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**The Right to Health in Practice**

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## The Right to Health in Practice

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### Context

In the current era of globalization, the world is diversifying as never before. Inequalities in economic, social, spiritual, political and civil matters characterise daily life. Estimates consider 80% of global disease burden lies in “developing” or low-income countries, based on crude calculations by disability-adjusted life years (DALYs) [1]. And measures do not seem to be in place to redress these inequalities. For instance, the Commission on Health Research Development estimated, albeit several years ago, that 90% of all global research and development expenditure is dedicated to 10% of the world’s disease burden, primarily concentrated in wealthier countries [2]. Today, there may be a new climate of awareness maturing. Governments representing “developed” or high-income countries often discuss the urgent need to help the world’s poorest or rescue the “bottom billion” from devastating illness [3-4]. However the optimistic rhetoric is not always matched by foreign policy and international trade agreements (consider TRIPS [5], the World Trade Organization’s Trade-Related Aspects of International Property Rights Agreement consolidating strict patent rules worldwide with significant impact on access to essential medicines). The following perspective provides a comprehensive overview of the right to health and proposes a human rights-based approach to health as a sustainable framework that transcends borders for justice in healthcare.

### The origin of human rights

Rights are moral and legal entitlements. Human rights have foundations in the theory of natural law and by definition human rights “belong justifiably” to all persons [6]. Several core notions play essential roles in the realization of human rights, namely the concept of a right, a duty, an entitlement and an obligation. For descriptive purposes, rights are classified as negative rights and positive rights. Negative rights imply freedoms, for instance the right to be free from forced medical experimentation or the right to be free from torture and ill treatment. Positive rights imply entitlements, for instance the right to access essential medicines and vaccines.

The philosophical basis for human rights is not restricted to the 20<sup>th</sup> Century and the United Nations Universal Declaration of Human Rights [7]. Core principles shape several religious and ancient legal texts, such as the Babylonian Code of Hammurabi, the Hindu Laws of Manu, and the Analects of Confucius. The origins of the modern human rights movement arguably stems from the end of the 18<sup>th</sup> Century at a time where the relationship between government and the governed was evolving rapidly and redefining itself, highlighted by treatises in political philosophy on the Social Contract. Two influential revolutions in the United States of America, 1776, and in France, 1789, generated the Declaration of

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Independence and the Declaration of the Rights of Man and the Citizen, respectively, upholding the concept of universal natural rights. However it is the genocidal atrocities and medical experimentation of an unparalleled evil committed by the Nazis, directed primarily at millions of Jews throughout Europe, from which the Universal Declaration of Human Rights (UDHR) was born. The inhumanity of the Nazi regime and gross disregard for human rights of all human beings left people and their leaders questioning the morality of the human race.

In the present day, the International Covenant on Economic, Social and Cultural Rights (ICESCR) [8] and the International Covenant on Civil and Political Rights (ICCPR) [9] are legally binding instruments in international human rights law upholding, enshrining and protecting universal human rights. They are part of what is referred to as the Bill of Human Rights, which is composed of the ICESCR, ICCPR and UDHR. These instruments are vital in ensuring that governments are held accountable for their action, or inaction, for the sustained improvement of health among their society.

### **The right to health**

Human rights are undeniably interdependent, indivisible and interrelated [10]. This concept is significant when referring to health. The World Health Organization (WHO) definition of health is considerably cited and defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease” [11]. Both the underlying determinants of health and a functioning health system accessible to all without discrimination are fundamental to the realisation of the right to the highest attainable standard of physical and mental health (‘the right to health’ or ‘the right to physical and mental health’). The right to water, to education and information, to adequate housing and shelter, freedom from human rights violations such as torture and inhumane treatment all inextricably impact upon health (directly and indirectly) [12]. The right to health however is not about a right to be healthy as many aspects, including genetic predisposition for instance, are outside the direct control of States.

Beyond the WHO Constitution and article 25 of the Universal Declaration of Human Rights, the right to health is articulated in the 1978 Declaration of Alma-Ata, regional treaties, article 12 of the ICESCR and further clarified in “General Comment No.14: The Right to the Highest Attainable Standard of Health”. Every State in the world has ratified at least one international human rights treaty upholding the right to health and over 115 national constitutions recognize the right to health [13], therefore governments and affiliated institutions have committed themselves to respecting, protecting and realizing the right in national law and domestic policy.

In practice, health systems and services operating with a human rights-based approach must be appropriately available, accessible, acceptable and of good quality. The principles of participation, non-discrimination, transparency and accountability on all levels and equality are paramount. Naturally, it is counterproductive to expect countries without the financial means to provide their citizens with a utopian healthcare system and implement policies to redress the underlying determinants of health all at once. Nevertheless, the United Nations Human Rights Council monitors States and their legal obligations to ensure the appropriate measures are in place to realize the right to health, and indeed the role of civil society is absolutely essential.

### **A human rights framework in practice**

Healthcare workers have unique access to individuals at times of greatest need and are in a prime position to report injustices and violations as they happen. The fundamental principles

of human rights provide a practical framework to guide healthcare practitioners and public health professionals to realize of the inextricable right to the highest attainable standard of physical and mental health for all.

There is a moral imperative and obligation for the State to address injustices with concerted action and healthcare professionals have a responsibility to act when appropriate. States are accountable and obliged to report to the United Nations. States must exert their influence to ensure public and private institutions are accountable and act in the best interests of the communities and individuals they serve. Just actions based on respective duties and obligations must ensure that progressive realization of the right to health and fair distribution of limited resources occurs without delay. Ethical principles have the compelling power to influence action. The following principles are central to realizing the right to health and guiding day-to-day practice by healthcare professionals:

Respect	Due regard, civility and non-discrimination for all women, men, boys and girls <u>regardless of background or ethnicity</u> .
Equality	A sense of egalitarianism, sympathy and empathy. An appreciation of the injustices in situations others may be confronted with.
Dignity	Honouring the values and individuality of all persons.
Autonomy	Respecting the freedom of competent human beings. Empowering the individuals who carry the resultant outcomes.
Participation	The opportunity, by men and women, to be involved in the process and discuss subjective issues on both sides in an effort to understand, not presume, the optimal way forward.
Fairness	Facilitating accountability for unfair processes and unfair outcomes.

These principles are not novel. In fact these principles complement the traditional principles of medical ethics and the Hippocratic Oath. "First do no harm" is a fundamental moral concept that relies on an underlying respect between healthcare professionals and their autonomous patients, equality in treatment based on need, and fairness. However the principles presented above are inconsistently applied at present to resource allocation for health, which favour instead utilitarian and consequentialist models. The universality of human rights act as a reminder that individuals are born into unequal circumstances with a tremendous influence on the rest of their lives and may remain trapped, vulnerable and destined to fight hard for social justice. To state the trivial but indisputable, we do not choose where we are born.

Redistributing societal benefits and burdens for the benefit of the marginalised is not uncommon in many states worldwide, as observed with social security policies. Translation

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12 Evidence from the United Kingdom Department of Health looking at human rights in  
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16 “a human rights based approach to health and social care can, and will  
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28 exclusively. Values, although complex to define, difficult to quantify and judged culturally  
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### 30 31 32 **Healthcare workers must lead the way**

33 Methods to strengthen and improve the reporting system at the United Nations are urgently  
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37 Institutions require clear communication and a bridge to connect with individuals they serve.  
38 Conflicting policies and priorities, such as the TRIPS agreement and access to essential  
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47 welfare of society as a whole cannot override. For this reason justice denies  
48 that the loss of freedom for some is made right by a greater good shared by  
49 others.” John Rawls, *A Theory of Justice* [17]

In the spirit of John Rawls, this principle must be applied to health to ensure the loss of health by some does not justify or make right the greater health of others. Health is global. For social justice on a global level, consistency in applying the human rights framework is urgently required for the realization of the right to health and redressing injustices worldwide.

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Table 1  
Core principles for the realization of the right to health

## The Right to Health in Practice

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