The Right to Health

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The Right to Health

A Multi-Country Study of Law, Policy and Practice

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Foreword

The key challenge confronting the health and human rights movement is the translation of international and national human rights law into operational policies, programmes and other health-related interventions. Nowhere is this more challenging—and more important—than within countries.

How can the right to the highest attainable standard of health ('the right to health') shape national policies? Does the right to health require that a national hospital—or a district health system—be organized differently? If so, what changes are needed? Does this human right demand that a country give more attention to community-level health promotion, for example via radio messages, poster campaigns, street theatre or primary education? Does it mean that the government has an obligation to regulate the sugar content of children's beverages? Does the right to health require the government to improve access to safe drinking water and adequate sanitation for rural communities and, if so, how can this be done within a finite budget?

This is just a tiny sample of the challenging questions facing those who wish to operationalise the right to health—and other health-related rights—in communities, districts and at national level.

One of the problems is context. What works well in one country might not work at all in another. It might not even work in a country of the same size and same stage of economic development. However, despite the enormous challenge of context, lessons can be learnt from the rich experiences of others. Indeed, it is crucial that we learn how different countries implement (or not) health-related rights.

That is why this book is so useful and important. It opens a right-to-health window onto different countries and continents. With a particular focus on eleven countries and five regions, it provides studies on the realization of the right to health (or dimensions of the right to health) from all regions of the world. It introduces research from a diverse group of authors operating through different disciplinary and cultural lenses, and demonstrates how scholars use the right to health framework and how they understand its strengths and weaknesses in relation to a particular country or region. In this way, we learn how the right to health framework is (and is not) being implemented in practice, and also how the authors envision the possibilities and limits of the framework for promoting health and well-being.

Some of the authors are representatives of a new generation of health and human rights academic-activists in the field of health-rights. They deserve—demand—our attention.

Each contribution focuses on a theme that is of specific relevance to the country in question, varying from access to health care for vulnerable groups (e.g., Aboriginal peoples in Canada and migrant workers in Saudi Arabia), to the use of indicators (in Brazil) and healthcare privatization (in the US and the Netherlands). Many of these themes overlap across countries and regions; for example, vulnerable populations exist in every country and region and are the focus of multiple chapters.

How many books on health-rights include contributions on the right to health in China, Japan, Saudi Arabia, Jordan and Peru? In this sense, this collection breaks new ground while emphasizing the need for deeper analysis and more studies.

Crucially, the contributors' examination of context-specific laws, policies and practices contributes to cross-cultural dialogue on the best practices and shortcomings, and provides insights that will be useful in a wide-range of countries.

So I warmly recommend this excellent volume to everyone interested in the great challenge of operationalising health-rights for all.

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Contents

Abbreviations

AAAQ	Availability, Accessibility, Acceptability and Quality
ACA	Affordable Care Act
ACHPR	African Charter on Human and People's Rights
AHWS	Aboriginal Healing and Wellness Strategy (Canada)
AU	Africal Union
AWBZ	Exceptional Medical Expenses Act (the Netherlands)
BIG	Dutch Health Care Professionals Act
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN, 1984)
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women (UN, 1979)
CHA	Canada Health Act
CHIP	Comprehensive Health Insurance Plan (USA)
CHRA	Canadian Human Rights Act
CIE	Committee of Independent Experts (ESC, CoE)
CoE	Council of Europe
CONAMUSA	National Multisectoral HIV-Related Coordination Mechanism (Peru)
CPT	European Convention for the Prevention of Torture (CoE, 1987)
CRPD	UN Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child (UN, 1989)
CRPD	Convention on the Rights of Persons with Disabilities (UN, 2006)
CSDH	Committee on the Social Determinants of Health (WHO)
CVZ	Dutch Health Care Insurance Board
DRCSC	Development Research Centre of the State Council (China)
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (CoE, 1950)
EComHR	European Commission of Human Rights
ECtHR	European Court of Human Rights (CoE)
EC Treaty	Treaty establishing the European Community (EU, 1993)
ECSR	European Committee of Social Rights (ESC, CoE)

ECFR	Charter of Fundamental Rights of the European Union (EU, 2000)
ECJ	European Court of Justice
ESC	European Social Charter (CoE, 1961)
EU	European Union
EUCFR	EU Charter of Fundamental Rights
FLACSO	Facultad Latinoamericana de Ciencias Sociales
General Comment 14	General Comment 14 to the ICESCR (on the right to health) (UN, 2000)
GHWA	Global Health Workforce Atlas
GHO	Global Health Observatory
GMS	General Medical Services Scheme (Ireland)
GOJ	Government of Jordan
GP	General Practitioner
GPPHP	Global public-private health partnerships
GTE Health	Technical-Executive Group on Health (Brazil)
HIA	Health Insurance Authority (Ireland)
HIV	Human immunodeficiency virus
HIQA	Health Information and Quality Authority
HRW	Human Rights Watch
HS	Health System
HSE	Health Services Executive (Ireland)
IACHR	Inter-American Commission on Human Rights
IBGE	Brazilian Institute for Geography and Statistics
ICCPR	International Convention on Civil and Political Rights (UN, 1966)
ICERD, CERD	International Convention on the Elimination of All Forms of Racial Discrimination (UN, 1965)
ICESCR	International Covenant on Economic, Social and Cultural Rights (UN, 1966)
ICF	International Classification of Functioning, Disability and Health
IFHHRO	International Federation on Health and Human Rights Organizations
IGZ	Dutch Health Care Inspectorate
ILO	International Labour Organization
IPEA	Applied Economic Research Institute (Brazil)
JHS	Jordanian Health System
KZi	Dutch Qualities of Health Facilities Act
MDGs	Millennium Development Goals
MENA	Middle East and Northern Africa
MMR	Maternal Mortality Ratio
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (UN, 1990)

NAFDAC	National Agency for Food and Drug Administration and Control of Nigeria
NAHO	National Aboriginal Health Organization (Canada)
NCCAH	National Collaborating Centre for Aboriginal Health (Canada)
NEPAD	New Partnership for Africa's Development
NHAD	National Health Accounts Directory
NHRI	National Health Rights Indicators (Brazil)
NHRP	National Human Rights Program (Brazil)
NHS	National Health Service
NIHB	Non-Insured Health Benefits (Canada)
NRCMIS	New Rural Cooperative Medical Insurance Scheme
NZA	Dutch Health Authority
OCAP	Ownership, Control, Acces and Possession Principles
OECD	Organisation for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OHIP	Ontario Health Insurance Plan
OOP	Out-of-pocket Payment
PAHO	Pan-American Health Organization
PHC	Primary health care
PLWHA	People Living with HIV or AIDS
PQP	Prequalification of Medicines Program
(Revised) ESC	Revised European Social Charter (CoE, 1996)
RMS	Royal Medical Services (Jordan)
SCOTUS	Supreme Court of the USA
SERAC	Social and Economic Rights Action Center (Nigeria)
SHP	Skilled Health Personnel
TB	Tuberculosis
TEPCO	Tokyo Electric Power Company
THSTP	Traditional Healer Services Travel Policy (Canada)
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights (UN, 1948)
UHC	Universal Health Coverage
UN	United Nations
UNAIDS	UN Programme on HIV and AIDS
UNCRC	United Nations Committee on the Rights of the Child
UNDP	United Nations Development Program
UNESCO	UN Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNPAN	UN Public Administration Network
UNRWA	UN Relief and Works Agency
ULMIS	The Urban Labour Medical Insurance Scheme (China)
VHI	Voluntary Health Insurance
WB	World Bank

WDI	World Development Indicator
WGBO	Dutch Medical Treatment Agreement Act
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMCZ	Dutch Client Representation Act
WMA	World Medical Association
WMO	Dutch Social Support Act

Introduction

The 'right to the highest attainable standard of health' (or right to health) is by now firmly embedded in international law. Over the past 20 years there has been a steady stream of documents, reports and other publications clarifying the meaning and contents of the right to health. The most important explanatory source is General Comment 14 of the UN Committee on Economic, Social and Cultural Rights (CESCR), which gives an authoritative explanation of the right to health in Article 12 ICESCR. As a result of this clarification process the right to health is by now a norm under international law which has a considerable legal weight and which has the potential to impact on the health and well-being of individuals all over the world.

As we now have a fairly clear picture of the normative content of the right to health, the next step is to find out more about how these standards are to be applied in practice. We should assess their content in the light of national realities and current findings in the public health arena, social medicine, health economics and related fields. In other words, if we want to obtain a proper understanding of this norm, we should also look beyond its international definition and doctrinal foundation. We must not look at human rights norms in a vacuum, rather we must reconsider them consistently in the light of national and regional realities and particularities, new trends and developments, and for this we must also look beyond our own disciplinary borders. Examples of such developments are the increasing health inequalities between and within nations, continued health problems such as HIV/AIDS and maternal mortality, the lack of medicines in the developing world, as well as the way in which health systems are organized, such as the increasing worldwide trend of healthcare privatization, and the magnitude of health sector corruption.

This study focuses on the implementation of the right to health at regional and national levels. This project brings together a set of experts from thirteen different countries in the world, with each of them analyzing the implementation of the right to health in his or her country or region. The foundations for this project were laid during a modest project that we ran at the University of Aberdeen School of Law, where I worked as a Lecturer between 2006 and 2009. The project enabled advanced students to write a report about the implementation of the right to health in their country, or another country of their choice. Some of the issues that the reports addressed were the legal status of the right to health, the way health

systems are organized, healthcare commercialization trends, the position of vulnerable groups and the underlying determinants of health.

Gradually, we were able to entice more experienced scholars for this project, and it grew into a more substantial research project. The project was moved to the Right to Health Wiki of the International Federation of Health and Human Rights Organisations (IFHHRO).[1] Some of the reports placed on this website had a considerable impact in the country under scrutiny. For example, the report on the right to health in Nigeria was adopted by the Association of Commissioners for Health as an authoritative statement on the state of health in that country.[2] The report about Brazil was published in Portuguese by the Brazilian government and was thus made available to a wider public in Brazil. Other reports that were made available included reports on Canada, Iran, Russia and Serbia.

The current follow-up project builds on the country reports by publishing a number of theme-oriented country studies in connection with the right to health. With theme-oriented country reports we mean reports that do not give a mere assessment of the implementation of the right to health in general, but that focus on a particular theme. For example, while the Millennium Development Goals are an important issue in relation to the implementation of the right to health in Africa, important issues in Europe are the social determinants of health, and the identification of vulnerable groups when it comes to accessing healthcare services. This approach enables us to focus on those issues that are of particular relevance to a certain country or region, so as to gain a greater understanding of these themes, and their applicability in a particular national or regional context. In addition, as a collection of tangentially connected themes, it helps to enrich our understanding of the right in practice. As mentioned, this project brings together experts from 13 different countries in the world, with each of them analysing the implementation of the right to health in his or her country or region. The authors are all scholars with considerable expertise in the right to health (see attached bibliography). As they all write about their own country or region, they can build a bridge between their expertise on the right to health with their specific backgrounds and expertise in his or her country or region. By covering countries from every region, the project can truly be called a global project which at the same time has relevance for every particular region in the world.

In the conclusions to this book, Rhonda Ferguson, Milan Markovic and Obi Nnamuchi distill the most important findings from the contributions and draw some conclusions in relation to the national implementation of the right to health. This may inspire scholars, policy makers and civil society to set the stage for a more effective implementation of the right to health at a national level.

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[1] See http://righttohealthifhhro.pbworks.com—Health and Human rights by Country. Last visited 16 June 2014.

[2] In addition, an abridged version of the report was published (in Dutch) as "The Right to Health in Nigeria: A Challenge for a Young Democracy". See *Dutch Physicians for Human Rights*, *Newsletter* 14–17 (2007). See http://www.johannes-wier.nl/userfiles/file/Nieuwsbrief%20nr10_JWS.pdf.

Compiling this work has meant collaborating with scholars from all over the world and has, therefore, been a complicated process. I am entirely grateful to editors Rhonda, Obi and Milan, for their ongoing dedication to this project. Without them this book would never have materialized. We have never met in person, but after the many emails and Skype conversations I feel I know them well, which is both a huge pleasure and a tremendous honour. I also thank Zlatka Koleva, student at the University of Groningen, for her fantastic editorial work, and Asser Press for turning our work into an appealing book. Last but not least: a big thank you to all the authors in the book for their wonderful submissions and for providing us with inspiration. We trust their contributions will lead to interesting discussions regarding the implementation of the right to health in their country, their region and beyond.

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