DOI: http://doi.org/10.4038/sljma.v23i1.5388
Volume 23, Issue I, November 2022

# How general human rights tools support the right to health: A review

Dias AADC[1]
[1]Base Hospital Gampola

## ABSTRACT

**Introduction:** The right to health is the economic, social, and cultural right of the individual to have a universal minimum standard of health without any discrimination. With the concern on human rights, the right to health is a highly developing area. Many human rights tools can be identified as strategies for protecting the right to health.

**Objective:** To understand how the general human rights tools support the right to health.

**Methodology:** A desk review was conducted to identify and analyze the relevant human rights tools. Data were extracted and summarization techniques were used to compile information.

**Results and discussion:** Identified human rights tools and strategies were conceptualized. Various treaties and declarations extending from the Universal Declaration of Human Rights to constitutional provisions were identified as relevant human rights tools to protect the right to health. Accountability is an important requirement for an effective mechanism. International Covenant on Economic, Social, and Cultural Rights (ICESCR) and Article 25(1) of the universal declaration were recognized as the main human rights interventions to protect the right to health. International Covenant on Civil and Political Rights (ICCPR) recognizes the right to health through various other rights such as the right to life and the right to equality. Indicators for the right to health reflect the various dimensions of the health status of a country.

**Conclusion:** This article focuses to introduce the international human rights mechanism for the right to health concept. Different types of general human rights tools and their relationships to the right to health were also identified.

## INTRODUCTION

The right to health is the economic, social, and cultural right of the individual to have a universal minimum standard of health without any discrimination. As a type of human right, the right to health is an integral part of human development. After World War II, global leaders concentrated their attention to the circumstances which can be used to the prevention of such a tragedy. Having this common agreement, world leaders moved to the formation of the United Nations Organization (UNO) in 1945, and international human rights laws were considered the foundation cornerstone of the UNO. Within the UN system, human rights are understood as the basic rights and freedoms to which all human beings are entitled by virtue of being human[1]. Therefore, a wide range of human rights is identified as a necessary component to assure the aspirations of human rights. Further, political, civil, economic, social, cultural, development, and self-determination rights have been identified as the main subcategories of international human right[2]. In this context, the right to health is

considered a social right. Although categorized into various subtypes, identified human rights categories are practically highly interrelated and interdependent. Additionally, several types of international human rights tools have been drafted in order to binding of the member states in the context of human rights. International law is created basically in two ways, namely 'treaties which are legally binding agreements between states, and 'customary law in which commonly accepted practices. These customary laws such as declarations, resolutions, and standards are also known as soft laws[3]. Understanding the relationships between general human rights tools with the right to health would be helpful for healthcare services in many ways. Therefore, the objective of this review article is to understand how the general human rights tools support the right to health.

## METHODOLOGY

This article reviews the literature on human rights and the right to health using a desk review. Electronic searches were carried out in four different databases of Google Scholar, PubMed, Scopus, and Wiley online libraries in relation to human rights tools and the right to health**.** Related declarations and treaties were mainly studied and analyzed. Further, data extraction and summarization were used to compile the information.

## RESULTS

In the nineteenth century, poor working conditions in factories associated with the industrial revolution in England fomented broader recognition of state responsibility for population health[4]. However, the first formal articulation of states' duties on health was found in the constitution of the World Health Organization (WHO), a special UN agency for health that was created in 1948. It clearly mentioned that "the enjoyment of the highest attainable standard of health is a fundamental right of every human being without distinction" [5]

Since then, several types of declarations, treaties, and covenants, also known as human rights tools, based on international human rights have been formulated with the purpose of ensuring the right to health. The following tools have been identified and used to conceptualize the concept of the right to health.

The main objective of the universal declaration of human rights was to articulate a broad range of civil, political, economic, social, and cultural rights and the provision for the right to health could be seen in article 25(1) [6]. After that, in 1966 UN attempted to codify the universal declaration provision into a treaty with more legal obligations. However, this codification ended up with two covenants. The rationale of these two covenants was two types of global centralization namely capitalist and socialist at that time [6,7]. The capitalist end was more concerned with political and civil rights and led to the formulation of the International Covenant on Civil and Political Rights (ICCPR)[6,8]. Similarly, socialists end more concerned with social, economic, and cultural rights, which led to the formulation

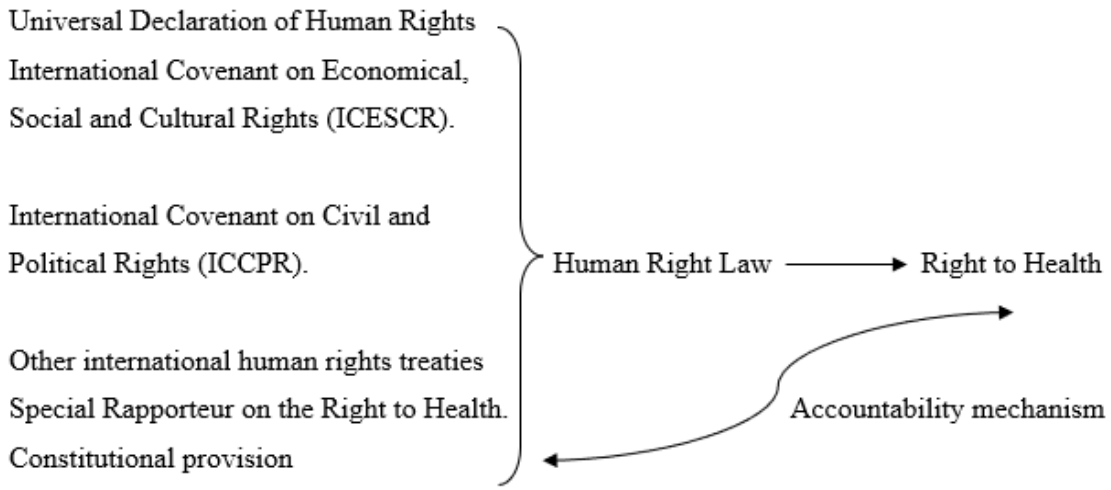


Figure 1. Conceptualization of determinants for the Right to Health.

of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)[6,9]. Furthermore, the aforementioned universal declaration of ICCPR and ICESCR are collectively known as the International Bill of Rights. Significant growth in international human rights treaties providing explicit protection to vulnerable groups such as minorities, women and children, and people with disabilities can be seen after the introduction of the International Bill of Rights. In addition to that, various types of conventions and treaties which are mainly based on health, such as the Alma Ata Declaration[10], Ottawa charter[11,] etc. have extensively discussed the right to health. The creation of a Special Rapporteur on the Right to Health by the Commission on Human Rights in April 2002 by resolution 2002/31 with a mandate of promoting the right to health in the global arena reflects an important recognition of the right to health in the UN system[4,6,12]. Sir Paul Hunt was appointed as the first Special Rapporteur and Ms. Thaleng Mofokeng from South Africa currently serves as the Special Rapporteur on the Right to Health.

Timor-Leste is the only constitution where the words “right to health” are included in South-East Region[5]. However, countries namely DPR Korea, Indonesia, Maldives, Nepal (interim constitution), and Thailand use local equivalents similar to the English word “right” when describing people's entitlement to health care[5]

## DISCUSSION

Article 25(1)[6] of the Universal Declaration of Human Rights states that everyone has the right to standards of living adequate for the health and well-being of himself and his family including food, cloth, and medical care. Having this background, International Covenant on Economic, Social, and Cultural Rights (ICESCR) contains the most authoritative formulation of the right to

health. Article 12 of the ICESCR recognizes the specific steps that states must take in order to fully realization of the standards of health; "states parties should take steps to reduce stillbirth and infant mortality, to improve the industrial hygiene, and to prevent, treat and control of epidemics and endemic diseases[6,9]. Furthermore, Article 14[9] which was formed by the Economic, Social and Cultural Rights (ESCR) committee, an independent monitoring body on ICESCR, reflects very comprehensive essential elements of the right to health and state core obligations. Providing nondiscriminatory access to health facilities, ensuring access to essential food and essential drugs, and adopting appropriate public health strategies can be identified as the prominent international human rights tools to ensure the right to health.

Although the ideological theory of the International Covenant on Civil and Political Rights (ICCPR) is different from ICESCR, it also recognizes the provisions for the right to health in their treaty through the various provisions such as the Right to life (article 6), Right to privacy (article 17), and Right to equality (article 26)[6,8]. Further, the interpretation on right to life is included states taking positive measures to reduce infant mortality and increase life expectancy.
The International Convention on the Elimination of All forms of Racial Discrimination emphasizes the right to health and medical care for minorities. It is a notable convention that not only identifies medical care but also suggests public health[13]. Additionally, the Convention on the Elimination of All forms of Discrimination against Women[14] (CEDAW) expands its scope to the right to health by ensuring women's equal access to healthcare services, particularly appropriate services during pregnancy and postnatal period. Further, the Convention on the Rights of the Child (CRC) which has been ratified by 193 countries gives an effectively universal reach and it is considered the most comprehensive specific treaty which covers most of the areas in right to health such as curative, preventive care and social determinants of health[4].

The Special Rapporteur on the Right to Health engages his /her mandate by undertaking a country mission, transmitting and communicating with the government in relation to violations of the right to health, and submitting annual reports to both Human Right Council and the General UN assembly.
Accountability mechanism can simply be described as how people and the community understand their government discharges its obligation to the right to health. Similarly, it provides the government to realize what has to be done for the people. Accordingly, Human Right Commission has developed a broad mechanism at various levels such as international, regional, and domestic levels.
If the government ratified any treaty, it should provide a regular report to the international committee of that particular treaty. Additionally, committees receive independent reports which are known as shadow reports from other organizations such as NGOs, and CBOs. After the complete

assessment, the committee publishes a concluding observation on a particular treaty[6,15].

Domestic accountability mechanisms are used to hold states, accountable for realizing the right to health. Litigation provides an important contribution to domestic accountability. It was possible to observe a significant increase in national-level cases involving the right to health, including low and middle-income countries during the past two decades[16].

Indicators for the right to health can be identified as a new initiative that has widely been used for the country's assessment on right to health. Backman and colleagues[6] explored the data from 194 countries and formulated 72 indicators for the assessment of the right to health on various dimensions.

Although Sri Lanka has reached a favorable level of health indicators than other countries with similar socio-economical conditions, it has not directly included the right to health in the current constitution which was adopted in 1978[17,18]. However, the 13th constitutional amendment which was carried out in 1987 included the provision of health care and its obligation to newly established provincial councils[5,17,18]. Moreover, the establishment of a constitutional council and subsequent independent committees can be considered a conducive initiative for the implementation of the right to health in Sri Lankan society.

Table 1. Selected indicators for the Right to Health and their categories.

| Category | Indicators |
|---|---|
| Recognition of the Right to Health | * Number of international and regional human rights treaties recognizing the right to health ratified by the state.<br>*Do the state constitution recognize the right to health |
| National Health Plan | *Does the state have a comprehensive national health plan with public and private sectors |
| Medicines | *Is the access to essential medicine, as part of the fulfillment of right to health, recognized in national legislation. |
| Monitoring, assessment, accountability | *Infant Mortality Rate, Maternal Mortality Rate |
| National financing | *Total Government spending on health as a percentage of GDP |

## CONCLUSION

This article focused to introduce the international human rights mechanism with the origin and development of the right to health concept. It described the special declaration, treaties and covenants that were developed on the Right to Health. Further, new initiatives of Right to Health such as Right to Health indicators and constitutional inclusions were discussed. Therefore, the practical strategies and legal background that were formulated by the United Nations and Human Right Commission will provide a ground-level understanding of the contribution of the Right to Health to improving health outcomes in the country.

## REFERENCES


1. Charter of the United Nations, *supra note 2* https://treaties.un.org/doc/publication/ctc/uncharter.pdf

2. Forman ,L.2011, making the case for human rights in global health education, *Canadian jornal of public health,* 102(3): 207-209https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6973942/

3. Aust,A.2010. Handbook of international law. 2nd ed: Cambridge university press. https://www.academia.edu/38057060/_Anthony_Aust_Handbook_of_International_Law_BookFi_org_

4. Toebes,B.C.A.1999,The right to health as a Human Right in International Law.Antwerp.https://scholar.google.nl/citations?user=Dwo6N5IAAAAJ&hl=nl

5. www.who.net

6. Backman,G.2010. The right to health, overseas press

7. Risse,T et al.1999. the power of human rights, Cambridge university press.

8. International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A, UNO. https://journals.sagepub.com/doi/10.1177/0022343399036001006

9. International Covenant on Social, Economic and Cultural Rights (ICSER), G.A. Res.2200A, UNO. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

10. Declaration of Alma-Ata, International Conference on Primary Health Care, USSR,1978.https://cdn.who.int/media/docs/default-source/documents/almaata-declaration-en.pdf?sfvrsn=7b3c2167_2

11. Ottawa Charter for Health Promotion, WHO/HPR/HEP. https://www.who.int/teams/health-promotion/enhanced-wellbeing/first-global-conference

12. *Pillai, Navanethem (Dec 2008).* "Right to Health and the Universal Declaration of Human Rights" *(PDF). The Lancet* ***372***

*(9655): 2005–2006.* https://www.researchgate.net/publication/23678201_Right_to_health_and_the_Universal_Declaration_of_Human_Rights

13. International Convention on the Elimination of All forms of Racial Discrimination, G.A. Res.2106, UNO.https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

14. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), G.A.Res.34/180. https://www.un.org/womenwatch/daw/cedaw/

*15. Hunt, Paul (Mar 2006).* "The Human Right to the Highest Attainable Standard of Health: New Opportunities and Challenges" *(PDF). Transactions of the Royal Society of Tropical Medicine and Hygiene* ***100****: 603–607* https://www.academia.edu/11504234/Towards_Realizing_the_Human_Right_to_Health_Care_for_Rwandan_Rural_Communities_through_Community_Based_Health_Insurance_CBHI_

16. Gloppen,M.2008." litigation as a strategy to right to health". Health and Human Right 10(2):21-36. https://pubmed.ncbi.nlm.nih.gov/20845857/

17. www.lawnet.lk

18.priu@presidentsoffice.lk. https://www.presidentsoffice.gov.lk/