

# A Human Right to Health under International Law

The right to health and the corresponding responsibilities for it are enshrined in the constitutions of both the World Health Organization and the Pan American Health Organization. There is also explicit or implicit recognition of the right to health and its concomitant responsibilities in the following international instruments on human rights: the Universal Declaration of Human Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the American Declaration of the Rights and Duties of Man; and the American Covenant on Human Rights (Pact of San José, Costa Rica). The provisions of these international texts demand close attention, as they form a starting point for a legal analysis of health-related precepts in the national constitutions.

## CONSTITUTION OF THE WORLD HEALTH ORGANIZATION

The WHO Constitution sets forth most clearly both the modern definition of a right to health and the responsibility of the State in promoting the physical and mental health of its people. The Preamble to the Constitution declares nine Basic Principles:

The States Parties to this Constitution declare, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations, and security of all peoples:

Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.

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, or economic or social condition.

The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest cooperation of individuals and States.

The achievement of any State in the promotion and protection of health is of value to all.

Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.

Health development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.

The extension to all peoples of the benefits of medical, psychological, and related knowledge is essential to the fullest attainment of health.

Informed opinion and active cooperation on the part of the public is of the utmost importance in the improvement of the health of the people.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

## **CONSTITUTION OF THE PAN AMERICAN HEALTH ORGANIZATION**

The PAHO Constitution states in its first article that the fundamental purposes of the Organization shall be

to promote and coordinate efforts of the countries of the Western Hemisphere to combat disease, lengthen life, and promote the physical and mental health of the people.

## **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

*United Nations, 1948*

The Universal Declaration of Human Rights sets forth in Article 25 that

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

## **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**

The International Covenant on Economic, Social, and Cultural Rights acknowledges the right to health in its Article 12:

1. 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.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - a) the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
  - b) the improvement of all aspects of environmental and industrial hygiene;
  - c) the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases;
  - d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

With regard to the protection of health, the International Covenant on Civil and Political Rights states that:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.... (Article 6, Paragraph 1.)

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subject without his free consent to medical or scientific experimentation. (Article 7)

## **INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

Article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination recognizes among the economic, social, and cultural rights that the States Parties should guarantee to everyone without discrimination as to race, color, nationality, or ethnic origin:

(IV) the right to public health, medical care, and social security and social services.

## **AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN**

The American Declaration of the Rights and Duties of Man recognizes the following:

*Article I.* Every human being has the right to life, liberty, and the security of his person.

*Article VI.* Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

*Article VII.* All women, during pregnancy and the nursing period, and all children have the right to special protection, care, and aid.

*Article XI.* Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing, and medical care, to the extent permitted by public and community resources.

*Article XVI.* Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

*Article XXVIII.* The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

*Article XXIX.* It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.

*Article XXX.* It is the duty of every person to aid, support, educate, and protect his minor children, and it is the duty of children to honor their parent always and to aid, support, and protect them when they need it.

*Article XXXV.* It is the duty of every person to cooperate with the State and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.

## AMERICAN CONVENTION ON HUMAN RIGHTS

The American Convention on Human Rights (Pact of San José, Costa Rica) recognizes implicitly that health is a human right:

*Article 4. Right to Life:* 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

*Article 5. Right to Humane Treatment:* 1. Every person has the right to have his physical, mental, and moral integrity respected.

*Article 17. Rights of the Family:* 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 19. Rights of the Child:* Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.

*Article 24. Right to Equal Protection:* All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

*Article 32. Relationship Between Duties and Rights:* 1. Every person has responsibilities to his family, his community, and mankind. 2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.



These principles are almost universally accepted. Every sovereign nation on earth is a member of WHO, and has thus formally agreed to its clear and complete constitutional Declaration of Principles. On a regional level, the same may be said about PAHO, as the specialized organization for health in the Americas. The Universal Declaration of Human Rights has become, as was the intention at its drafting in 1948, "the common standard for achievement for all peoples and nations." The international covenants on Economic, Social, and Cultural Rights and on Civil and Political Rights are recognized as codifying rights that, as stated in their preambles, "derive from the inherent dignity of the human person." The International Convention on the Elimination of All Forms of Racial Discrimination is the means "to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end." The American Declaration and the American Covenant are the traditional means of guaranteeing the protection of human rights in the Inter-American System.

In summary, there can be no doubt that in the modern world a right to health is a basic human right or, to reiterate the WHO Constitution: "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." In the WHO system and according to modern public health and medical thought, "health is a state

of complete physical, mental, and social well-being and not merely the absence of disease or infirmity." There is virtually no country in the world that does not accept at least some governmental responsibility for the public and individual health of its people, thereby recognizing the pledge made upon ratification of the WHO Constitution, that "Governments have a responsibility for the health of their people which can be fulfilled only by the provision of adequate health and social measures."



## **Selected International Bioethics Organizations**

### **ARGENTINA**

Instituto de Humanidades Médicas  
Calle 3, No. 706  
La Plata, Argentina

### **COLOMBIA**

Instituto Colombiano de Estudios Bioéticos  
Calle 65, No. 9-39, Of. 202  
Bogotá 2 D.E. Colombia

### **CANADA**

Faculty of Law, University of Toronto  
78 Queen's Park  
Toronto, Canada M5S 2C5

McGill Center for Medicine, Ethics and Law  
Lady Meredith House  
1118 Pine Ave. West  
Montreal, Canada H3A 1A3

### **SPAIN**

Instituto Borja de Bioética  
Llaseres, 30, Sant Cugat del Vallès  
Barcelona, España

### **U.S.A.**

Center for Bioethics  
Kennedy Institute of Ethics  
Georgetown University  
Washington, D.C. 20057

The Hastings Center  
255 Elm Road  
Briarcliff Manor, NY 10510