or incarcerates, persons with HIV/AIDS, refuses to allow doctors to treat persons believed to be opposed to a government or fails to provide immunization against the community's major infectious diseases, on grounds such as national security or the preservation of public order, has the burden of justifying such serious measures.[54]

(53) Gruskin S and Tarantola D in Ed. Retels R, Mc Ewen J, Beaglehole R, Tanaka H, Oxford Textbook of Public Health, Fourth Edition, Oxford, Oxford University Press, (in press).

(54) General Comment 14, paragraphs 28-29.

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Q.14 What implications could human rights have for evidence-based health information?

The process that gives birth to an internationally recognized human right is generated from the pressing reality on the ground. For example, the development of a declaration on the rights of indigenous populations[55] stems from the recognition that this is a vulnerable and marginalized population group lacking full enjoyment of a wide range of human rights, including rights to political participation, health and education. In other words, the establishment of human rights norms and standards is itself evidence of a serious problem and governmental recognition of the importance of addressing it. The existence of human rights norms and standards should therefore stimulate the collection of evidence, indicating the data needed to tackle complex health challenges. For example, disaggregating data beyond traditional markers could detect discrimination on the basis of ethnicity against indigenous and tribal peoples which is considered an underlying determinant of their overall poor health status. However, the political sensitivities which underpin human rights in exposing how different population groups are treated and why, hampers the extent to which human rights are welcomed as a driving force for data collection.

More widely accepted is the notion that human rights are relevant to the way in which health data should be collected. This includes the choice of the methods of data collection which must include considerations on how to ensure respect for human rights, such as privacy, participation and non-discrimination. Secondly, international instruments can be helpful in defining various population groups. For example, the ILO Convention Concerning Indigenous and Tribal Peoples[56] provides an authoritative basis for identifying and differentiating indigenous and tribal peoples from other population groups.

Collecting personal information from individuals about their health status (e.g. HIV infection, cancer or genetic disorders), or behaviour (e.g. sexual orientation or the use of alcohol or other potentially harmful substances) has the potential for misuse by the state, whether directly or because this information is intentionally or inadvertently made available to others.[57]

(55 The open-ended intersessional Working Group on the draft declaration was established in 1995 in accordance with Commission on Human Rights resolution 1995/32 and Economic and Social Council resolution 1995/32. The Working Group has the sole purpose of elaborating a draft declaration on the rights of indigenous peoples, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 entitled draft "United Nations declaration on the rights of indigenous peoples". The draft is being prepared for consideration and adoption by the General Assembly during the International Decade of the World's Indigenous People.

(56) The International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169) adopted by the International Labour Organisation on 27 June 1989.

(57) Gruskin S and Tarantola D (refer to footnote 49).

Indicators

United Nations agencies' work on health indicators, human rights indicators, and human development indicators can assist in forging common agendas. Greater coordination to ensure a common framework for the design, development, use and assessment of indicators is needed. The UNDG working group on Common Country Assessment (CCA) Indicators adopted the definition of an indicator as a variable or measurement, conveying information that may be qualitative or quantitative, but which is consistently measurable. Human rights were integrated in the CCA indicator framework which lead to the goal of developing a list of simple development indicators, designed to measure "what is", on a right-by-right basis. This would not include benchmarks, targets or goals, or answer definitely "what should be" or "by when," as these are appropriately developed in country-specific, participatory national processes.[58]

"Information and statistics are a powerful tool for creating a culture of accountability and for realizing human rights."

Human Development Report 2000[59]

(58) See Mokhiber, C. G. "Toward a Measure of Dignity: Indicators for Rights-Based Development". Session I-PL 4, Montreux, 4-8 September 2000.

(59) United Nations Development Programme, Human Development Report 2000, (New York and Oxford: Oxford University Press, 2000), p. 10.

(60) The World Health Report 2000 *Health Systems: Improving Performance.*

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Q.15 How can human rights support work to strengthen health systems?

Human rights provide a standard against which to evaluate existing health policies and programmes, including highlighting the differential treatment of individual groups of people in, for example, manifestations, frequency and severity of disease, and governmental responses to it. Human rights norms and standards also form a strong basis for health systems to prioritize the health needs of vulnerable and marginalized population groups. Human rights moves beyond averages and focuses attention on those population groups in society which are considered most vulnerable (e.g. indigenous and tribal populations; refugees and migrants, ethnic, religious, national and racial monitories), as well as putting forward specific human rights which may help guide health policy, programming, and health system processes (e.g. the right of those potentially affected by health policies, strategies and standards to participate in the process in which decisions affecting their health are made).

World Health Report 2000: WHO Framework on Health Systems Performance Assessment

In working towards an evidence-based model of health, WHO developed health system performance indicators in its World Health Report 2000. The fundamental principles underlying these indicators are: to clarify the boundaries of health systems; to assess how health and other systems interact to achieve key social goals; to define and measure health, responsiveness, and fairness in financial contribution; and to show how different policies contribute towards improving health systems performance.[60] In particular with regard to the responsiveness of the health system, human rights norms and standards have been incorporated shaping the definitions of the various domains being measured.

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Q.16 What is the relationship between health legislation and human rights law?

Health legislation can be an important vehicle towards ensuring the promotion and protection of the right to health. In the design and review of health legislation, human rights provide a useful tool to determine its effectiveness and appropriateness in line with both human rights and public health goals. In this context, HIV/AIDS has caused many countries to revisit their public health laws, including in relation to quarantine and isolation.[61]

Restrictive laws and policies that deliberately focus on certain population groups without sufficient data, epidemiological and otherwise, to support their approach may raise a host of human rights concerns. Two examples in this regard are health policies concerning the involuntary sterilization of women from certain population groups that are justified as necessary for their health and well-being, and sodomy statutes criminalizing same-sex sexual behaviour that are justified as necessary to prevent the spread of HIV/AIDS.[62]

Government capacity to develop national health policy and legislation that conforms to human rights obligations needs to be strengthened. This includes developing the tools to review health-related laws and policies to determine whether, on their face or application, they violate human rights, and providing the means to rectify any violation which exists.

Q.17 How do human rights apply to situational analyses of health in countries?

Increased attention to human rights may, firstly, broaden the scope of situational health analysis in countries, and secondly, as a result, allow new partners to be identified. New areas of attention include consideration of the health components of national human rights action plans and, conversely, the inclusion of human rights in national health strategies and action plans. Given that human rights obligations relevant to health rest with the government as a whole, health and human rights goals need to figure in policies and plans which may be generated outside the health sector per se but which have a strong bearing on health, such as national food and nutrition policies and plans. The focus on vulnerable population groups draws attention to how national legislation and development policies impact upon the status of such groups, which institutions work to protect their best interests, and how civil society movements represent them. Finally, the reports to and comments from the United Nations human rights treaty monitoring bodies and the views of civil society organizations are another issue for consideration.

Practical implications may be to engage at the national level with a greater range of Ministries other than Health Ministries, e.g. Justice Ministries and those with responsibility for human rights (including independent human rights institutions), women's affairs, children's affairs, education, social affairs, finance, etc. United Nations agencies and other intergovernmental organizations working on human rights, international and national human rights NGOs, national human rights institutions, ombudspersons, national human rights commissions, human rights think-tanks and research institutes, also constitute fruitful partners for advancing the global health agenda.

(61) Gostin L, Burris S, and Lazzarini Z, "The Law and the Public's Health: A study of Infectious Disease Law in the United States", *Columbia Law Review*, Vol. 99, No.1, (1999).

(62) Gruskin S and Tarantola D, refer to footnote 48.

Section 3: Health & Human Rights in a broader context

Q.18 How do ethics relate to human rights?

Ethics are norms of conduct for individuals and for societies. These norms derive from many sources, including religion, cultural tradition, and reflection, which accounts in part for the complexity within each ethical outlook. Ethics as a system of norms employs many component concepts, including obligations and duties, virtues of character, standards of value and goodness in outcomes and consequences of action, standards of fairness, and justice in allocation of resources and in reward and punishment.

Work in ethics needs to take into account human rights norms and standards, not only in substance but also in relation to the processes of ethical discourse and reasoning. For example, where issues concern a specific population group, individuals representing this group should be participants in any determination of the ethical implications of the issues affecting them. Ethics is particularly useful in areas of practice where human rights do not provide a definite answer, for example, in new and emerging areas where human rights law has not been applied or codified, such as human cloning.

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Human rights refer to an internationally agreed upon set of principles and norms embodied in international legal instruments. These international human rights principles and norms are the result of deep and long-standing negotiations among Member States on a range of fundamental issues. In other words, human rights are generated by governments through a consensus-building process.

Q.19 How do human rights principles relate to equity?

Equity means that people's needs, rather than their social privileges, guide the distribution of opportunities for well-being.[63] This means eliminating disparities in health and in health's major determinants that are systematically associated with underlying social disadvantage within a society. Within the human rights discourse, the principle of equity is increasingly serving as an important non-legal generic policy term aimed at ensuring fairness. It has been used to embrace policy-related issues, such as the accessibility, affordability and acceptability of available health care services. The focused attention on vulnerable and disadvantaged groups in society in international human rights instruments reinforces the principle of equity. Also, at the international level, human rights instruments address equity by encouraging international cooperation to realize rights as well as addressing intrastate relations, most notably in the United Nations Declaration on the Right to Development.[64]

(63) *Equity in Health and Health Care: A WHO/SIDA Initiative*, WHO, Geneva, 1996.
(64) Declaration on the Right to Development, 4 December 1986, (A/RES/41/128).

Q.20 How do health and human rights principles apply to poverty reduction?

The right to a standard of living adequate for health and well-being, including necessary social services, and the right to security in the event of sickness, disability, old age or other lack of livelihood is enshrined in the Universal Declaration of Human Rights.[65] The Committee on Economic, Social and Cultural Rights has defined poverty as "a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights."[66]

> "The challenge for development professionals, and for policy and practice, is to find ways to weaken the web of powerlessness and to enhance the capabilities of poor women and men so that they can take more control of their lives."[67]

Human rights empower individuals and communities by granting them entitlements that give rise to legal obligations on others. Human rights can help to equalize the distribution and exercise of power both within and between societies, mitigating the powerlessness of the poor. As economic and social rights, such as the right to health, are increasingly gaining weight through increased normative clarity and application, they will provide an important tool for poverty reduction. A human rights approach also requires the active and informed participation of the poor in the formulation, implementation and monitoring of strategies which may affect them.

Accountability, transparency, democracy and good governance, are essential ingredients to addressing poverty and ill-health. Legal rights and obligations, at the domestic and international level, demand accountability: effective legal remedies, administrative and political accountability mechanisms at the domestic level, as well as human rights monitoring at the international level.[68] Overall, human rights provide a holistic framework to poverty reduction, demanding consideration of a spectrum of approaches, including legislation, polices and programmes.

Disability can become a cause of poverty and poverty can also be a risk factor for disability. Human rights provide a legal framework to ensure non-discrimination and equal opportunity for persons with disabilities, and thus provides a potential avenue to go "upstream" to prevent persons with disabilities from becoming poor.

A report from Action on Disability and Development looks at the vicious circle linking poverty and disability. It argues that the basic cause of disabled people's poverty is social, economic, and political exclusion.

The scale of exclusion is dramatic:

- 98 per cent of disabled children in developing countries are denied any formal education and excluded from many of the day-to-day interactions that non-disabled children take for granted.
- One hundred million people world wide have preventable impairments caused by malnutrition and poor sanitation
- 70 per cent of childhood blindness and 50 per cent of hearing impairment in Africa and Asia are preventable or treatable.

These impairments then lead to discrimination, exclusion and further poverty. The Standard Rules on the Equalisation of Opportunities for People with Disabilities have been endorsed by all United Nations Member States. Although not legally enforceable, they have encouraged many governments to introduce disability legislation.[69]

(65) Article 25 UDHR (1948).

(66) "Poverty and the International Covenant on Economic, Social and Cultural Rights", statement adopted by the Committee on Economic, Social and Cultural Rights on 4 May, 2001 (E/C.12/2001/10), paragraph 8.

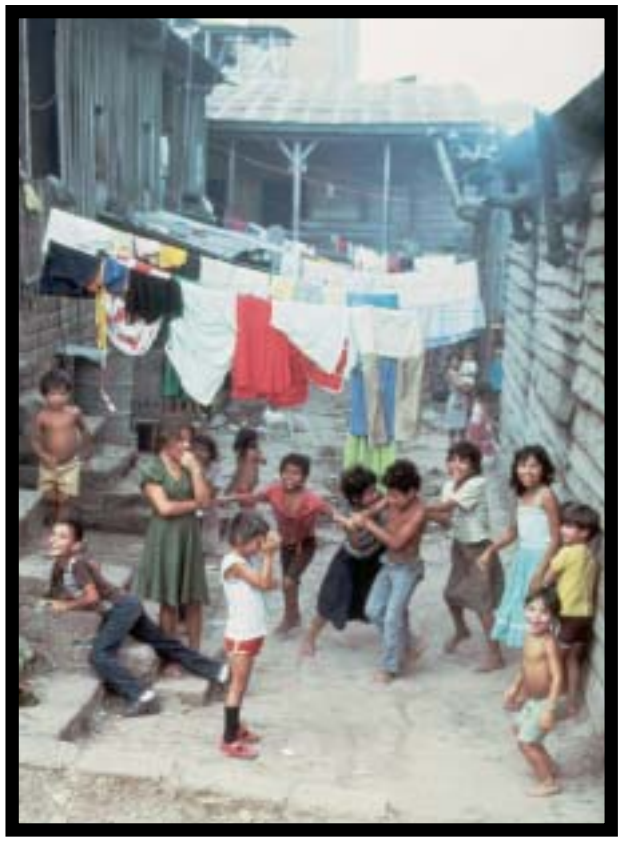
(67) *Voices of the Poor: Crying Out for Change*, Chapter 7, 'Social Ill-being: Left Out and Pushed Down', World Bank 2000, page 235.

(68) Human rights and poverty reduction strategies: A discussion paper, *prepared by Professor Paul Hunt, Professor Manfred Nowak, Professor Siddiq Osmani for the UN Office of the High Commissioner for Human Rights (February 2002).*

(69) *Disability, Poverty and Development*, Department for International Development (DFID), ID21 Highlights, January 2002.

Q.21 How does globalization affect the promotion and protection of human rights?

The Secretary-General of the United Nations, Kofi Annan, has underscored that *"the pursuit of development, the engagement with globalization, and the management of change must all yield to human rights imperatives rather than the reverse. Respect for human rights, as proclaimed in the international instruments, is central to our mandate. If we lose sight of this fundamental truth, all else will fail."*[72]



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Globalization is a term used to cover many different phenomena, most of which concern increasing flows of money, goods, services, people, and ideas across national borders. This process has brought benefits to many peoples and countries, lifting many people from poverty and bringing greater awareness of people's entitlement to basic human rights. In many cases, however, the globalization process has contributed to greater marginalization of people and countries that have been denied access to markets, information, and essential goods such as new life-saving drugs.

Within the human rights community, certain trends associated with globalization have raised concern with respect to their effect on states' capacity to ensure the protection of human rights, especially for the most vulnerable members of society. Located primarily in the economic-political realm of globalization, these trends include: an increasing reliance upon the free market; a significant growth in the influence of international financial markets and institutions in determining national policies; cutbacks in public sector spending; the privatization of functions previously considered to be the exclusive domain of the state; and the deregulation of a range of activities with a view to facilitating investment and rewarding entrepreneurial initiative.[70] These trends serve to reduce the role of the state in economic affairs, and at the same time increase the role and responsibilities of private (non-state) actors, especially those in corporate business, but also those in civil society. Human rights analysts are concerned that such trends limit the ability of the state to protect the vulnerable from adverse effects of globalization, and enforce human rights.

In this context, the United Nations Committee on Economic, Social and Cultural Rights has emphasized the strong and continuous responsibility of international organizations, as well as the governments that have created and manage them, to take whatever measures they can in the context of globalization to assist governments to act in ways which are compatible with their human rights obligations, and to seek to devise policies and programmes which promote respect for those rights.[71]

"Although we refer to our world as a global village it is a world sadly lacking in the sense of closeness towards neighbour and community which the word village implies. In each region, and within all countries, there are problems stemming from either a lack of respect for, or lack of acceptance of, the inherent dignity and equality of all human beings."

United Nations High Commissioner for Human Rights, Mary Robinson

(70) Statement by the Committee on Economic, Social and Cultural Rights, to the Third Ministerial Conference of the World Trade Organization, 1999.
(71) Statement by the Committee on Economic, Social and Cultural Rights, May 1998, paragraph 5.
(72) Report of the Secretary-General on the work of the Organization, 1999, General Assembly, Official Records, 54th session. Supplement No.1 (A/54/1).

Q.22 How does international human rights law influence international trade law?

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Recently, the United Nations human rights system has begun addressing trade laws and practices in relation to human rights law and, in turn, the World Trade Organization (WTO) and other organizations dealing with trade have begun to consider the human rights implications of their work.

For example, the question of access to drugs has been increasingly addressed in the context of human rights. In an unprecedented move, the Commission on Human Rights last year adopted a resolution on access to medication in the context of pandemics such as HIV/AIDS[73] which reaffirms that access to medication in this context is a fundamental element for the progressive realization of the right to health. States are called upon to pursue policies which would promote the availability, accessibility and affordability for all without discrimination of scientifically appropriate and good quality pharmaceuticals and medical technologies used to treat pandemics such as HIV/AIDS. They are also asked to adopt legislation or other measures to safeguard access to such pharmaceuticals and medical technologies from any limitations by third parties.

Also in relation to the question of access to drugs, the relationship between the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and human rights was considered in a report to the Subcommission on Human Rights, last year, by the High Commissioner for Human Rights.[74] This report notes that of the 141 Members of the WTO, 111 have ratified the ICESCR. Members should therefore implement the minimum standards of the TRIPS Agreement bearing in mind both their human rights obligations as well as the flexibility inherent in the TRIPS Agreement, and recognizing that "human rights are the first responsibility of Governments."[75]

Article 15 of the International Covenant on Economic, Social and Cultural Rights recognizes "the right of everyone to enjoy the benefits of scientific progress and its applications." This right places obligations on governments to take the steps necessary to conserve, develop and diffuse science and scientific research, as well as ensure freedom of scientific enquiry. The implications of this right for health issues have only recently begun to be explored, for example, with respect to access to drugs for developing countries.

(73) Commission on Human Rights resolution 2001/33: Access to medication in the context of pandemics such as HIV/AIDS, adopted 20 April 2001, (E/CN.4.RES.2001.33).

(74) Report of the High Commissioner for Human Rights both Sub-Commission on the Promotion and Protection of Human Rights on intellectual property rights and human rights; the impact of the agreement on trade related aspects of Intellectual Property Rights on human rights ; Fifty-second session of June 2001 (E/CN.4/Sub.2/2001/13 paras. 61-69.)

(75) Vienna Declaration and Programme of Action, Article 1.

Q.23 What is meant by a rights-based approach to development?

There is increasing recognition, within the United Nations system and beyond, that development itself is not only a human right as recognized in the United Nations Declaration on the Right to Development (1986), but that the development process must, in itself, be consistent with human rights. In this regard, OHCHR has advocated a rights-based approach to development as a conceptual framework for the process of human development that is normatively based on international human rights. This approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations. The principles include those of participation, accountability, non-discrimination and attention to vulnerability, empowerment and express linkage to international human rights instruments.

> *"A rights-based approach to development describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society's obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance when needed."*
>
> United Nations Secretary-General, Kofi Annan

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> *"A rights-based approach to development sets the achievement of human rights as an objective of development. It uses thinking about human rights as a scaffolding of development policy. It invokes the international apparatus of human rights accountability in support of development action. In all of these, it is concerned with not just civil and political rights but also with economic, social and cultural rights. Further, the implementation of a rights-based approach implies that performance standards be set."*[76]

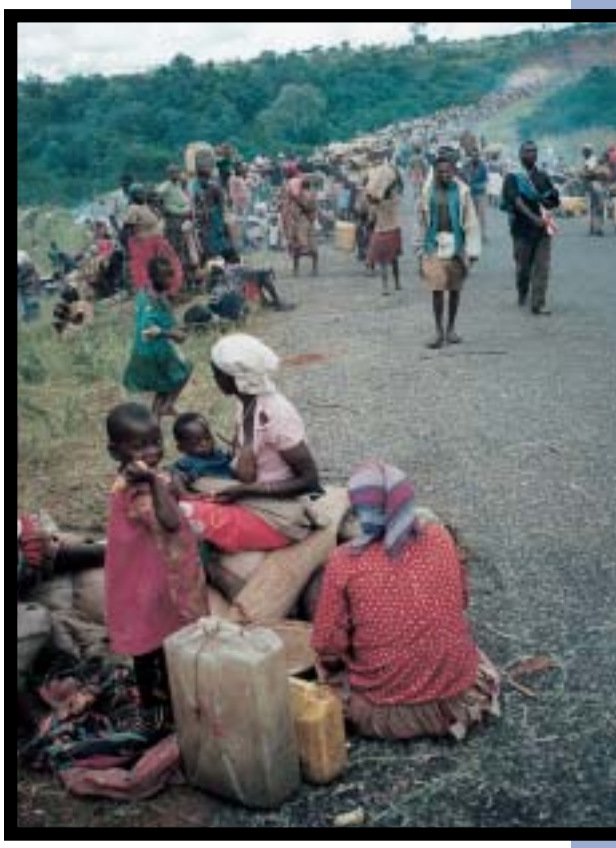
(76) Overseas Development Institute, "What can we do with a rights-based approach to development?". Briefing Paper, 1999 (3) September.

Q.24 How do human rights law, refugee law and humanitarian law interact with the provision of health assistance?

The large number and changing nature of emergencies and conflicts, including the explosion of religious and ethnic turmoil around the world, has prompted the need for new thinking and approaches within the United Nations system and beyond. Fresh attention is being drawn to the international legal framework for dealing with these emergencies, in particular the relationship between humanitarian law, human rights law and refugee law and their applicability in a changing crisis environment.[77]

Refugee law acts to protect refugees by spelling out specific legal provisions protecting the human rights of refugees most notably through the United Nations Convention Relating to the Status of Refugees (1950) and its protocol (1966).

Human rights, humanitarian law and refugee law are distinct yet closely related branches of the international legal system. Human rights and refugee law were developed within the United Nations framework and thus have similar underpinnings. Humanitarian law, however, has profoundly different origins and uses different mechanisms for its implementation. All branches of law have, however, a fundamental common objective: the respect for human dignity without any discrimination whatsoever as to race, colour, religion, sex, birth or wealth, or any similar criteria. In addition, they share a great number of detailed objectives and conceptual similarities.



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Humanitarian law is the law of armed conflict or the law of wars: a body of rules which in wartime protect persons who are not or no longer participating in the hostilities and which limit methods and means of warfare. The central instruments of humanitarian law are the four 1949 Geneva Conventions and their two Additional Protocols of 1977.

Efforts are under way to ensure that international human rights and humanitarian law principles provide the standard and reference for humanitarian action by the United Nations and its agencies as well as other actors. Health practices in preparing for, assessing, implementing, and evaluating the impact of health assistance in the context of an armed conflict need to be grounded within a framework of international law. The sick and wounded, health workers, medical equipment, hospitals and various medical units (including medical transportation) are all protected under humanitarian law principles. Moreover, denying access to medical care in some circumstances could constitute a war crime.

(77) See paper by Uwe Kracht, Development Consultant and Co-Coordinator of the World Alliance for Nutrition and Human Rights (WANAHR) Human Rights and Humanitarian Law and Principles in Emergencies - An overview of concepts and issues, prepared for UNICEF.

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Overall, humanitarian action in the field of health represents action towards the fulfilment of *the right to health* in situations where the threats to health are greatest. Moreover, in the provision of health care in emergency situations, consideration of the human rights dimension can help ensure that strategies pay particular attention to vulnerable groups. The particular vulnerability of refugees, internally displaced, and migrants requires a special emphasis on human rights. Within these groups, women as single heads of households, unaccompanied minors, persons with disabilities, and the elderly are in need of special attention. Specific human rights principles exist that provide guidance in ensuring protection in emergencies against exposure of vulnerable groups to risk-factors of disease and ill-health. (78)

According to United Nations Guidelines, United Nations staff in the field, "should generally not reject complaints of human rights violations. Once received, these should be promptly and confidentially transmitted to OHCHR for processing..." (79)

Q.25 How does human rights relate to health development work in countries?

Human rights are upheld as a cross-cutting issue in the United Nations' development work at country level. (80) The Common Country Assessment (CCA) and the United Nations Development Assistance Framework (UNDAF) provide the major principles upon which a human rights-based approach to development is founded. The CCA and UNDAF Guidelines refer to the implementation of United Nations Conventions and Declarations and underscore the importance of taking full account of human rights in both these processes. The CCA thus helps to facilitate efforts for coherent, integrated and coordinated United Nations support to government follow-up to the Conferences and the implementation of Conventions at the field level.

This parallels the principles enunciated in the World Bank's Comprehensive Development Framework (CDF), the joint World Bank/IMF Poverty Reduction Strategy Paper (PRSP) initiative, the formal design of which reflects human rights concepts and standards. A project of the OHCHR to produce guidelines for the integration of human rights in poverty reduction strategies, including Poverty Reduction Strategy Papers (HRPRS Guidelines), has highlighted the close correspondence between "the realities of poor people," as identified by Voices of the Poor (81) and other poverty studies, and the international human rights normative framework. Thus, attention to human rights will help to ensure that the key concerns of poor people become, and remain, the key concerns of poverty reduction strategies. For example, the integration of human rights into anti-poverty strategies will help to ensure that vulnerable individuals and groups are not neglected; that the active and informed participation of the poor is provided for; that key sectoral issues (e.g. education, housing, health and food) receive due attention; that immediate and intermediate (as well as long-term) targets are identified; that effective monitoring methods (e.g. indicators and benchmarks) are established; and that accessible mechanisms of accountability, in relation to all parties, are instituted. Furthermore, human rights provide poverty reduction strategies with norms, standards and values that have a high-level of global legitimacy. (82)

(78) Guiding Principles on Internal Displacement (1998).

(79) In March 2000, the ACC issued the Human Rights Guidelines and Information for the Resident Coordinator System which is an important reference for the collective effort to integrate human rights within the United Nations system, approved on behalf of ACC by the CCPOQ at its 16th Session, Geneva, March 2000, http://accsubs.unsystem.org/ccpoq/documents/manual/human-rights-gui.pdf, para. 59.

(80) *Idem.*

(81) Refer to footnote 68.

(82) Human rights and poverty reduction strategies: A discussion paper, footnote 57.

Annex I: Legal Instruments

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International treaties and conventions (in chronological order) relevant to health & human rights

Convention (No. 29) concerning Forced Labour (1930);

United Nations Charter (1945);

Convention on the Prevention and Punishment of the Crime of Genocide (1948);

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949);

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949);

Geneva Convention relative to the Treatment of Prisoners of War (1949);

Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), and the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol 1) (1977) and the Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977) ;

Convention relating to the Status of Refugees (1950) and its Protocol (1967);

Convention (No. 105) on Abolition of Forced Labour (1957);

International Convention on the Elimination of All Forms of Racial Discrimination (1963);

International Covenant on Economic, Social and Cultural Rights (1966);

International Covenant on Civil and Political Rights (1966) and its two Protocols (1966 and 1989);

Convention on the Elimination of All Forms of Discrimination Against Women (1979) and its Protocol (1999);

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);

Convention on the Rights of the Child (1989);

Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1989);

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990);

Convention (No. 182) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999);

Maternity Protection Convention (No. 183, 2000).

International declarations, norms and standards (in chronological order) relevant to health &human rights

Universal Declaration of Human Rights (1948);

Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975);

Declaration on the Rights of Disabled Persons (1975);

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982);

Declaration on the Right to Development (1986);

Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991);

United Nations Principles for Older Persons (1991);

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992);

United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993);

Declaration on the Elimination of Violence Against Women (1993);

Universal Declaration on the Human Genome and Human Rights (1997);

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998);

Guiding Principles on Internal Displacement (1998).

Regional instruments (in chronological order) in relation to health & human rights

American Declaration of the Rights and Duties of Man (1948);

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Eleven Protocols (1952 - 1994);

European Social Charter (1961), (revised 1996);

American Convention on Human Rights (1969);

African Charter on Human and Peoples' Rights (1981);

Inter-American Convention to Prevent and Punish Torture (1985);

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights - "Protocol of San Salvador" (1988);

Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990);

African Charter on the Rights and Welfare of the Child (1990);

Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para." (1994);

Arab Charter on Human Rights (1994);

European Convention on Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997);

Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities. (1999).

International conference documents and their follow-up (in chronological order) relevant to health & human rights

World Summit for Children, New York (1990): World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration, and its follow-up, the United Nations General Assembly Special Session (UNGASS) on Children (2002): A World Fit for Children;

United Nations Conference on Environment and Development, Rio de Janeiro (1992): Rio Declaration on Environment and Development and Agenda 21;

World Conference on Human Rights, Vienna (1993): Vienna Declaration and Programme of Action;

International Conference on Population and Development, Cairo, 1994: Programme of Action;

World Summit for Social Development, Copenhagen (1995): Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, and its follow-up, Copenhagen Plus 5 (2000);

Fourth World Conference on Women, Beijing (1995): Beijing Declaration and Platform for Action, and its follow-up, Beijing Plus 5 (2000);

Second United Nations Conference on Human Settlements (Habitat II), Istanbul (1996): Istanbul Declaration on Human Settlements;

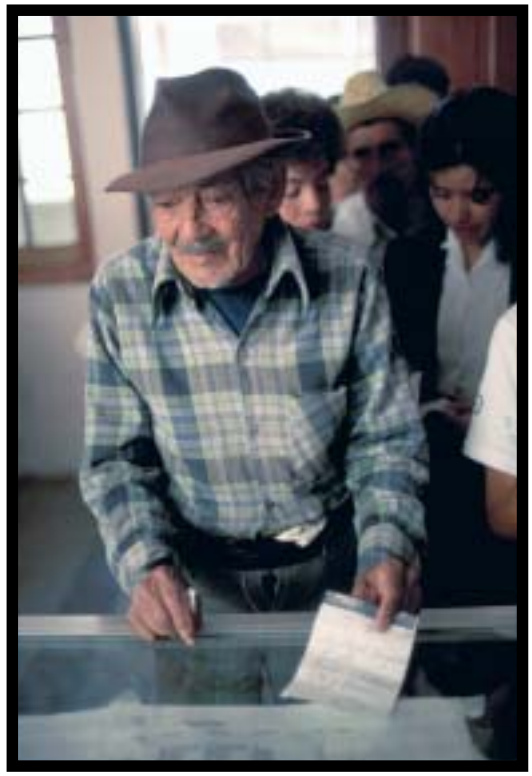
World Food Summit, Rome (1996): Rome Declaration on World Food Security and World Food Summit Plan of Action, and its follow-up, Declaration of the World Food Summit: Five Years Later, International Alliance Against Hunger (2002);

United Nations General Assembly Special Session (UNGASS) on AIDS (2001): Declaration of Commitment on HIV/AIDS "Global Crisis–Global Action;"

World Conference Against Racism, Racial Discrimination Xenophobia and Related Intolerance, Durban (2001): Durban Declaration and Programme of Action;

Second World Assembly on Ageing (2002): Political Declaration and Madrid International Programme of Action on Ageing.

Annex II: United Nations Human Rights Organizational Structure



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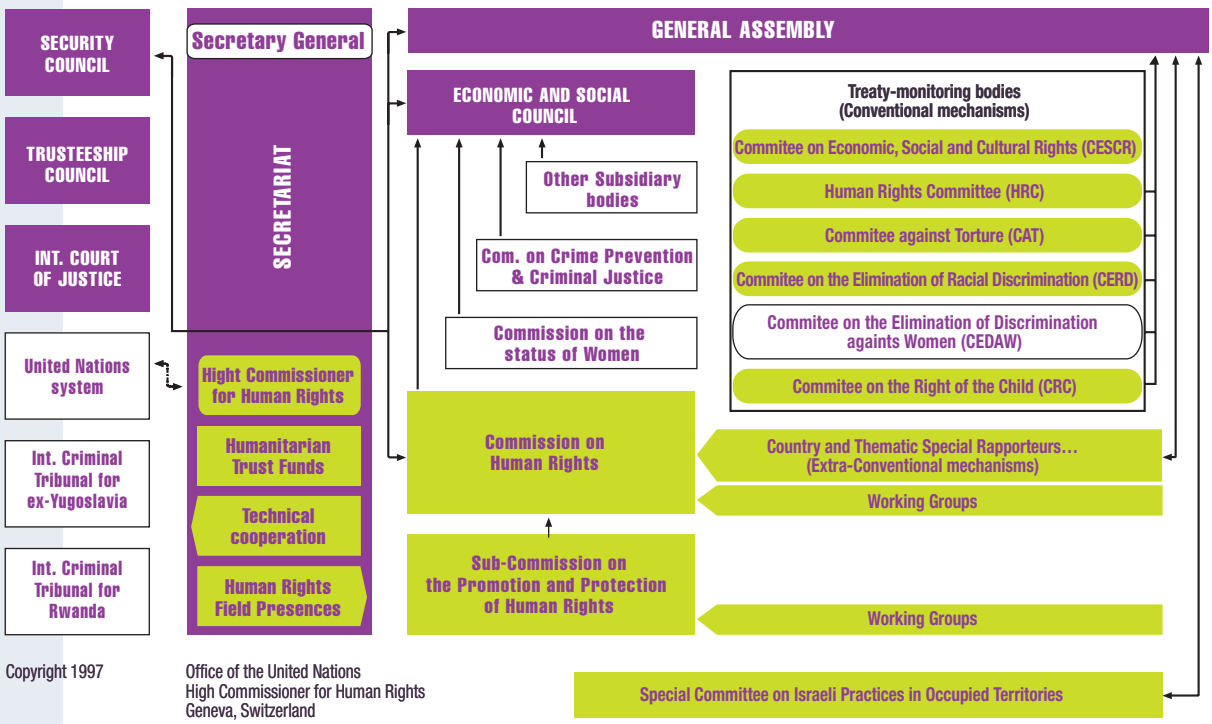
This chart, which is not exhaustive, describes the functioning of the United Nations system in the field of human rights. Emphasis is given to those bodies and programmes with major human rights responsibilities.
The purple areas indicate six principle organs of the United Nations, whereas the green ones indicate bodies or programmes serviced by the Office of the United Nations High Commissioner for Human Rights.[83]



Office of the United Nations
High Commissioner for Human Rights
Geneva, Switzerland

(83) This organizational chart is used courtesy of the Office of the High Commissioner for Human Rights.
http://www.unhchr.ch/hrostr.htm

The enjoyment of the highest attainable standard of health as a fundamental right of every human being was enshrined in WHO's Constitution over fifty years ago. WHO strives to make this right a reality for everyone, paying particular attention to the poorest and most vulnerable.

In this context, WHO has launched the Health and Human Rights Publication Series to explore the complex relationship between health and human rights regarding various health challenges. The first in this series, *25 Questions and Answers on Health and Human Rights*, attempts to answer key questions that come to mind in exploring the linkages between health and human rights. It is intended as a practical guide to generate increased clarity and understanding among WHO staff and other health, development and human rights practitioners about the important synergy between health and human rights.

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For more information, please contact:
Helena Nygren-Krug
Health and Human Rights
Strategy Unit
Director General's Office
World Health Organization
20, avenue Appia – 1211 Geneva 27 – Switzerland
Tel. (41) 22 7912523 – Fax: (41) 22 7914726
www.who.int/hhr