

A World Health Assembly Resolution on the Human Right to Health

Despite the commitment to mainstreaming human rights in all Specialized Agencies of the United Nations (UN), the World Health Organization's (WHO) plenary body the World Health Assembly (WHA) has yet to adopt a resolution on the human right to health. Such a resolution would operationalize the human rights approach to which WHO has committed as one of its core principles.

Below we note reasons:

- 1) Why is there a need for the WHA to adopt a resolution on the human right to health?
- 2) What is the added value of a resolution on the human right to health?
- 3) Responses to objections to the adoption of a resolution on the human right to health?

1) Why is there a need for the WHA to adopt a resolution on the human right to health?

- A human rights approach to health and the human right to health are fundamental to improving the health of the most vulnerable individuals worldwide and encouraging greater international cooperation towards alleviating social inequalities.
- The commitment to the human right to health is already mentioned in the preamble of the Constitution of the World Health Organization adopted in 1946: "*The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition*". This provision represented the broadest and most liberal concept of international responsibility for health ever officially declared.
- Most State Members of WHO have reaffirmed this right to be a human right that is legally binding by their ratification of universal or regional human rights treaties, which makes the right to health an international legal obligation to be progressively realized at the national level.
- Despite this wide consensus, in the sixty-three WHAs that have taken place to date no resolution on the human right to health has ever been adopted.
- We believe that it is imperative for the World Health Assembly to consider such a resolution as it is one of the few international forums concerned with the right to health that has not pledged to ensure this right for the people of the world in a resolution which will guide the WHO Secretariat.
- The attainment of the highest possible level of health is a most important worldwide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector. Mobilization of the international community, joint

networks and partnerships is necessary to achieve this social goal.

- The WHO has a leadership obligation deriving from its constitutional mandate to direct and coordinate international law and human rights development for the advancement of public health.

2) What is the added value of a WHA resolution on the human right to health?

- It will facilitate the mainstreaming of the human rights approach across UN agencies and particularly in the lead UN Specialized Agency on health.
- It will give guidance to WHO so that it can better use the human resources it already has devoted to the human right to health, but which have no clear mandate from the WHA.
- It will better position WHO to encourage cooperation among its Member States to achieve greater respect for the human right to health of all people everywhere.
- It will strengthen partnerships and cooperation in the international community for ensuring respect for the right to health.
- It will reflect the international community's commitment to the human right to health and the human rights-based approach to health.
- It will encourage the World Health Organization, especially the Office of the Director-General, to apply the human rights-based approach to policies and practices within the Organization.
- It will enhance cooperation between WHO and the UN Human Rights Council's Special Rapporteur on the Right to Health.
- It will provide civil society and governments with an additional tool to encourage a rights-based approach to health by clarifying the operationalization of the human right to health.

3) Responses to objections to the adoption of a resolution on the human right to health?

Objection: There is not adequate recognition of the human right to health

Response: The right to health has been recognized in numerous international instruments, both aspirational instruments such as the Universal Declaration of Human Rights, where WHO contributed significantly to drafting the right to health in article 25, and in universal and regional human rights treaties.

The following page contains a chart with the major provisions of international legal instruments containing the human right to health.

International Legal Provisions containing the Human Right to Health

Universal Instruments:

- ❖ WHO Constitution (1946) (preamble) recognizes that the “enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.”
- ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR) to which 163 states have consented states in Article 12 that: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”
 - the UN Committee on Economic, Social and Cultural Rights (CESCR), which in the future is likely to express its views on individual petitions. The CESCR’s General Comment on Article 12 explains that “[h]ealth is a fundamental human right indispensable for the exercise of other human rights.” It goes on explain that although “the right to health is not to be understood as a right to be *healthy*,” it does create states’ obligations and these obligations may be violated. The duties are defined generally as the “immediate obligations ... [to] ... guarantee that the right will be exercised without discrimination of any kind” and to take steps “towards the full realization” of the right that “must be deliberate, concrete and targeted towards the full realization of the right to health;” and
 - the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, a post created by the UN Commission on Human Rights’ in 2002.
- ❖ International Convention on the Elimination of All Forms of Racial Discrimination,
- ❖ Convention on the Elimination of All Forms of Discrimination against Women,
- ❖ Convention on the Rights of the Child,
- ❖ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,
- ❖ the Convention on the Rights of Persons with Disabilities,
- ❖ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989),

Regional Instruments:

- ❖ African Charter on Human and Peoples' Rights that provides that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health.”
 - Protocol to the African Charter concerning violence against women.
 - African Charter on the Rights and Welfare of the Child.
 - San Salvador Protocol to the American Convention on Human Rights provides that “[e]veryone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well- being ... [and that] ... [i]n order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good....”
 - European Social Charter of the Council of Europe,
 - Charter of Fundamental Rights of the European Union.
 - Arab Charter on Human Rights.
 - Charter of the Association of South East Asian Nations.

Customary International Law:

- ❖ Numerous UN and regional resolutions as well as national and federal state constitutions reiterate the right to health indicating a widespread state practice and *opinio juris* that the right is customary international law.

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Objection: The right to health is already sufficiently dealt with by other bodies.

Response: While it is true that the above chart indicates that there is widespread support for the human right to health, none of the bodies elaborating and promoting the human right to health under these instruments possess the technical expertise that is present in WHO for determining what interventions are most relevant and effective for achieving the right to health.

In other words, WHO's technical expertise in the field of health can be a significant added-value to the joint and common commitment to achieving respect for the right to health.

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Objection: The right to health is vague and difficult to implement.

Response: As the above instruments indicate the right to health has been elaborated at great length. Especially the General Comment and comment on State reports of the UN Committee on Economic, Social and Cultural Rights and the reports of the Special Rapporteur of the UN Human Rights Council have elaborated this right.

Nevertheless, it is true that a technical agency like WHO could make a very substantial contribution to assisting States to understand what the best practices among States have been and in encouraging the cooperation that is needed between States to ensure the right to health for everyone.

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Objection: The right to health is too expensive to implement.

Response: While it is true that achieving the human right to health requires the investment of resources, it is a right that allows for progressive implementation and for States without adequate resources to call upon their neighbors in the international community to assist them. It is thus a right that does not impose impossible resource obligations on States but merely requires that States act and cooperate in good faith to provide the highest possible health to people under their jurisdiction.

It is unlikely that WHO's role in implementing a WHA resolution on the right to health will require any additional funds as the WHO already has several persons working on the human right to health.

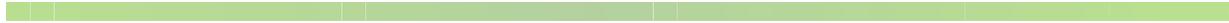
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Objection: The human right to health is contrary to private health care.

Response: The human rights approach to health does not exclude private health care as a means of providing the highest attainable health to everyone. Indeed, States are free to choose the means that best suit their national circumstances for achieving the right. It only requires that when individual cannot afford health care, the State adequately invests in ensuring that health care is still available.



What needs to be done?

Now is the time to act. For more than a half century the WHA has failed to give operational meaning to the human right to health after having been a leading actor in the recognition of this right. Yet, almost every States that is Member of the WHO and its WHA has committed itself to ensuring, fulfilling, protecting and promoting the right to health. Moreover, the State that has in the past had the greatest difficulty recognizing this right, the United States of America, has made significant strides in the direction of recognizing its responsibility to ensure the human right to health of everyone under its jurisdiction.

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