



INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

WHAT DOES THE RIGHT TO ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH MEAN?

The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life. It extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

The notion of “the highest attainable standard of health” takes into account both the individual’s biological and socio-economic preconditions, and a State’s available resources.

WHAT DOES THE RIGHT TO HEALTH CONTAIN?

- **Freedom**s, which include the right to control one’s health and body, and the right to be free from interference;
- **Entitlement**s, which include the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable level of health.

WHAT ARE THE STATE’S LEGAL OBLIGATIONS IN RELATION TO THE RIGHT TO HEALTH?

Respect The state has to refrain from denying or limiting equal access for all persons, including those most vulnerable and marginalized, to preventive, curative and palliative health services.

Protect The state has to adopt legislation or take other measures for ensuring equal access to health care and health-related services provided by third parties.

Fulfill The state has to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.

WHAT ARE THE ELEMENTS OF THE RIGHT TO HEALTH AND HOW CAN IT BE ASSESSED, WHETHER THE RIGHT TO HEALTH IS ENSURED IN COMPLIANCE WITH THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)?

Are the public health and health-care facilities, goods, services and programs AVAILABLE?

- Are functioning public health and health-care facilities, goods, services and programs available in appropriate quantity?
- Does the system have trained medical and professional personnel? Do the personnel receive domestically competitive salaries?
- Are essential drugs available?
- Do the facilities, goods and services ensure potable drinking water and adequate sanitation facilities?

Are the health facilities, goods and services ACCESSIBLE to everyone without discrimination?

- Are the health facilities, goods and services accessible to all, including those most vulnerable or marginalized without any discrimination?
- Can the health facilities, goods and services be reached physically by the most vulnerable or marginalized and are they architecturally accessible for persons with disabilities?
- Are the health facilities, goods and services economically accessible/affordable for all, including socially disadvantaged groups? Are the payments for health-care services based on the principle of equity?
- Is the health-related information accessible? Is the right to seek, receive and impart information and ideas concerning health issues ensured?

Are the health facilities, goods and services culturally ACCEPTABLE?

- Are the health facilities, goods and services respectful of medical ethics and of the culture of individuals, minorities, and communities, and sensitive to gender and life-cycle requirements?
- Are the health facilities, goods and services designed to respect confidentiality and improve the health status of those concerned?

Are the health facilities, goods and services scientifically and medically appropriate and of good QUALITY?

- Are skilled medical personnel involved in providing health related services?
- Are the drugs scientifically approved and unexpired?
- Do the hospitals have the necessary equipment?



HOW CAN IT BE ASSESSED WHETHER THE ACTIONS TAKEN FOR THE PREVENTION, TREATMENT AND CONTROL OF THE EPIDEMIC COMPLY WITH ICESCR?

- Have measures been taken to prevent, treat and control epidemic and endemic diseases? Is there a system of urgent medical care in place in cases of an epidemic?
- Is the treatment available to everyone without discrimination?
- Is it ensured that no one is denied treatment because they lack the means to pay for it, or because stigma prevents them from getting treatment?
- Do the health strategies address, besides the medical dimensions of the epidemic, also the human rights and gender-specific consequences of measures taken?
- Is the epidemiological surveillance and data collection on a disaggregated basis ensured?
- Are prevention and education programs established and accessible to everyone including the most vulnerable or marginalized?

CAN STATES LIMIT THE RIGHT TO HEALTH?

Yes, but only, if the limitation is in accordance with national and international law, if it is compatible with the nature of the rights protected by ICECR, if it is necessary for the promotion of the general welfare in a democratic society, if the restriction is of limited duration, subject to review, if it is proportionate, ie the least restrictive measure, and, if it is non-discriminatory.

FOR MORE INFORMATION, SEE:

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), available at: <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>