

HEALTHCARE AND HUMAN RIGHTS: UNITED NATIONS' INITIATIVES TO
ENSURE RIGHT TO HEALTH

Dusiyarova Barno Shuhratovna

Tashkent State University of Law The graduate student of Media law

In addition to being a fundamental human right, health is also a prerequisite for the fulfilment of other rights. Among the numerous facets of human wellness, good health is essential to the exercise of human rights. Additionally, being well is essential for enabling people to engage in other activities that would improve their welfare. A healthy individual is thus in a better position to practically engage in activities that they find beneficial, raise their level of living, boost their prospects of success in life, and enjoy other human rights. In addition to being a necessary condition for participation in social, economic, and cultural endeavours as well as civic and political activities, health is a basic human right and a necessary, fundamental, and indispensable state of wellbeing. Thus, one of the pillars supporting the advancement of human growth and general well-being is the right to health.

Numerous laws and protocols pertaining to human rights recognise and affirm the rights to health. The obligation to safeguard, protect, ensure, and fulfil the right to health, as well as to provide remedies for any infringement of that right, falls on certain parties. When nations sign international treaties, they assume these obligations. This was confirmed by the United Nations General Assembly's 1998 Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms¹.

The "respect, protect, and fulfil" paradigm has a profound influence on how people around the world perceive the actions required to achieve human rights. It comprises obligations to: (1) respect rights, which means avoiding harming or introducing deprivation of concern to protected interests; (2) protect rights, which means making sufficient guarantees that others respect rights; and (3) provide, which means supporting those whose protected interests are facing rectifiable setbacks, according to Reeves. We'll also talk about a fourth kind of obligation that's connected to the duty of protection and involves putting in place a working legal system. Even with the distinct boundaries, the need to uphold the right to health is still a contentious subject globally, raising concerns about how the right to health can actually accomplish its goal. It may be argued that there is a clear difference in how the primary responsibility bearers approach their responsibilities, supporting the widely held belief that economic, social, and cultural rights—including the right to health—produce an excessive number or the incorrect kind of duties. One of the primary goals of this paper is to evaluate this critique.

In a similar spirit, this article acknowledges that, to the extent that each of these entities has distinguishable human rights duties, the human right to health confers a variety of obligations on people, governments, businesses, non-governmental organisations, and the global community. Nonetheless, it is debatable that the state, through its laws and implementation authorities, must take the lead in carrying out the tasks required to successfully ensure this right in terms of the particular obligations of each party. In order to make our case, we will examine the philosophical

¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4. Available at: <https://www.refworld.org/docid/4538838d0.html>. Accessed 28 Feb 2022.

issues surrounding the nature of duties as well as the legal implementation of human rights obligations, particularly as they relate to legal systems in Africa².

As we examine the specific mechanisms of the right to health, it is also important to ask why some moral issues are deemed so significant that they are given the status of universal human rights. This means that other individuals, groups, companies, and other entities have an assigned duty—sometimes an enforceable one—to uphold the requirements of these rights. While there is disagreement over the theoretical underpinnings of human rights, it is generally accepted that one of the primary goals of these rights is to protect those who are vulnerable and at risk of abuse or even persecution in the absence of a morally and legally sound protection system. Human rights are necessary to ensure that their interests are not obscured and that their struggles are not written off as self-inflicted hardships. For instance, it's possible that jailed women will have to give birth while handcuffed. What reaction does the people have?

Some people will be appalled and think that the mother has violated her daughter's human right to dignity, while others will think that the mother is to fault because she did something to land her in jail in the first place. If the lady in question belongs to a minority or is not a citizen of the country in question, the latter opinion is generally more likely. However, human rights require us to consider the victim's point of view. Regardless of her actions, she is still deserving of respect and safety. This might make the powerful feel very uneasy. Government officials frequently attempt to subvert the human rights discourse first because it serves as a tool for holding them accountable. Human rights are a popular concept, but when they are applied to specific situations, they are frequently mocked or ridiculed. This emphasises much more the necessity for them.

The Universal Declaration of Human Rights (UDHR) has a comparatively limited mention of the human right to health in international law. It is stated that everyone has the right to a living level that is suitable for maintaining good health as well as, enlighteningly, the right to a number of other fundamental health determinants, including shelter, food, and clothes, in addition to access to healthcare. The later International Covenant on Economic, Social, and Cultural Rights (ICESCR) drafters³, on the other hand, went considerably farther and established a universal right to the best possible state of physical and mental health. Onora O'Neill has stated that this remark presents a difficulty for those who support the human right to health, asking what should be done with the concept of the "highest attainable standard of health." Imagine living in a region with little resources, like rural India or sub-Saharan Africa. We are setting an idealistic standard if by that we mean the highest standard that is internationally attainable. Are we not setting our aim far too low if by highest achievable quality we mean the locally? Joseph Raz highlights a similar issue, but overall, he is far more understanding of the human right to health than O'Neill. The "highest attainable" norm, he notes, does not say whether it is the "highest attainable" or the "highest attainable, given proper weight to all other considerations, including other moral rights and worth-while goals."

It is obvious that significant work is required to clearly define the direction of human rights. Accepting Henry Shue's claim that human rights defend against frequent, serious, and preventable threats—in this case, common, serious, and preventable health threats—might be one approach to go forward. Putting them in reverse order, it is obvious to include remediable

² Karp DJ. What is the responsibility to respect human rights? Reconsidering the 'respect, protect, and fulfill' framework. *International Theory*. 2020;12(1):83–108.

³ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>. Accessed 21 Feb 2022.

threats because of the duties that result from them; however, if nothing can be done and the harm is not of the kind that can be compensated for, then no clear duty results, possibly with the exception of the duty to investigate ways to counteract similar threats in the future.

However, one could counter that even in the absence of action, there might still be a violation of human rights. There is a strong argument in favour of adopting this since it maintains the pressure to find a solution. Therefore, even in cases where nothing can be done right now, remediable should be considered to mean compensable or remediable in principle, in part or in full. It is evident that the concept of major risks is included in order to exclude insignificant threats. Nonetheless, there can be some confusion here. Is trivial synonymous with low harm or low probability? Though it will be debatable how the line is really drawn in practice, a combination of these is probably the wisest course of action.

On the other hand, the inclusion of common risks might seem more controversial. Why is it common? Why not protect human rights from atypical threats? The equality that underlies human rights concept may be highlighted by the idea that a threat is widespread⁴. Elite members rarely need to invoke their human rights in most nations, unless they are the target of intentional political persecution—for example, because they belong to an opposition party. The wealthy are typically equipped to defend their own interests against everyday dangers. Human rights, however, are intended to support persons in such vulnerable positions because certain groups within society will still require aid in order to receive even a minimal level of protection. Human rights guard against commonplace dangers, not unusual ones.

Despite varying interpretations of these threats, the key notion is that human rights are protections especially for the vulnerable. We resist saying protections for minorities, for there are times when majorities can lack power, and need the protection of human rights. The idea that human rights offer special protection for the vulnerable may however seem to be in tension with the idea that human rights are universal. But, as discussed above, it is precisely because they are universal that human rights can protect minorities. The universality of human rights is a counter to the pattern that can easily be fallen into, when there is, de facto, one law for the rich or powerful and another for the poor or vulnerable. For example, the police and security services may take steps to protect the elite from a common threat of serious theft or assault, but leave the poor to fend for themselves. If there are steps that could be taken to improve the situation, i.e. the threat is, to some degree, remediable, and the threat is serious and common, if only the privileged are protected. this is where human rights claims take root. The vulnerable are ignored, or, even worse, suffer deliberate discrimination, and thereby their rights are violated. The vulnerable do not have access to what should be universal and is enjoyed by the rich. This concept remains true, however large or small the unprotected group is, provided that there is a protected elite.

References:

1. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4). Available at: <https://www.refworld.org/docid/4538838d0.html>. Accessed 28 Feb 2022.

⁴ Mike JHM. Access to Essential Medicines to Guarantee Women's Rights to Health: The Pharmaceutical Patents Connection. *The Journal of World Intellectual Property*. 2020;23(3-4):473-517. <https://doi.org/10.1111/jwip.12161>.

2. Mike JHM. Access to Essential Medicines to Guarantee Women's Rights to Health: The Pharmaceutical Patents Connection. *The Journal of World Intellectual Property*. 2020;23(3-4):473-517. <https://doi.org/10.1111/jwip.12161>.
3. Karp DJ. What is the responsibility to respect human rights? Reconsidering the 'respect, protect, and fulfill' framework. *International Theory*. 2020;12(1):83-108.
4. UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>. Accessed 21 Feb 2022.