Health, Essential Medicines, Human Rights & National Constitutions

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Date: July 31, 2008

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<td>WHO African Region</td>
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<tr>
<td>CEDAW</td>
<td>Covenant on Eliminations of All Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CRC</td>
<td>Covenant on the Rights of the Child</td>
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<tr>
<td>EMRO</td>
<td>WHO Eastern Mediterranean Region</td>
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<td>EURO</td>
<td>WHO European Region</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>NGO</td>
<td>non-governmental organization</td>
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<td>PAHO</td>
<td>WHO Region of the Americas</td>
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<td>RtH</td>
<td>Right to Health</td>
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<td>SEARO</td>
<td>WHO South-East Asia Region</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>WHO</td>
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I would like to express my sincere thanks to my supervisor at Vrije Universiteit Amsterdam, Dr. Jacqueline Broerse. Her guidance in the early stages of this project was critical to developing the sound research design on which this study is based.

My supervisors at the World Health Organization, Dr. Richard Laing and Dr. Hans Hogerzeil from the Department of Essential Medicines and Policy at the World Health Organization, offered their time and expertise to guide the development of this project. I was inspired by their dedication to all means of advancing access to essential medicines and their keen interest in a project of this caliber. Their interest in enhancing my skills as a researcher, through discussions and critical analysis, is especially appreciated.

I am grateful to my advisor Dr. Helena Nygren-Krug from the Department of Ethics, Equity, Tread and Humans Rights at the World Health Organization, who readily contributed her perspective to this project. This triangulation approach that was created by involving several departments enhanced the methodology and the final product.

Finally I would like to thank all my colleagues in Health Technologies and Pharmaceuticals Department for enriching my experience at the World Health Organization. Ms. Ann Wilberforce-Cerat was a particularly kind and helpful spirit whose generosity has not gone unnoticed.
Executive Summary

Introduction

Human rights affect the relationship between States and individuals giving State duties and individual entitlements. Human rights aim to empower individuals and are thus based on the general principles of equality, participation, accountability, attention to vulnerable groups and the interdependence of human rights. The right to freedom from discrimination underlies all human rights.

The human right to health emerged as a social right in the World Health Organization (WHO) Constitution (1948) and has since been included in several international treaties and declarations. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) described the progressive realization of the right to health through four concrete and targeted steps including the creation of conditions for individuals to access health facilities, goods and services. General Comment 14 (2000) identifies access to essential medicines as part of the minimum 13 core contents of the right to health. The right to health principles, including accessibility, availability, appropriateness and assured quality, are also applied to health goods and services, including essential medicines.

Essential medicines, as defined by the WHO, are those required to meet the priority health care needs of a population. Essential medicines are chosen with consideration for disease prevalence, efficacy and safety of the drug and cost-effectiveness. Essential medicines are used for disease prevention, treatment and control and are applicable to most chronic and acute diseases, thus, they are required to manage the global burden of treatable and preventable disease.

The operationalization of health rights is a dynamic process. The right to health and essential medicines has been entrenched in international law. Truly committed governments will include the right to health in their national constitutions. Constitutional obligations can provide a framework from which national health policies and laws can be formulated. These legal aspects of health rights are not static. Many countries revise or produce new constitutions while others choose to create or amend national legislation and policies to suit their changing needs. Health programs, born from policies and laws, can yield positive health outcomes and the individual realization of health rights. Therefore constitutional law has the potential to impact individual health circumstances.

In this bi-directional process individuals can influence all levels in order to advance their right to health. Hogerzeil et al. identified 59 court cases in low- and middle-income countries in which individuals successfully secured access to essential medicines as a result of the right to health in international and domestic law. The entrenchment of health rights in legal frameworks provided a foundation
for progressive realization to which governments can be held responsible.

This study assesses constitutional commitments to the right to health and essential medicines in order to identify favorable right to health texts. The resulting text can serve as a baseline indicator of each State’s commitment to the right to health and essential medicines. Favorable text could serve as a resource for committed governments seeking to enhance their constitutional obligations to the right to health and access to essential medicines. This study investigates one means of advancing access to essential medicines and compliments WHO’s efforts to enhance health rights.

Methods

Through a six-month desk study a comprehensive inventory of constitutional text from WHO member States was created. In order to be included, States must have a written constitution, national Bill of Rights or Basic Law that was recognized as part of the national statute. Current draft constitutions were included and noted as draft versions. Accessible English translations of the constitutional text were required. The texts were drawn from the English version of “Constitutions of Countries of the World” and the Constitution Finder Database. Constitutions of 186 countries were accessible. Finally, constitutions including any aspect of health rights were included. Documents only including general rights relating to housing, work, environment, education, social security or other underlying determinants of health without references to health, were excluded. The definition of the right to life was not considered as advancing the right to health.

A Tree Diagram of the Right to Health, pictured below, was created based on the health rights in international law. The top two boxes (non-discrimination & equality and health policy) are core components from General Comment 14 that apply to all the other aspects of health; the four STEPS are described in the International Covenant on Economic, Social and Cultural Rights as necessary steps for the realization of health; the remaining boxes under each STEP are the core contents of the right to health, described in General Comment 14.

Figure 1. Right to health tree diagram. Boxes in black were included in the constitution; boxes in grey were absent.
Within the selected constitutions, articles that employed any step or core content of health rights were selected for analysis. Provisions applicable only to certain population groups were included but noted as being exclusive. The presence of articles in which international law supersedes domestic law and/or right to equality/freedom from discrimination was noted.

A scoring system was devised to analyze constitutional provisions for the level of State commitment and the application of general human rights and right to health principles to aspects of the right to health. The scoring system allowed for the identification of provisions for health facilities, goods and services and essential medicines. The sum of each constitution’s score was used to identify comprehensive constitutions.

**Results**

The analysis of 186 accessible constitutions yielded 135 constitutions (73%) that include some form of health provisions. Ninety-five constitutions (51%) are more specific by naming rights to health facilities, goods and services. Four constitutions (2%) include essential medicines as part of health rights.

Of the 135 constitutions that included health rights, 62 constitutions (45%) included in-text reference to equality and non-discriminatory, while 111 constitutions (82%) included a separate article(s) mandating the right to be treated equally or freedom from discrimination.

There are 152 State parties to the International Covenant on Economic, Social and Cultural Rights as of January 2006 and 31 constitutions worldwide hold international law superior to domestic law. Four of these 31 constitutions do not include health rights, therefore health rights are indirectly applied into these four legal frameworks.

Essential goods and medicines were identified as a component of the right to health in four constitutions. In summary, the Constitution of Panama imposes a primary State duty to supply medicines to all people while the Constitution of Syria requires the provision of medicines to citizens. The Constitution of Mexico describes medicines as an entitlement of working women and their families. Although the Constitution of the Philippines does not directly name essential medicines, essential goods, which could be interpreted to include medicines, are provisioned to all persons with explicit consideration for marginalized groups.

A favorable or comprehensive right to health text mandates a strong State commitment to fulfill the greatest number of aspects of health with considerations for general human rights and right to health principles. The Constitutional of Panama was identified as including the most comprehensive health provisions. The following tree diagram is used to summarize the aspects of health included in the text, where black boxes are included and grey boxes are absent.
Figure 2. Right to health tree diagram summarizes health provisions in the Constitution of Panama. Boxes in black were included in the constitution; boxes in grey were absent.

Discussion

This study found that the dates of constitutions adoption is linked to the level of State commitment to health rights within the text, where recently adopted documents are more likely to include strong State commitments rather than passive or absent commitments. We hypothesize that development of the right to health in the last 60 years has positively influenced willing governments to take on higher commitments to health.

This study utilized international human rights idioms to analyze domestic constitutional text. The language may not have the same meaning in both contexts but international human rights discourse remains the only 'standard' point from the human rights approach within constitutional texts can be assessed. To avoid misrepresenting the intention of the text in cases of uncertainty, the author consulted the original language texts in French and Spanish for greater clarity. A similar study of the original language text could be helpful to avoid misinterpretations. In order to verify the outcomes of this study, future research can also study the intention of the constitutional framers, which gives valuable insight on the text in order to clarify the meaning behind the provisions. Subsequent constitutional provisions can utilize internationally accepted human rights language in order to promote the standard interpretation of national commitments.

Constitutional commitments can be difficult to revise and some countries choose to create or amend national legislation and policies in order to meet their needs. Therefore, future research could analyze the national health legislation in countries with comprehensive constitutional health rights in order to draw positive examples from a study of national legislation and policies that reflect the values articulated in the constitutional text. Future investigations could create case studies of national health policy and legislative structures that have been translated into high performing, equitable health systems and programs to determine
the legal basis for health initiatives. As national health policy directives and legislation provide a framework for programs, insight into these legal frameworks can illuminate favorable examples or 'best practices' that promote universal access to health facilities, goods and services including essential medicines.

**Conclusion**

At the conclusion of this study we are aware that health rights are explicitly included in nearly three quarters of the constitutions worldwide. Furthermore, 31 (16%) countries hold international law, which can include the right to health, superior to domestic law. While more specific entitlements to health facilities, goods and services are recognized in half of national constitutions, only 2% (4) of constitutions cite the provision of essential goods or medicines as part of the right to health. This baseline study indicates the much progress is needed in order to gain widespread State commitment to universal access to essential medicines.

There are two routes through which the right to health can be recognized and implemented in national frameworks. One option is to recognize and integrate international law in national constitutions in order to entrench health rights. The International Covenant on Economic, Social and Cultural Rights, accompanied by General Comment 14, is a particularly pertinent document to the advancement of health rights. It may be more feasible for the international community to advocate for the recognition of international laws within national constitutions than for substantial creations or changes that include explicit health rights.

Alternatively, national constitutions can be revised to include the right to health and essential medicines. Newly produced constitutions can also include these rights, which is a trend that has been identified in this study. With this approach in mind, this study has identified the key components of a right to health including essential medicines. The key components include: identifying the essential medicines concept, strong level of State commitment, equality and non-discriminatory language, right to health principles (accessibility, affordability, availability, appropriateness, quality), and general human rights principles (participation, accountability, attention to vulnerable groups). Examples of the key components were drawn from existing constitutional commitments to serve as resources to the international community wishing to align domestic constitutional aspirations with human rights standards.

Constitutional frameworks are valuable aspirational statements on which domestic legislation and policy directives are based. The examples of constitutional text identified in this study can be a model to States motivated to achieve the universal right to health. Despite limited resources, willing governments can identify and gradually implement targeted and concrete actions through a participatory process where priority medical needs and available resources are considered. In this way all States can fulfill their health goals over time.
1 Introduction

Good health is an essential component of human dignity and a foundation on which full and productive human lives are built. Across the globe, countries need to manage the burden of chronic and acute disease in order to achieve the highest attainable standard of health. Essential medicines are those medicines required to satisfy the priority health care needs of a population. They are used for all areas of disease prevention, treatment and control. But the potential of medicines to improve disease management is hampered by barriers to access. As a result, the World Health Organization (WHO) estimates that one-third of the world’s populations lack access to medicines. Government commitments to the equitable provision of safe and effective medicines have the potential to reduce the global burden of disease. Thus, attention to individual entitlements to equitable distribution of essential medicines is an important way to reduce disease burden and promote healthy and dignified lives.

1.1 International human right to health

The Right to Health (RtH) was conceived by the international community in order to advance economic growth, promote social development, and reaffirm human dignity. The Universal Declaration of Human Rights (UDHR) of 1948 was the first document to articulate the inherent moral value of a human being and attempt to translate this value into State obligations. On the basis of human dignity, the UDHR asserts that everyone, equally, has the inalienable right to “a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”. Already the right to health care (“medical care”) and the right to underlying health conditions (“food, clothing, housing, and necessary social services”) emerge and later become the two main pillars of the RtH.

The WHO Constitution in 1948 defined the RtH as the right of all people “to the enjoyment of the highest attainable standard of physical and mental health.” The phrase “highest attainable standard” first appeared here and does not assert the right to be healthy. Instead it asserts the right to the highest possible level of health, which is a relative level dependant on individual biology, socioeconomic

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conditions and available resources.\(^5\)

Neither the UDHR nor the WHO Constitution are legally binding documents.\(^6\) On the other hand, the International Covenant on Economic, Social, and Cultural Rights (ICESCR)\(^7\) in 1966 stipulates, among other rights, the obligations of United Nations’ Member States to commit to the highest attainable standard of health. Article 12 of the ICESCR describes albeit vaguely the avenues of WHO Member States’ (hereinafter States)\(^8\) obligations to ensure the RtH. Article 12 and other relevant articles from international law are in Annex 1.

The WHO and the United Nations Children’s Fund (UNICEF) released the Alma Ata Declaration in 1978, which is a document that first emphasized the value and necessity of advancing universal primary health care. In this document, the scope of essential primary health care was defined as including, at the very minimum,\(^9\) where the underlined phrase is of particular interest to this project:

“...education concerning prevailing health problems and the methods of preventing and controlling them; promotion of food supply and proper nutrition; an adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against the major infectious diseases; prevention and control of locally endemic diseases; appropriate treatment of common diseases and injuries; and provision of essential drugs.”

Subsequent international treaties refer to health rights. The Covenant on Elimination of All Forms of Discrimination Against Women (CEDAW) reaffirms the importance of meeting women’s unique health needs and providing women with health services equal to that of men.\(^10\) The Covenant on the Rights of the Child (CRC) also prescribes attention to children’s needs in all aspects of the RtH, specifically mentioning the State obligation “to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”.\(^11\)

Regional treaties also affirm commitment to health rights. The Council of Europe formulated the European Social Charter in 1961 in which the right to health protection is described as the removal of causes of ill health, the provision of educational health facilities and the prevention of disease.\(^12\) The Organization of African Unity enacted the African Charter of Human and Peoples’ Rights in

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6. Toebes B eds.. The right to health as a human right in international law. Antwerpen:INTERSENTIA/HART, 1999. (referenced p. 36 & 40)


8. The titles of 193 WHO member states were accessed at http://www.who.int/countries/en. Member States are defined those countries that have accepted the WHO Constitution and whose application has been approved by a majority vote of the World Health Assembly.


1981, which proclaims the right to the highest attainable standard of physical and mental health and the right to receive medical attention when ill. Toebes (1999) surveyed articles pertaining to health in the ICESCR, the CEDAW, the CRC, the Constitution of the WHO, the African Charter on Human and Peoples’ Rights, and the Protocol of San Salvador. Based on the overlap of at least two supranational treaties listed, she has devised the following broad scope of health goods and services that ought to be provided:

- medical care
- preventative health care
- primary health care
- child health care
- family planning services
- pre- and post-natal health services
- clean drinking water
- adequate sanitation
- environmental health
- adequate nutritious food
- health-related information

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17 The African Charter on Human and Peoples’ Rights and the Protocol of San Salvador are regional treaties that include health rights.
18 Toebes B eds.: The right to health as a human right in international law. Antwerpen:INTERSENTIA/HART, 1999. (referred tables on p. 245 & 246)
In order to derive the core content, Toebes studied the overlapping content of the supranational laws referring to health rights (named above) and the primary health care components outlined in the Alma Ata Declaration.\textsuperscript{19} The overlapping components have been identified as the minimum health goods and services that ought to comprise the core or minimum obligations of the RtH. Based on the above directives of the RtH, Toebes suggested the following ‘ideal’ RtH provision in international treaties.\textsuperscript{20} The core contents are the six points in subparagraph two and the underlined phrase is of particular interest to this project.

“1. States parties recognize the right to the enjoyment of the highest attainable standard of physical and mental health through the provision of health care services as well as the safeguarding of the underlying preconditions for health. They shall ensure the availability, accessibility, affordability, and quality of such services, and pay commensurate attention to the position of vulnerable groups in this regard.

2. Irrespective of their available resources, States shall ensure a right to basic health services, including:

i. Maternal and child health care, including family planning;

ii. Immunization against the major infectious diseases;

iii. Appropriate treatment of common diseases and injuries;

iv. Provision of essential drugs;

v. Adequate supply of safe water and basic sanitation;

vi. Freedom from serious environmental health threats.”

In 2000 the Committee on Economic, Social and Cultural Rights reached a consensus on the core content of the RtH based on Toebes’ work. General Comment 14 “The Right to the Highest Attainable Standard of Health”\textsuperscript{21} (hereafter General Comment 14) the eleven requirements are thought to be the minimum health provisions required to live a dignified, productive life. The provision of essential medicines as ‘defined under the WHO Action Essential Drugs Plan of Action the State needs to provide access to existing health goods and services on a non-discriminatory basis to all persons.\textsuperscript{22} This clause does not require the State to expand the scope of health commodities currently offered, but does mandate the equitable distribution of existing goods and services.

Second, the State is obliged to move as quickly as possible to gradually achieve duties to the right to health. Due to the effort and resource requirements of positive obligations, which all social rights including the right to health, impose on the State, these rights are subject to progressive realization, as stated by the Committee:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available re-


\textsuperscript{20} Ibid Toebes B. (referenced p. 348)


\textsuperscript{22} Ibid. General Comment 14.
sources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.\textsuperscript{23}

This progressive approach is adopted in recognition that limited State resources can preclude States from immediately achieving the right to the highest attainable standard of health.\textsuperscript{24} While it is not possible to recommend uniform benchmarks applicable to all States, the above clause mandates resource commitment in order to make relative advancements of the RtH in diverse political circumstances, social conditions and available resources.\textsuperscript{25} The phrase “with a view to achieving progressively the full realization of rights” conveys the need for continuous progressive action rather than inaction or regression. The Committee warns against complacency and reiterates the “obligation to move as expeditiously and effectively as possible towards that goal”.\textsuperscript{26} The phrase “the adoption of legislative measures” clarifies the intention that the RtH ought to be integrated into national law and policy.

The concept of gradual implementation provides a vantage point from which government action can be adjudicated.\textsuperscript{27} Robertson recommends that States specifically name the amount of each resource type (i.e. human, technological, human, informational and financial assets) required to meet social rights and couple this with aggressive efforts to acquire resources in order to make it possible for even the most financially-limited States to meet the minimum requirements. Based on preliminary State commitments, it can later be determined if the State has made the appropriate investments or allocations of resources.\textsuperscript{28}

\section*{1.2 Accountability}

At the international level the Committee of Economic, Social and Cultural Rights adjudicates the measures that States have taken to uphold their commitments to the ICESCR. However, few organizations besides the Committee exist to monitor the implementation of the RtH\textsuperscript{29} and there are even fewer avenues of international recourse to adjudicate alleged violations.\textsuperscript{30} Regional alliances, such as the European Union, can lobby their respective member States to recognize and

\begin{itemize}
  \item \textsuperscript{24} Ibid. General Comment 14
  \item \textsuperscript{25} Chapman A. “Violations approach” for monitoring the international covenant on economic, social and cultural rights. Human Rights Quarterly, 1996, 18:23-65.
  \item \textsuperscript{26} Ibid. General Comment 14, point 31.
  \item \textsuperscript{27} Bilchitz, D. South Africa: right to health and access to HIV/AIDS drug treatment. International Journal of Constitutional Law, 2003, 1:524-534. Although it commitments to progressive realization is difficult to adjudicate, it allows for government to be held responsible. In the TAC case, outlined in Bilchitz, the Supreme Court of South Africa ruled in favor of providing neverapine to mothers to prevent the spread of HIV because the government didn’t take “reasonable measures…” to progressively realize the right to health care, as stated in Art 27(2) of the South African Constitution.
  \item \textsuperscript{28} Robertson R. Measuring state compliance with the obligation to devote the “maximum available resources” to realizing economic, social, and cultural rights. Human Rights Quarterly, 1994, 16:693-714. (referenced p. 693 & 704)
  \item \textsuperscript{29} Ibid. Chapman A. “Violations approach” (referenced p. 23 & 28). Chapman indicates that States do not comply in reporting on the covenant. Those organizations that do exist to adjudicate State efforts are not encouraged to attend the Committee adjudication sessions and/or are disconnected with the review process and/or are unskilled at monitoring and reporting on HR violations.
  \item \textsuperscript{30} Toebes B. Towards an improved understanding of the international human right to health. Human Rights Quarterly, 1999, 21:661-679. (referenced p. 662)
\end{itemize}
integration the RtH into in national legal frameworks. However, effective regional pressure requires States’ subscription to an alliance that holds the power to dictate constitutionalization.\textsuperscript{31}

Domestically, monitoring State compliance to ICESCR commitments can be complicated. It is difficult to obtain historical and current disaggregated data needed to measure changes over time. Voluntarily State self-monitoring can be flawed and domestic monitoring bodies (NGOs) often lack the time, the resources, and the methodological abilities to properly document and analyze State activity.\textsuperscript{32} Furthermore, in light of potential violations, a functional judicial system is needed to adjudicate RtH disputes.\textsuperscript{33}

In light of the difficulties posed by enforcing health rights in the ICESCR, it is useful for governments to clarify their duties to realize the RtH in national constitutional frameworks.

### 1.3 International law & domestic impacts

The realization of the right to health begins in the domestic realm where States can commit to realizing the internationally established RtH concept and components in constitutional frameworks. Constitutional text is interpreted and contextualized by legislators and policy makers to produce national health policies and legislation that identifies State responsibilities to health and targeted steps required to fulfill State duties. These legal instruments are translated into action by, for example, allocating national resources towards health initiatives or creating national health programs. As a result of State effort, (positive) health outcomes in individual and population health can be realized. Positive outcomes include, for example, reduced mortality rates or improved access to health goods and services, such as essential medicines. Through this sequence human dignity is advanced by operationalizing the abstract RtH concept.

This sequence is a bi-directional process through which individuals can influence all levels of translation in order to gain or advance their health rights. Individuals and patient groups have successfully claimed health rights, specifically to access essential medicines, through domestic courts. Hogerzeil et al. describe 59 court cases in low- and middle-income countries in which plaintiffs have successfully cited the RtH in order to secure essential medicines and in some cases, government policies were overridden by health rights in domestic constitutions or international law.\textsuperscript{34} The entrenchment of health rights in constitutions provides a foundation of aspirations to which governments are held responsible.

### 1.4 Integrated purpose statement and summary

International discourse has identified essential medicines as a core com-

\textsuperscript{31} Smith GP. Human rights and bioethics: formulating a universal right to health, health care, or health protection? Vanderbilt Journal of Transnational Law. 2005, 38:1295-1321. (referenced p. 1303)


\textsuperscript{34} Hogerzeil HV, Samson M, Casanovas JV, & Rahmani-Ococa L. Is access to essential medicines as part of the fulfillment of the right to health enforceable through the courts? The Lancet, 2006 368:311.
ponent of the RtH. As a result, governments are strongly encouraged to take steps to expand the provision of health goods and services to include the equitable distribution of and access to essential medicines. One way to achieve this is by entrenching health rights and essential medicines in constitutional documents.

This research evaluates existing constitutional commitments to health and access to essential medicines. This report outlines the steps of this investigation and is intended for use by WHO staff in guiding and advising States through constitutional formulations and by domestic legislators and policy makers in need of a resource that identifies examples of favorable existing commitments to health and essential medicines. First, this report establishes the conceptual framework on which the evaluation was based and formulates the research objective and study questions that were asked. The methodology of this comprehensive desk study describes the criteria on which constitutions and articles were selected and the method of analysis. The results of the analysis are presented followed by a discussion of trends identified in this study and future avenues of research in this field. Recommendations for constitutional stipulations on access to essential medicines are offered. The conclusion provides a summary of examples of favorable legal provisions on health rights and medicines. With this resource, willing States can commit to progressively realize universal access to essential medicines.
The conceptual framework is based on the evolution of the RtH in international law beginning with the emergence of health rights in 1948 and continuing to the delineation of health into core contents. The steps to realizing health, cross-cutting principles and minimum core contents are examined followed by the spectrum of State commitments to these health rights. General human rights principles and right to health principles are outlined and applied to health to complete the framework of criteria required to realize the highest attainable level of health.

2.1 Right to health criteria

The ICESCR outlines four key steps required to progressively realize the RtH. These include: Maternal & Child Health, Healthy Environments, Prevention, Treatment & Control of Disease, and Health Facilities, Goods & Services.

Maternal and child health care is aimed at achieving the reduction of the stillbirth and infant mortality rate as well as the healthy development of the child. This aim also includes the right to sexual and reproductive health, family planning education and services and pre- and post-natal care.1

The right to healthy environments and conditions includes the protection of both occupational and natural settings and the prevention of harm from hazardous environmental conditions. Several specific conditions are encompassed by this step including adequate housing, potable water, basic sanitation, and

adequate nutrition and the prevention of abuse of alcohol, tobacco and drugs.

The means to prevent, treat and control diseases extends three general health rights: the right to prevention of and education about diseases, the right treatment of disease and treatment in emergency situations and the right to control of diseases, specifically through strategies such as immunization and surveillance methods.

The right to health facilities, goods and services confers an obligation to create conditions that will allow for all individuals to access preventative, curative and rehabilitative goods and services include essential medicines. Emphasis is placed on participatory approaches to decision-making and management of health commodities.

General Comment 14 (2000) offers the most authoritative and specific details on the minimum core components that constitute the essence of the RtH. Three of the 13 core contents (non-discriminatory access, equitable distribution, national health policy or strategy) transcend all dimensions of health. That is, they need to be universally applied to all other core contents and thus, these three cross-cutting principles are located directly below the RtH in the diagram and applied to each step.

The remaining core components listed in General Comment 14 can be placed under one of the four steps based on the above step definitions. The complete diagram of all four steps and core contents can be organized as follows:
Public health is neither a step towards the realization of health nor a minimum core content of the right to health in the ICESCR and General Comment 14, respectively. However, public health was also included as one criteria in the assessment of legal text because it was a common provision in constitutional text.

2.2 Levels of State commitment

A spectrum of State obligations to ensure the above health goods and services exist can be drawn from the language of the text. Human rights discourse employs the tripartite typology of State duties: to respect, to protect, and to fulfill. The typology, described below, moves in a hierarchal order from lowest to highest order of State commitment.

2.2.1 Recognize/Respect

Obligations to recognize or respect the right to health confer minimum State effort and as such, are insufficient to hold the State accountable to immediate action.5 “To respect” imposes a negative right to be protected from State interference with the attainment of the highest possible level of health.6 The ICESCR requires that States recognize the right to health in order to maximize acceptability of the right across all State parties.7

5 Smith GP. Human rights and bioethics: formulating a universal right to health, health care, or health protection? Vanderbilt Journal of Transnational Law. 2005, 38:1295-1321. (referenced p. 1315) It is important to note that in an effort to make the social rights as widely acceptable as possible, the Committee merely “recognizes” the right to health. As mentioned above, this language is vague and can be unclear.


7 Toebe B eds.. The right to health as a human right in international law. Antwerpen:INTERSEN-
2.2.2 Protect

The obligation “to protect” demands greater State effort as the State is mandated to take action between two parties: the right-bearer and a third party. The phrase “right to health protection” confers a positive and negative State duty to protect and respect health by preventing exposure to health risks and refrain from taking action that is detrimental to health. While a minimum level of health protection is an important aspect of the RtH, a specific reference to “the right to health protection” could imply negative rights only. That is, the interpretation could be to protect from interference rather than impose positive obligations, such as to protect from disease by providing immunizations. This commitment alone would be insufficient to mandate the realization of the complete RtH.

2.2.3 Fulfill

The obligation “to fulfill” requires that the State take action to satisfy individuals’ health needs and advance the right to health. The exact phrase “to fulfill” is not often used in constitutional text. Instead, text will name specific action in relation to the provision of health-related goods and services. The phrases “to ensure” and “to guarantee” impose an immediate State duty while the phrase “to be entitled” imposes an individual right. Kinney and Clark assert that both phrases equally convey the highest order of State obligations when compared to the phrases “to respect” or “to recognize.” General Comment 14 distinguishes between different types of fulfillment. One type of fulfillment is “to promote”, which implies the need for sustained action over a period of time in order to create, maintain and sustain the health of people. This project delineated the commitment “to fulfill” into two duties: “to ensure”, which carries an immediate responsibility to guarantee health goods or services, and “to promote”, which implies prolonged action in order to gradually realize an aspiration.

2.3 Right to health principles

The right to health principles are outlined in General Comment 14 as those inter-related and essential elements of health goods and services at all levels.
The principles include appropriateness, availability, quality, and non-discriminatory access, specifically affordability, geographic accessibility, and information accessibility. The complete definitions of these principles are in Annex 2.

### 2.4 General human rights principles

This project is initiated from the human rights perspective, which advocates that all persons are entitled to minimum health rights. Particular emphasis is placed on the pillars of justice, fairness, and equality with respect to those rights. From this perspective health rights are afforded to each person, without discrimination, and special attention is paid to the health rights of vulnerable or marginalized groups. Universal access to health-related information should be necessary and personal health information is kept confidential. All persons have the right to participate in the monitoring, reporting and evaluation of health rights and the subsequent outcomes of realizing health rights. In the pursuit of the highest attainable standard of health, individual and group stakeholders need to cooperate in their efforts, especially international donors working with developing countries. Definitions of these principles are in Annex 2. The six human rights principles of equality, attention to vulnerable groups, access and safety of health information, accountability and cooperation are all crucially inter-related and co-depandant in the advancement of health status.

### 2.5 Summary

The four criteria (RtH criteria, level of state commitment, general human rights principles, right to health principles) can be used to review existing legal text in order to identify favorable examples. Evidence from science-based medicine and studies of economic productivity have historically dominated discussions of universal minimum health entitlements. The legal and moral obligations to health, outlined in this conceptual framework, provide a third platform from which health rights can be advanced.

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19 Ibid. Hunt P & MacNaughton G. (referenced p. 315 point C(4))
Study Design

This chapter presents the overall project objective and resulting study questions based on the previous conceptual framework. The following methodology outlines the criteria on which constitutional articles were selected for analysis and the method of constitutional ranking that was devised.

3.1 Objective

The objective of this research was to assess domestic constitutional text, which is one aspect of national commitment to the right to health and essential medicines. A truly committed government will enshrine the RtH in its legal frameworks; therefore this legal aspect can be used as an indicator of national commitment to health. Existing RtH text that employs the rights-based approach was identified as a baseline indicator of each State’s commitment to health rights and essential medicines. Examples of favorable texts could serve as resources for the WHO in guiding and advising States on the requisite components of constitutional obligations to health and access to essential medicines.

3.2 Study Questions

Hunt describes constitutional assessments as one structural indicator of domestic commitment to health.\(^5\) Structural indicators measure key national frameworks that must be in place in order to operationalize the right to health such as treaty ratification, constitutional inclusion and national legislation.\(^6\) The study questions were derived from the RtH components, levels of State obligations, general human rights principles and RtH principles described in the conceptual framework. In order to realize the research objective, the following study questions have been posed:

How are health rights enshrined in constitutional texts?
1. Are international law and human rights treaties directly acknowledged and/or applied in the constitution? If so, are international laws and treaties superior to the authority of the constitution?
2. How does the constitution enshrine the right to health?
   - What health components are included? Are health facilities, goods and services named? Are essential medicines named?


\(^6\) Ibid. Hunt P & MacNaughton G.
• To what degree/level does the State commit the above health components?
• How are the general human rights principles and RtH principles applied to the above health components? How are the cross-cutting principles of equality and non-discrimination applied?

3.3 Methodology

This was a six-month desk study that created a comprehensive inventory of constitutional text. Constitutional duties to the RtH were extracted based on the criteria below and analyzed based on the concepts in the conceptual design.

To be included, constitutional texts were selected based on the following criteria assessed in the order listed:

1. Country must be a WHO Member State
2. Country must have a written constitution. Note that some countries do not have written constitutions. In this case, a national Bill of Rights or Basic Law that is recognized as part of the national statute was substituted for the constitution. Current draft constitutions were included and noted as draft versions.
3. Country must have an accessible English translation of the constitutional text. The texts were drawn from two sources in order to maximize the number of accessible constitutions:
   - English version of “Constitutions of Countries of the World”, a reliable interpretation of domestic constitutions used by other health and human rights academics, which presents original and amended constitutions.
   - Links to English translations of constitutional were found using the Constitution Finder Database. Constitutions of 186 countries were accessible.

1. Constitutions with articles addressing either of the following:
   - Articles referencing health rights (i.e. any aspect of the step and core content of the RtH that had a direct, in-text link to health). Documents only including general rights relating to housing, work, environment, education, social security or other underlying determinants of health without references to health, were excluded. The definition of the right to life was not considered as advancing the RtH.
   - Articles applying international law or human rights treaties to the domestic constitution were included

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10 Ibid. Research instructions.
Within these constitutions, articles for analysis were selected based on the following considerations, listed in no particular order:

- Constitutional articles employing any of the steps and/or core content, based on the definitions and synonyms of these in Annex 2, were included.
- Constitutional articles applicable only to sub-groups of society were included because attention to marginalized groups is one aspect of the human rights principles to be applied to health. Examples include the rights of mothers, children, workers, the disabled or other vulnerable groups to health goods and services. These texts were not scored as being inclusive.

The presence or absence of constitutional articles employing the right to be free of discrimination and/or the right to equal treatment before the law were noted but not included in the analysis of text. An analysis of the inclusiveness of equality and non-discriminatory provisions would be a valuable study; however, time restraints did not allow for this research in this project.

A two dimensional scoring system was created to assess the selected articles. There were three main questions used to judge the text contents. First, ‘how does that State make a commitment to the good or service?’ For example, this question was answered in the following models, where the State action is underlined and the good or service is in bold:

“The State recognizes the right to health services

Using the grid shown below, the box corresponding to ‘recognize – health’ is filled in. The same scoring system was used to answer the questions ‘what guiding principle is named with respect to a good or service?’ and ‘what rights-based principle is applied to a good or service?’ (Definitions of the terms that fall under the categories Health Components, State Action, General Human Rights Principles, and Right to Health Principles are in Annex 2.) The answers to these three questions were scored in the appropriate place on the chart.
The presence of articles recognizing international law, the right to equality, and the right to be free of discrimination were noted for each constitution, although the text of these articles was not assessed.

Two scores were computed for each constitution. The first score was calculated as the total number of health rights and corresponding principles (i.e. human rights and guiding principles) employed in the text. The second score was derived from the total number of health rights that the State strongly committed to (not including human rights principles), where a State duty or obligation to fulfill the right to health was weighted heavier than lower order language. Constitutions were ranked based on these two scores of the quantity of health rights and principles, and quality/level of State commitment, respectively. The most comprehensive constitutional provisions were those that ranked highly in both categories, thereby mandating a strong State commitment to many health rights and corresponding human rights principles.

<table>
<thead>
<tr>
<th>Constitution, articles analyzed, date of adoption</th>
<th>Right to health criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Health Facilities, Goods &amp; Services</td>
</tr>
<tr>
<td>Level of State commitment</td>
<td>respect, recognize</td>
</tr>
<tr>
<td></td>
<td>protect</td>
</tr>
<tr>
<td></td>
<td>promote</td>
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<tr>
<td></td>
<td>fulfill</td>
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<tr>
<td></td>
<td>duty/entitlement</td>
</tr>
<tr>
<td>Right to health principles</td>
<td>accessibility</td>
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<td></td>
<td>affordability</td>
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<td>appropriate</td>
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<td>General human rights principles</td>
<td>accountability</td>
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<tr>
<td></td>
<td>participation</td>
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<td></td>
<td>vulnerable groups</td>
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<tr>
<td></td>
<td>equality/fairness</td>
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</tbody>
</table>
4 Results

This chapter presents the current global perspective on health rights in domestic constitutions. The influences of other constitutional provisions, such as the superiority of international law to domestic law and/or freedom from discrimination, on health rights are described. Constitutional articles that include essential medicines and the application of principles of equality and non-discrimination are described. The most comprehensive right to health texts are identified and described. Overall, this chapter gives the current scope on health rights and essential medicines in existing constitutional text.

4.1 Global perspective on health rights

The analysis of 186 accessible constitutions yielded 135 constitutions (73%) that include some form of health provisions. Ninety-five constitutions (51%) are more specific by naming rights to health facilities, goods and services. The provision of health facilities, goods and services constitute one ‘step’ in the realization of health from which the right to access medicines could be interpreted. Four constitutions (2%) include essential medicines as part of health rights. The global distribution of the specificity of health rights is shown in Figure 4-1. The analysis was performed for all steps and core contents and a summary chart of these results is in Annex 3. Constitutional references to health rights and health facilities, goods and services are summarized by WHO Region and World Bank Income Economy in Annex 9 and 10, respectively.

Figure 4-1. Pictorial representation of national constitutional commitments to the health and essential medicines. Colour of circles corresponds to map colour of countries where white countries indicate that the constitution was accessible but did not contain any health rights and the constitutions from black countries were not accessible.
4.1.1 Equal Access within/to Health Rights

The principles of equality and non-discrimination can be applied to health rights either by using this language within the RtH text (hereafter called in-text) or by reading a separate constitutional article, outlining these principles, in conjunction with the RtH article. Of the 135 constitutions including health rights, 62 constitutions (45%) included in-text reference to equality and non-discrimination, while 111 constitutions (82%) included a separate article(s) mandating the right to be treated equally or freedom from discrimination.

4.1.2 International Law and Domestic Health Rights

Several key international human rights instruments include the RtH. States can choose to integrate these documents into their national constitutions or laws either by ratifying the instrument or through a domestic process. Many States referenced the directives of international law in their constitution; however, 31 constitutions explicitly stated the superiority of ratified human rights treaties and international laws to domestic constitutions and laws, shown in Figure 4-2. Four constitutions, in which international law held constitutional rank, did not include the domestic RtH. Therefore the RtH is indirectly applied in those four constitutions in which explicit health rights are absent. When considered with the number of constitutions enshrining health rights, these results indicate that 88 constitutions entrench either some for of health rights or give international laws constitutional rank, superior to that of the domestic laws.
4.2 Comprehensive Right to Health Provisions

The relative score of each constitution was used to rank the 'comprehensiveness' of each document in two different categories: one, the greatest number of health rights and corresponding principles (i.e. human rights and guiding principles); and two, the level of State commitment to the greatest number of health rights (not including human rights and guiding principles). The top ranked constitutions of each procedure are listed in Table 4-1 in alphabetical order. The original constitutional text, a visual summary and comments on the text of these constitutions is in Annex 5 and 6.

<table>
<thead>
<tr>
<th>Constitutions with the highest State commitment to the greatest number of health rights</th>
<th>Constitution with the greatest number of health rights &amp; corresponding principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>(greater detail in Annex 5)</td>
<td>(greater detail in Annex 6)</td>
</tr>
<tr>
<td>Mexico (1917)</td>
<td>Panama (1972 amended 1994)</td>
</tr>
</tbody>
</table>

Chart 4-1. Highest ranked constitutions employing a State duty to the greatest number of health rights (left column) or the greatest number of health rights and principles (right column). Constitutions falling in both categories are considered to have the most comprehensive text (bold).

A favorable or comprehensive right to health text mandates a strong State commitment to fulfill the greatest number of aspects of health with considerations for general human rights and right to health principles. The constitutional texts that ranked highest in both procedures describe above constitute the most favorable texts. These include the constitutions of Honduras, Panama, South Africa and Uganda. To demonstrate the comprehensiveness of these constitutions, the following diagrams are used to visualize the completeness of these four constitutions (although they also ranked high in State duty to fulfill health rights, which can not be determined from the diagram). Greater detail can be found in Annex 7, which includes the original constitutional text, a visual summary and comments on the text of these four constitutions.
4.2.1 Constitution of Honduras

The Constitution of Honduras mandates the realization of every child’s “right to grow and develop in good health.” Specific and targets steps towards this goal include the entitlement of mothers and children “to food, housing… and adequate medical services”. This provision acknowledges the intrinsic connection between mother and child health. The State has the responsibility to “maintain the suitable environment” in order to protect the health of all people and “promote the integrated programs to improve the nutritional state of the Hondurans”. A national plan of health is to be created in which “priority will occur to the neediest groups more”. It is the responsibility of the State to supervise the private activities of health according to the law.¹

4.2.2 Constitution of South Africa

The Constitution of South Africa employs the concept of progressive realization by stating “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.” Concrete and targeted steps are described as the universal right to access “health care services, including reproductive health care; sufficient food and water…” There are no provisions on maternal or child health care. Key contents of the underlying determinants of health and reference to environmental health are absent. Non-discriminatory access to treatment is described as “no one may be refused emergency medical treatment.” Despite the use of equality provisions, no specific considerations for vulnerable populations are included. Right to health principles are not employed in this text; general human rights principles of attention to vulnerable groups, participation and accountability are also absent from the health provisions in the Constitution of South Africa.²

The Constitution of Uganda states that all Ugandans have the “right and opportunities and access to... health services, clean and safe water,... decent shelter,... food security.” By describing the right bearers as “Ugandans”, this clause discriminates against non-citizens and is not an inclusive provision. The concept of progressive realization is applied to medical services where the State “shall take all practical measures to ensure the provision of basic medical services.” While there are considerations for the health needs of vulnerable and orphaned children, provisions for explicit equitable distribution and non-discriminatory access to health facilities, goods and services are absent. Safe and clean drinking water are also subject to progressive realization, in which the State is to “promote a good water management system at all levels.” In realizing food security, the State shall “establish national food reserves; and... encourage and promote proper nutrition through mass education and other appropriate means.” Basic sanitation is not considered in these provisions for the underlying determinants of health. The general human rights principles of participation and accountability are not included in this text.
The Constitution of Panama articulates the right to health as “the individual…is entitled to promotion, protection, conservation, recovery and rehabilitation of his health.” Article 110 of the Constitution of Panama imposes an absolute State responsibility to progressively realize the right to health through concrete and targeted actions (“the State is primarily obligated to develop the following activities…”). These actions include the education of individuals and groups about “individuals and collective rights and responsibilities, with respect to personal and environmental health.” Furthermore, mothers, young children and adolescents are guaranteed health care “during periods of pregnancy, lactation, childhood, and adolescence.” Reproductive services are not mentioned. Considerations for environmental health include the State responsibility to provide potable water and to promote available food of good quality through a national food policy aimed at “ensuring optimum nutritional conditions for the entire population.” In matters of occupational health, the State is required to take a regulatory and supervisory role. Basic sanitation and shelter or housing, two underlying determinants of health, are not included in the text.

Immunizations and access to treatment and comprehensive health care services, including medicines, are described. The universal provision of affordable health care and essential medicines is stipulated in the phrase “to all people” and the principles of affordability and access are applied in the text. Special consideration is given to those who can not afford the medicines. The State’s duty to regulate medical products according to the guiding principles of “availability, obtain ability, quality” is articulated in Article 111. Article 116 mandates public participation in health programs and particularly encourages accountability through public involvement in the “evaluation of different health programs.”

4.3 Focus on Essential Medicines

From the four provisions on essential goods and medicines, favorable text applying human rights principles and strong state commitments to essential medicines were identified. The original constitutional text, a visual summary and comments on the text of these four constitutions is in Annex 8.

First, in the Constitution of Panama (1972 amended 1994) “the State is primarily obligated to develop the following activities” including the provision of medicines “to all the people”. The phrase “in accordance with the requirements of each region” can be interpreted to mean that appropriate health care be provided to meet the medical needs and unique context of disease while also considering the geographic accessibility issues of each region. Affordability is mandated by the phrase “shall be given free to those who lack economic means”. Consideration for the affordability of goods and services is described in the phrase “[medicines shall be] given free to those who lack economic means to purchase them”. The Constitution continues, in the following article, to apply the principles of “availability; obtain ability, quality” to medical products, which can include essential medicines.

Second, the Constitution of Syria (1973) directs the State to “provide them (citizens) with the means of protection, treatment, and medication”. No considerations for human rights principles are included. The limitation of right bearers to “citizens” can discriminate against non-citizens and hamper their access to medicines.

Third, the Constitution of Mexico (1917) mandates that working women and their families “are entitled to medical and obstetrical attention, medicines…” in conjunction with their maternal needs. As the article only applies to working women and their families, access to medicines is not considered to be a universal right. However, specific consideration for the needs of maternity is favourable as women and mothers tend to comprise a vulnerable group that can be overlooked in the provision of health goods and services.

Fourth, the Constitution of the Philippines (1987) the State “endeavors to make essential goods, health and social services available to all people at an affordable cost.” Although the text does not explicitly include medicines, it can be interpreted from the inclusion of essential goods and health. The universal provision of goods (“to all people”) is mandated at an economically accessible cost (“provide free medical care to paupers”) with due consideration for the needs of vulnerable groups (“priority for the needs of the underprivileged sick, elderly, disabled, women and children”).

Taken together, these four constitutions address several human rights and right to health principles. However, clear considerations for several principles including the medical appropriateness and cultural acceptability of medicines (called appropriateness), general geographic and information accessibility, and

6 Ibid. Constitution of the Republic of Panama, art 111.
availability of medicines in sufficient quantity are absent. Furthermore, there are no provisions for means of public participation and accountability of medicines programs.

4.4 Global trends in health rights

This study found that the greatest State commitment to health rights is most likely to occur in lower income countries. We suggest that this finding is confounded by the date of constitutional adoption where higher income States are those developed countries with older constitutions while those States emerging from conflict and/or economic hardship and likely to have recently adopted a new constitution. Constitutions conceived prior to 1948, the beginning of international discourse on health rights, are unlikely to include the right to health. While, constitutions adopted within the last 60 years come of age at a time when the concept of the RtH has been debated and defined in international discourse leading to the identification the minimum core contents in the past 20 years. To illustrate this, constitutional commitments to the right to health in the in the last 60 years are shown in the graph below. The size of each bubble represents the number of constitutions adopted in the corresponding year and category of commitment.

The three categories of constitutional health rights, represented by the three levels of bubbles, include (from top to bottom):

- an entitlement or duty to health ("everyone has the right to health") shown in orange;
- a passive mention of health ("the right to health is recognized", "the state strives for the health of it's people", etc.) shown in blue or
- an absence of health rights, shown in green.

Figure 4-6.
Global level of constitutional commitment to health rights by date of constitutional adoption.
The orange bubbles in this graph demonstrate that the inclusion of strong State commitments to health rights has increased over the past six decades. Constitutions adopted since 1990 are more likely to constitutionalize strong commitments to health than constitutions adopted earlier. Chirwa confirms that constitutions adopted after 1989 include more socio-economic rights, including the right to health.\textsuperscript{10} Kinney and Clark cite evidence that the constitutions adopted since 1983, including constitutional reforms in Central and South America (adopted between 1983-1994) and constitutions of new democracies from the former Soviet Union (adopted between 1989-present), were created in consultation with several of the same experts, giving rise to similar language.\textsuperscript{11} This graph also shows that all constitutions adopted since 2000 include some form of commitment to health rights (i.e. duty/entitlement or passive mention). This progressive trend could indicate that governments are more willing to commit to health rights.

As shown by the above figure, older constitutions also included favorable health rights. An example can be drawn from the Constitution of Hungary (1949) in which the State iterates that “everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health.” This universal individual entitlement to health is to be progressively achieved through “institutions of labor safety and health care, through the organization of medical care... as well as through the protection of the urban and natural environments.”\textsuperscript{12} Despite the fact that this article pre-dates the ICESCR of 1966, the Hungarian Constitution describes health care and the underlying determinants as requirements to achieve the highest possible standard of health.

4.5 Summary

Almost three quarters of the constitutions worldwide directly enshrine broad health rights; however, not all health rights are subject to equitable distribution and non-discriminatory access, which is suggested by inclusive in-text language or a separate right to equality article. Health rights are indirectly invoked in an additional four constitutions in which international law supersedes domestic law.

The most comprehensive provisions related to health are found in the Constitutions of Honduras, Panama, South Africa and Uganda. Based on the diagrams above it is clear that, despite being the most comprehensive constitutions, none of these constitutions fulfill all of the RtH steps or core contents outlined in international law.

Essential medicines were identified as a component of the right to health in four constitutions. In summary, the Constitution of Panama imposes a primary State duty to supply medicines to all people while the Constitution of Syria limits the provision of medicines to citizens. The Constitution of Mexico describes medicines as an entitlement of working women and their families. Although the

\textsuperscript{10} Chirwa, DM. The right to health in international law: its implications for the obligations of State and non-state actors in ensuring access to essential medicine. \textit{South African Journal on Human Rights}, 2003, 19: (referenced p. 556)


Constitution of the Philippines does not directly name essential medicines, essential goods, which could be interpreted to include medicines, are provisioned to all persons with explicit consideration for marginalized groups.

The recognition of health rights in constitutional frameworks has increased in the last 60 years. These trends towards the right to health in modern constitutions signals the opportunity to entrench health rights in future constitutions.
This investigation builds on the past work of Toebes, Hogerzeil and the international community who have defined the human right to health and studied its application in domestic courts of law. This project has studied the entrenchment of the right to health and essential medicines in national constitutional frameworks. The source documents used in this study have been retained in order to build on this work through subsequent studies of constitutional provisions and national health legislation and/or policies.

This chapter describes the current position of national health rights and links these findings to areas of future research, including the conception and interpretation of the four essential goods and medicines provisions. The limits of this study are identified and suggestions for greater investigation of the relationship between constitutional frameworks, policy and legislative aspects, and health outcomes are made.

5.1 Limitations of present study

This study relied heavily on English terms endorsed by human rights treaties (i.e. tripartite typology: respect, protect, fulfill) that may not be universal. There may be context-specific words or provisions that can be misrepresented when translated into English. In cases of uncertainty, the author consulted the original language texts in French and Spanish for greater clarity. A similar study of the original language text could be helpful to avoid misinterpretations.

This study utilized international human rights idioms to analyze domestic constitutional text. The language may not have the same meaning in both contexts but international human rights discourse remains the only ‘standard’/‘accepted’ point from the human rights approach within constitutional texts can be assessed. The conceptual framework in this study provides a structure from which future constitutional texts can be modeled in order to align State aspirations with international human rights norms. In order to verify the outcomes of this study, future research can study the intention of the constitutional framers, which gives valuable insight on the text in order to clarify the meaning behind the provisions.

5.2 Avenues of future research

This study has identified four constitutions with clear commitments to essential goods and medicines. A future investigation into the process through which health rights and essential medicines were included in these constitutions could illuminate a common strategy used to entrench health rights or the mechanisms through which constitutional reform can be influenced. While constitu-
tional creations or reforms are unique processes that are highly dependant on contextual factors, this future research could yield an effective approach to highlighting the necessity of health rights, including essential medicines.

Hogerzeil et al. have demonstrated that the right to health in international and domestic realms has been interpreted to include the right to access essential medicines at the national judicial level; however the interpretation of the four explicit essential goods and medicines provisions in constitutional text has yet to be elucidated. A study of the historical judicial interpretation of the four constitutional provisions on essential goods and medicines could be valuable in order to determine the impacts of essential medicines provisions on the realization of health rights and health circumstances.

Constitutional commitments can be difficult to revise and some countries choose to create or amend national legislation and policies in order to meet their needs. Therefore, future research could analyze the national health legislation in countries with comprehensive constitutional health rights in order to draw positive examples from a study of national legislation and policies that reflect the values articulated in the constitutional text. Future case studies of national health policy and legislative structures that have been translated into high performing, equitable health systems and programs are warranted to determine the legal basis for health initiatives. As national health policy directives and legislation provide a framework for programs, insight into these legal frameworks can illuminate favorable examples or ‘best practices’ that promote universal access to health facilities, goods and services including essential medicines.

General Comment 14 indicates that States are required to progressively realize health rights thereby avoiding regressive measures with respect to health. Two constitutional provisions that deeply commit governments to fulfill health and embraced the concept of progressive measures were identified in this study. The Constitution of Ecuador (1998) directly states that there shall be no reduction in the fiscal allotment for public health thereby eliminating the possibility of regressive fiscal measures with respect to health. The Constitution of Ethiopia (1994) states that “the State has the obligation to allocate ever increasing resources to provide to the public health, education and other social services.” A similar example comes from Byrne, who discusses the Hungarian Constitutional Court’s interpretation of the constitutional right to health as a State duty to maintain a certain level of services that can not be diminished during economic busts or limited or repealed by subsequent law. These examples of strong national commitments to realizing health could be interesting case studies of judicial provisions that carry economic impacts that have yet to be fully described.

1 Hogerzeil HV, Samson M, Casanovas JV, & Rahmani-Ocora L. Is access to essential medicines as part of the fulfillment of the right to health enforceable through the courts? The Lancet, 2006 368:311.


In this study we found no relationship in the crude comparison of the comprehensiveness of constitutional health provisions and the health system performance of the corresponding country, ranked in the World Health Report 2000\(^6\). A more detailed investigation into the relationship between constitutional provisions and health system outcomes, particularly pertaining to the provisions and resulting outcomes for vulnerable and marginalized groups, is warranted.

The private sector plays a pivotal role in ensuring access to essential medicines. Although constitutional law and human rights are applied to the relationship between individuals (or groups of individuals) and governments, there are emerging discussions about the private sector's moral obligations to advance access to medicines.\(^7\) Chirwa argues that the private sector has the responsibility to respect health, which entails, at the very minimum, “to refrain from imposing unreasonable charges for essential medicines and services related to it, to provide the necessary information relating to essential medicines, not to discriminate, and to ensure quality of essential medicine.”\(^8\) This study has uncovered constitutional directives in which the State is responsible for monitoring and regulating the quality of medicines through a national policy. Yet the question arises: to what extent is the State, a regulatory body, responsible for enforcing human rights responsibilities on the private sector with respect to essential medicines? The future impacts of State responsibilities to ensure that the private industry does not discriminate or impose unreasonable charges with respect to access of medicines have not yet been elucidated in academic literature.

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7 Chirwa, DM. The right to health in international law: its implications for the obligations of State and non-state actors in ensuring access to essential medicine. South African Journal on Human Rights, 2003, 19: (referenced p. 541)

8 Ibid. Chirwa, DM. (Referenced p. 566)
Components of the right to health

Examples of constitutions including medicines

Examples of constitutions including other health rights

Essential medicines concept (medicines required to meet the priority health care needs of a population)

Constitutions of Panama, Mexico, Syrian Arab Republic

"medicines" or "medication"

Constitution of the Philippines "essential goods, health"

Greatest commitment (includes a State obligation or absolute responsibility to take steps to fulfil the right to health and/or an individual entitlement to the right to health)

Constitution of Panama "…the State is primarily obligated to develop the following activities…supply medicines to all the people…"

Constitution of the Syrian Arab Republic "The state protects the citizens' health and provides them with the means of protection, treatment, and medication."
6 Recommendations

There is an opportunity to align constitutional aspirations with international human rights standards. In order to achieve this, constitutional health rights regarding health goods and/or medicines need to consider the following key components derived from general human rights principles and ‘General Comment 14: The right to the highest attainable standard of health’ (RtH criteria, tripartite typology and right to health principles).

<table>
<thead>
<tr>
<th>Components of the right to health</th>
<th>Examples of constitutions including medicines</th>
<th>Examples of constitutions including other health rights</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
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<td>(medicines required to meet the priority health care needs of a population)</td>
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<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Greatest commitment</strong></td>
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<td></td>
</tr>
<tr>
<td>(includes a State obligation or absolute responsibility to take steps to fulfil the right to health and/or an individual entitlement to the right to health)</td>
<td>Constitution of the Syrian Arab Republic “The state protects the citizens’ health and provides them with the means of protection, treatment, and medication.”</td>
<td></td>
</tr>
</tbody>
</table>
### Components of the right to health

**Equality and non-discrimination**

(Universal inclusion of all persons in health provisions without discrimination of any kind)

<table>
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<th>Examples of constitutions including other health rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution of Panama “...supply medicines to all the people...”</td>
<td>Constitution of Estonia “This right [to health] shall exist equally for Estonian citizens and citizens of foreign states and stateless persons who are present in Estonia.”</td>
</tr>
<tr>
<td>Constitution of the Philippines “The State shall... endeavor to make essential goods, health and other social services available to all people at affordable cost.”</td>
<td>Constitution of Nicaragua “The services of education, health, and social security are irrenouncable duties of the State, which is obligated to provide them without exclusions, to improve and broaden them...”</td>
</tr>
<tr>
<td></td>
<td>Constitution of South Africa “No one may be refused emergency medical treatment”</td>
</tr>
<tr>
<td></td>
<td>Constitution of Cuba “The state consecrates the right achieved by the Revolution that all citizens, regardless of race, skin color, sex, religious belief, national origin and any situation that may be harmful to human dignity: - be given health care in all medical institutions”</td>
</tr>
</tbody>
</table>
### Components of the right to health

**Right to Health Principles:**

- **Affordability**
  (at a price that is economically accessible to all persons, which could include the provision of free goods and services for those who require it)

- **Accessibility**
  (considerations for economic, geographic and informational access to health goods and services)

- **Availability**
  (presence of goods or services in sufficient quantity to satisfy needs)

- **Appropriateness**
  (includes medical efficacy, suitability to the diagnosis and cultural acceptability of the good or service)

- **Assured Quality**
  (safe goods and services of high quality)

### Examples of constitutions including medicines

- **Constitution of Panama**
  “The state shall envelop a national policy regarding medical products that promotes the production, availability; obtain ability, quality, and control thereof throughout the country.”

- **Constitution of Philippines**
  “The State shall endeavor to make essential goods, health and other social services available to all people at affordable cost. The State shall endeavor to provide free medical care to paupers.”

### Examples of constitutions including other health rights

- **Constitution of Ecuador**
  “The State guarantees the right to health through the... possibility of permanent and uninterrupted access to health services, in conformity with the principles of equity, universality, solidarity, quality and efficiency.”

- **Constitution of Ecuador**
  “The State shall create a national health policy and shall oversee its applications; ... it shall recognize, respect, and promote the development of traditional and alternative medicines, the use of which shall be regulated by law; and it shall impulse scientific-technological advances in the area of health, subject to bioethical principles.”

- **Constitution of Nicaragua**
  “Free health care is guaranteed for the vulnerable sectors of the population, given priority to the completion of programs benefiting mothers and children.”
<table>
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</tr>
</thead>
</table>
| **General Human Rights Principles:**  
  **Participation**  
  (inclusion of all persons in planning and execution of health initiatives) | Constitution of the Philippines  
  “There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children.” | The Constitution of Viet Nam  
  “Priority is given to the program of health care for highlanders and various ethnic minority groups.” |
| **Attention to vulnerable groups**  
  (consideration for the health needs of vulnerable and marginalized groups) | Constitution of Panama  
  “Communities have the duty and the right to participate in the planning and execution and evaluation of different health programs.” | |
| **Accountability**  
  (transparency of health initiatives, including effective mechanisms for evaluation, complaints and redress) | | |
At the conclusion of this study we are aware that health rights are enshrined in nearly three quarters of constitutions worldwide. Furthermore, 31 (16%) countries hold international law, which can include the right to health, superior to domestic law. More specific entitlements to health facilities, goods and services are recognized in half of national constitutions while only 2% (4) constitutions cite the provision of essential goods or medicines as part of the right to health. This baseline study indicates the much progress is needed in order to gain widespread State commitment to universal access to essential medicines.

There are two routes through which the right to health can be recognized and implemented in national frameworks. One option is to recognize and integrate international law in national constitutions in order to entrench health rights. The International Covenant on Economic, Social and Cultural Rights, accompanied by General Comment 14, is a particularly pertinent document to the advancement of health rights. It may be more feasible for the international community to advocate for the recognition of international laws within national constitutions than for substantial creations or changes that include explicit health rights.

Alternatively, national constitutions can be revised to include the right to health and essential medicines. Newly produced constitutions can also include these rights, which is a trend that has been identified in this study. With this approach in mind, this study has identified examples of favorable constitutional commitments to the provision of essential medicines, defined in accordance with right to health and human rights principles, with particular consideration for non-discriminatory access and equitable distribution of health goods and services. These examples can serve as resources to the international community wishing to align domestic constitutional aspirations with human rights standards.

The highest attainable standard of health can only evolve from the interplay of all components of health. This study has identified the most comprehensive right to health articles. While no article includes all aspects of health, these complete provisions serve as examples of strong State commitments. Several of the examples highlighted can be used to build a ‘patchwork’ article, in which all components are addressed. With this resource, the WHO can maximize those opportunities where national health commitments can be aligned with the health directives in international law and human rights principles.

Constitutional frameworks are valuable aspirational statements on which domestic legislation and policy directives are based. This study has identified examples of favorable right to health text that incorporates essential medicines and the human rights approach. These examples can be a resource to States motivated to achieve the universal right to health. Despite limited resources, willing governments can identify and gradually implement targeted and concrete ac-
tions through a participatory process where priority medical needs and available resources are considered. In this way all States can fulfill their health goals over time.
Annex 1: International & Regional Treaties

1.1 International Law

1.1.1 International Covenant on Economic, Social and Cultural Rights (1966)

“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) [Right to Maternal and Child Health] The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   b) [Right to Healthy Environments] The improvement of all aspects of the environmental and industrial hygiene;
   c) [Right to Prevention, Treatment, and Control of Disease] The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   d) [Right to Access Health Facilities, Goods and Services] The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

1.1.2 Covenant on the Elimination of All Forms of Discrimination Against Women (1979)

“Article 12.
1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.”

1.1.3 Covenant on the Rights of the Child (1989)

“Article 24
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation
of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries."

1.1.4 General Comment 14: The Right to the Highest Attainable Level of Health (2000)

The following are the core contents of the Right to Health, as named in General Comment 14.

"Point 43.

a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;

b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;

c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;

d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;

e) To ensure equitable distribution of all health facilities, goods and services;

f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely moni-
tored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.”

“Point 44.

a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;

b) To provide immunization against the major infectious diseases occurring in the community;

c) To take measures to prevent, treat and control epidemic and endemic diseases;

d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;

e) To provide appropriate training for health personnel, including education on health and human rights.”

1.2 Regional Treaties

1.2.1 European Social Charter (1961)

“Part I.

Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

“Part II. Article 11

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in cooperation with public or private organizations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;

2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3. to prevent as far as possible epidemic, endemic, and other diseases.”

1.2.2 Protocol of San Salvador (1988)

“Article 10

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental, and social well-being.

2. In order to ensure the exercise of the right to health, the State Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

a. Primary health care, that is, essential health care made available to all individuals and families in the community;

b. Extension of the benefits of health services to all individuals subject to the State’s jurisdiction;
c. Universal immunization against the principal infectious diseases;
d. Prevention and treatment of endemic, occupational and other diseases;
e. Education of the population on the prevention and treatment of health problems;
and
f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

1.2.3 African Charter on Human and Peoples’ Rights (1981)

“Article 16
1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”

1.2.4 Cairo Declaration on Human Rights in Islam (1990)

“Article 17
a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development and it is incumbent upon the State and society in general to afford that right.
b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.
c) The State shall ensure the right to of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.”
Annex 2: Health criteria & synonyms

Right to Health Criteria

Health
- health (promotion)
- health (protection)
- (right to) health
- a standard of living adequate for the health and wellbeing
- to grow and develop in health
- to a level of life sufficient to assure his health
- activities contributing to the improvement of human health

Maternal Health Care
- maternity care
- priority given to (aforementioned health care) programs benefiting mothers
- Women’s health and safe motherhood
- Reduce maternal mortality
- to prevent harm arising from pregnancy and childbirth
- health care during periods of pregnancy
- health care to pregnant women
- expectant mothers
- special care shall be given for the mother, [including] food, housing, education, recreation, and exercise and adequate medical services.
- Services in connection with pregnancy, confinement, and the post natal period
- Protection of the health of women
- health care during periods of pregnancy, lactation, childhood
- NOT protection of motherhood, to protect mothers; motherhood and childhood are entitled to special care and assistance/entitled to special care; privileges to pregnant women and mothers; care for pregnant women

Child Health Care
- health care during periods of childhood
- special care shall be given for the child [including] food, housing, education, recreation, exercise and adequate medical services.
- Reduction of stillbirth rate and of infant mortality and the healthy development of the child.
- Priority given to (aforementioned health care) programs benefiting children
- Ensure the wellbeing and development
- Breastfeeding
- NOT protection of childhood; entitled to special care; provide child care

Reproductive and Sexual Health Care
- emergency obstetric care
- to reduce morbidity from unsafe abortion
- family planning

Environment (General Conditions)
- conditions for a healthy environment
- the health promotion for sustainable health conditions of the public
- improve environment
- work and community environment
- maintain a satisfactory environment
- family environment and community
- improving conditions of family
- economic, social, and cultural [environment]
- a healthy environment
- protection from environmental pollution creating health risks
- industrial hygiene
- prevention, treatment and control of occupational diseases
- Occupational health
- prevention, treatment and control of occupational diseases + measures to improve industrial hygiene
- Ecologically adequate environment
- Health of all persons in employment
- family environment and community
- discourage abuse of alcohol and other addic-
tions harmful to human health
• Causes of ill health
• Living conditions
• To combat contagious diseases through environmental health
• Ecological welfare
• Compulsory treatment of drug addition
• Occupational disease
• Labour safety
• Environmental protection
• Dangers and risks of environmental pollution
• Health, safety and welfare of persons in employment
• Reduce exposure to harmful disease or detrimental conditions
• Healthy natural environments
• Prevent occupational disease and accidents
• Safe, hygienic working conditions
• NOT adequate working conditions; including beautiful or resourceful environment without a reference to health

Shelter and Housing

Sanitation
• sanitary/epidemic well-being
• hygiene
• hygienic conditions
• sanitary welfare
• sanitary and social measures
• public health and hygiene

Water

Food
• proper nutrition
• nutritional status

Prevent, Treat and Control Disease
• other measures to prevent the outbreak of disease
• (methods of) prophylaxis
• Disease prevention
• primary and secondary prevent, halt, or retard existing disease
• fight of epidemics and endemics
• health conservation

• primary health care
• combat epidemic illnesses
• restoration
• to preventatives and remedial medical care and rehabilitation
• health issues
• protection from disease
• methods of prophylaxis
• (priority given to) preventatives activities
• Preventatives measures, promotion, recuperation, rehabilitation, coordination
• Health promotion, protection, and recovery
• Remedial care
• Preventatives treatment
• Priority given to preventatives activities
• Means of protection
• Health rehabilitation
• Preventative programs
• emergency attention
• urgent medical care
• disaster relief and humanitarian aid
• NOT including rehabilitation of disabled persons

Essential Drugs
• traditional and alternative medicines
• medicines
• essential goods
• medication
• NOT modern medicine and traditional Chinese medicine (the practice not the medicine)

Health Facilities, Goods and Services
• medical treatment
• national health service
• health services
• health facilities (hospitals and other institutions)
• activities related to health
• health/medical insurance services
• health assistance
• health care protection programs
• health establishments
• health infrastructures
• health care services (facilities for the treatment of illness and rehabilitation of health)
• activities
• health measures
• comprehensive health care services
• human health resources and units
• equipment to combat communicable diseases
• medical products
• building and development of medicine
• Preventatives and curative facilities
• Basic health care
• Services for health protection
• medical services
• medical care
• medical aid
• medical exams
• medical attention
• medical assistance
• medical consultation
• welfare medical services
• regular medical examinations
• medical protection
• primary health care, essential health care
• basic public health services
• NOT care and help; health systems

Education/Access to Information
• sexual and reproductive education
• training
• educational actions
• information on the protection of health

Public Health
• activities of public character
• health of population
• public health activities and services
• other services as it considers necessary for the public health
• funding of the relevant socio-economic, medical and sanitary, health improvement and prophylactic programs
• public health institutions
• epidemiological welfare

National Health Policy or Strategy
• NOT national service or system Level of State commitment

Levels of State commitment

Recognize
• to recognize
• to give full consideration
• to pay attention/ to attend
• to call for
• to assist in implementation (second actor)
• with due regard to
• to support (second actor)
• to encourage (second actor)
• to take into consideration
• of basic importance

Protect
• to care for/to look after
• to prevent harm from
• to safeguard
• to abolish the deprivation of... by a third party
• not endangered or abused
• to conserve
• to security of/(health) security

Progressive Realization (Promote)
• take measures to
• within the limits of resources
• [aims] to promote
• within available resources
• gradual creation of
• to the extent that resources permit
• in so far as possible
• to seek means
• according to its possibilities
• development of/to develop
• systematic improvement
• to strive for the improvement
• to strive
• to advance
• to promote the measures needed to ensure
• with a view to securing the provision of
• to expand
• to foster
• take measures to constantly improve
• to take every step reasonable and necessary
• to benefit from any measures
• to increase
• to achieve the full realization
• to remove as far as possible
• to take all practical measures to promote
• to seek means of
• to endeavor
• to endeavor to bring about

Fulfill
• to make effort
• to take positive action
• the provision of/to provide
• to train
• to combat
• to organize
• to maintain
• to establish
• to see to
• to provide/to provide means of
• to provision
• to create
• no one shall be deprived/shall not be denied
• to adopt
• to offer
• to determine
• to cover
• to allow
• to improve
• to raise
• to achieve
• to receive
• make an investment in
• through (by means of)
• to reduce
• to extend/the extension of
• to organize
• to take all practical measures to ensure the provision
• to secure
• to take appropriate measures

Duty/Entitlement
• the state is obliged (to take measures to ensure)
• to the enjoyment of
• to assure
• to ensure/to ensure the development of
• to guarantee
• in the domain of the State
• to benefit from
• state responsibility
• individual right
• duty

Right to Health Principles

Access
(considerations for economic, geographic and informational access to health goods and services)
• egalitarian access
• effective food delivery (physical access)
• obtain ability
• equal access
• available to all
• in rural areas
• in accordance with the requirements of each region
• throughout the whole country
• create the necessary conditions for access health care
• accessible to all
• of all regions
• coverage of resources throughout all the country
• to provide these services to the village
• equitable distribution of economic resources among geographic areas
• rural economic collectives

Affordability
(at a price that is economically accessible to all persons, which could include the provision of free goods and services for those who require it)
• free, gratis
• system of exemption from and reduction of fees

Appropriate
(includes medical efficacy, suitability to the diagnosis and cultural acceptability of the good or service)
• the needs of Malawian society
• rational and efficient coverage of human health resources
• acceptability

Quality
(safe goods and services of high quality)
• international standards of health care
• biological benefit [of suitable food]
• clean and safe (water)

Availability
(presence of goods or services in sufficient quantity to satisfy needs)
General Human Rights Principles

Accountability
(transparency of health initiatives, including effective mechanisms for evaluation, complaints and redress)

Participation
(inclusion of all persons in planning and execution of health initiatives)
- in which the beneficiaries participate
- private sector and the communities in participating in
- planned and administered in cooperation with…
- pluralistic and decentralized

Vulnerable Groups
(consideration for the health needs of vulnerable and marginalized groups)
- aged, old-age
- women’s health as well as that of their offspring
- people with disabilities, sickness
- contingencies of maternity (when maternal health care is not the subject of the article)
- programs benefiting women and children (when mother and child health is not the subject of the article)
- orphans
- neediest groups
- provisions for females health
- programs benefiting mothers and children
- highlanders and various ethnic minority groups
- girls infants and children (with respect to child health)
- pregnant and nursing women (with respect to health)
- high risk groups
- those whose poverty makes them vulnerable

Equality/Non-discrimination
- universal coverage, complete coverage
- uniformity
- everyone in the territory, including the stateless and resident of foreign states
- entire population
- each person
- the human being
- the individual
- inhabitants of the territory

- To reduce disparities between and within countries
- NOT resident
Annex 3: Summary chart of constitutional health provisions

This table summarizes the step and core contents in each constitution that was selected for analysis in this study.

Legend:
‘+’ indicates the content is present
‘+++’ indicated that the content is described as a high order of State responsibility with regard for human rights principles and guiding principles

Definitions:
World Bank Income Economy:
- L - Low
- LM - Lower middle
- UM - Upper middle
- H - High

WHO Region: see Abbreviations preface for definitions

Right to health: a right to health, health facilities, goods or services

Equality within RtH Article: use of inclusive language in health provision (‘+’ if present; blank if absent)

Equality outside RtH Article: additional constitutional article addressing the right to equality and/or freedom from discrimination (‘+’ if present; blank if absent)

International Law: the presence of a constitutional provision in which international law is of higher authority than national law (‘+’ if present; blank if absent)
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Legend: L = Low Income, LM = Lower Middle Income, H = High Income, UM = Upper Middle Income, ++ = Not Available

*Note: The table represents various health-related factors and their availability in different countries.*
<p>| International Law | + | + | + | + | - | + | + | + | + | + | + | + | + | + |
| Equalities (outside) | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Equalities (within) | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Struggle | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| National Health | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Immunizations | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Essential Drugs | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Treat Disease | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Prevent, Control &amp; | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Shelter &amp; Housing | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Food | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Water | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Sanitation | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Sexual Health | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Reproductive &amp; | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Child Health Care | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Maternal Health | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Information &amp; | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Education &amp; | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Goods &amp; Services | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Health Facilities, | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Conditions | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| Right to Health | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| WHO Region | LM | WPRO | PAHO | AFRO | AFRO | AFRO | AFRO | EURO | PAHO | EURO | PAHO | SEARO | AFRO | LM |
| CHINA | COLOMBIA | COMOROS | CONGO | COTE D’IVOIRE | CROATIA | CUBA | CZECH | REPUBLIC | DOMINICAN | REPUBLIC | DEMOCRATIC | REPUBLIC OF | PEOPLE’S | REPUBLIC OF | KOREA | DEMOCRATIC | REPUBLIC OF | THE CONGO | ECUADOR | EGYPT | EL SALVADOR | EQUATORIAL | EQUATORIAL | EQUATORIAL | ERITREA |</p>
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**Constitution**

- International law (with article) +
- Equality (outside) +
- Equality (within article) +
- National Health Strategy +

**WHO Region**

- EURO +
- AFRO ++
- UM +++
- LM ++++
- HEMRO ++++
- PAHO ++++
- SEARO ++
- EMRO ++
- WPRO +

**Date of Adoption**

- 1992
- 1994
- 1999
- 1991
- 1991
- 1995
- 1995
- 1992
- 1985
- 1990
- 1994
- 1996
- 1982
- 1949
- 1950
- 1943
- 1945
- 2005
- 1948
- 1948
- 1995
- 1962
- 1991

**World Bank Income**

- H
- L
- LM
- UM
| International Law | + | + | + | + | + | + | + | + | + | + | + |
| Equality (outside article) | + | + | + | + | + | + | + | + | + | + | + |
| Equality (within RIGHT) | + | + | + | + | + | + | + | + | + | + |
| National Health Strategy | + |
| Immunizations | + |
| Essential Drugs | + |
| Treat Disease | + |
| Prevent, Control & Eliminate | + |
| Shelter & Housing | + |
| Food | + |
| Water | + |
| Sanitation | + |
| Sexual Health & Reproductive Health | + |
| Child Health Care | + |
| Maternal Health Care | + |
| Information | + |
| Education & Training | + |
| Goods & Services, Facilities, Resources, Facilities, Services | + |
| Environment & Land Use | + |
| Right to Health | + |

### WHO Region

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- SYRIAN ARAB REPUBLIC
- TAJIKISTAN
- THAILAND
- TIMOR-LESTE
- TOGO
- TUNISIA
- TURKISTAN
- TURKEY
- TURKMENISTAN
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- UKRAINE
- UNITED ARAB EMIRATES
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- VIET NAM
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Annex 4: Summary of health steps & core content

Right to Health Steps

The right to health facilities, goods or services is the most frequently cited step, occurring in 96 constitutions of the 186 accessible constitutions. Note that the maternal and child health care step will be presented as two separate contents in the core contents section below. The number of constitutions that cite each of the RtH step is shown in the Figure below.

![Cluster Components of the Right to Health](image)

Right to Health Core Content

The core contents of the RtH are rarely named in constitutional health provisions. With three constitutional provisions worldwide, the right to essential medicines is among the least common aspect of the RtH included in constitutional text. Figure 4 below represents the number of constitutions that reference each of the core components.
Figure 4.2 Total number of constitutions that cited the components of the right to health.
Annex 5: Articles with strong State commitments to constitutional health rights

These example constitutional texts were selected because they impose the highest State duty or individual entitlement to the health rights named in each article. As these texts were only selected for the use of binding language, bear in mind that these examples do not include a significant number of health rights. The most binding constitutional health provisions were found in the following constitutions:

- Constitution of Azerbaijan
- Constitution of Cameroon
- Constitution of Congo
- Constitution of Democratic Republic of the Congo
- Constitution of Mexico
- Constitution of Sri Lanka
- Constitution of Viet Nam


Figure 5.1
Diagram of health rights addressed in the Constitution of Azerbaijan (1995). The boxes in black were mentioned; the boxes in grey were absent.
I. Everyone has the right to live in a healthy environment.
II. Everyone has the right to collect information on the environmental situation and to get compensation for damage rendered to the health and property due to the violation of ecological rights.

Article 41. Right to Health Protection.
I. Everyone has the right to Health Protection and Medical Aid.
II. The State acting on the basis of various forms of property implements necessary measures to promote the development of all aspects of health services, ensure the sanitary-epidemiological well being creates various forms of medical insurance.
III. Authoritative Persons are made answerable for concealing the facts and cases that create danger to life and health of people.

Constitution of the Cameroon (1972 amended 1996)

Article 25
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of 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.
Constitution of the Congo (1992)

Figure 5.3
Diagram of health rights addressed in the Constitution of the Congo (1992). The boxes in black were mentioned; the boxes in grey were absent.

Article 11 [Equality, Gender Equality, Liability]

(1) The State shall assure the equality of all citizens before the law, without discrimination of origin, social or material situation, racial, ethnic and regional origin, sex, instruction, language, attitude vis-a-vis religion and philosophy, or place of residence. It shall respect all the rights and liberties within limits compatible with public order and good mores.

(2) The State shall have the duty to strive for the elimination of any form of discrimination with regard to women and to assure the protection of their rights in all domains of private and public life such as stipulated in the international Declarations and Conventions ratified by the Congo.

(3) Any act which accords privileges to nationals or limits their rights by reason of the considerations targeted in Paragraph (1) shall be punished by the penalties provided for by law.

Article 34 [Health, Aged, Handicapped]

(1) The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.

(3) Aged or handicapped persons shall have the right to specific measures of protection coinciding with their physical and moral needs.
Author’s comments:

There is an explicit entitlement or goal (every citizen shall have the right to a level of life sufficient to assure his health) and the means by which the goal will be realized are outlined (food, clothing, shelter, medical care)

Consideration for the special needs of the aged or handicapped persons.

**Constitution of the Democratic Republic of the Congo (2006)**

Figure 5.4
Diagram of health rights addressed in the Constitution of the Democratic Republic of the Congo (2006). The boxes in black were mentioned; the boxes in grey were absent.

Article 13

No Congolese can, on grounds of education and access to the public office nor in any other matter, to be the subject of a discriminatory measurement, which it results from the law or an act of the executive, because of its religion, of his family origin, his social condition, his residence, his opinions or his political convictions, of his membership of a race, an ethnic group, a tribe, a cultural or linguistic minority.

Article 42.

The public authorities are obliged to protect the young against any attack on their health, education or integral development.

Article 47.

The right to health and food security is guaranteed. The law fixes the fundamental principles and the rules of public health and food security.
Article 48.

The right to decent housing, access of potable water and electric energy are guaranteed. The law governs the exercise of these rights.

Author’s Comments:
The constitution gives absolute rights to health, food, housing and potable water (Articles 47 & 48). The protection of child health is mandated (protect the young against any attack) but the State is under no obligation to take positive action i.e. provide health services.

**Constitution of Mexico (1917)**

![Diagram of health rights](image)

Article 123.

The Congress of the Union, without contravening the following basic principles, shall formulate labor laws which shall apply to:

1. Social security shall be organized on the following minimum bases:
   a. It shall cover work accidents and occupational diseases, non-occupa-
tional illness and maternity; and retirement, disability, old age, and death.
   b. In case of accident or illness, the right to work shall be retained for the
time specified by law.
   c. Women shall be entitled to one month’s leave prior to the approximate
date indicated for childbirth and to two months’ leave after such date. During the
nursing period, they shall have two extra rest periods a day, of a half hour each,
for nursing their children. In addition, they are entitled to medical and obstetrical
attention, medicines, nursing aid, and infant care services.

d. Members of a worker’s family shall be entitled to medical attention and medicines, in those cases and in the proportions specified by law.

Author’s Comments:
Article 123 mandates the provision of essential medicines restricted to women, workers, and their families. This provision excludes those not employed in the formal sector. In the same article, point 1(c) could be interpreted as the right of pregnant women to medicines and applied only during that period of motherhood (or during the pre-/post-natal period). This limits the scope of essential medicines.

Constitution of Sri Lanka (1978)

Article 12. Right to equality.

(1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds:

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office:
Provided further that it shall be lawful to require a person to have sufficient knowledge of any language as a qualification for any such employment of office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

(3) No person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

(4) Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.

Article 22. Special rights of children.

(2) Every child has the right - (b) to basic nutrition, shelter, basic health care services and social services.

Article 25. Social rights.

(1) Every citizen has the right to have access to:

(a) health-care services including emergency medical treatment;

(c) appropriate social assistance.

Article 52. Principles of State Policy.

The following principles shall guide the State in making laws and in the governance of Sri Lanka -

(e) the realization of an adequate standard of living for all citizens and their families including adequate food, clothing, housing and medical care;

Author’s Comments:

The constitutional provisions make a strong commitment to health rights (Art 25 every citizen has the right to have access to health care services; Art 22 every child has the right to basic health services). The inclusively and universality of these rights can be strengthened. Use of the word citizen limits the application of all rights. Although the constitution contains an Right to Equality (article 12), again citizens are named as the right bearers in the health clauses (article 25).

Emergency medical treatment is mandated, carrying implications for the obligation to provide accessible medical care (Art 25 every citizen has the right to have access to - emergency medical treatment).
Article 39.

The State makes investment in, ensures the development of, and exercises unified management over health care activities for the people. It mobilizes and organizes all social forces in the building and development of Vietnamese medicine, especially preventative medicine; combines disease prevention with medical treatment; develops and combines modern and traditional medicine and pharmaceutical practices; combines the development of State health care with that of folk medicine; offers health insurance; and creates the necessary conditions for all citizens to access health care. Priority is given to the program of health care for highlanders and various ethnic minority groups. Organizations and individuals are strictly forbidden from illegally providing health care and from producing or selling pharmaceutical products that are harmful to the health of the people.

Article 40.

The state, society, families, and citizens shall be duty bound to provide health care and protection to mothers and children to carry out population and family planning programs.

Article 61.

The citizen is entitled to health care. The State shall establish a system of hospital fees, and for exemption from and reduction of such fees. The citizen has
the duty to observe all regulations on disease prevention and public sanitation It is strictly forbidden to produce, transport, deal in, store and use unlawfully opium and other narcotics. The State shall enact regulations on compulsory treatment of drug addiction and treatment of dangerous social diseases.

Article 71.

The citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honor and dignity.

Author’s Comments:

Article 61 mandates the treatment of addictions, which is a component of environmental health that is seldom mentioned. The phrase ‘creates conditions to access health care’ in Article 39 could account for all the barriers to health services. Article 39 also mandates health insurance, which can be a strategy to achieve access to affordable health care, but is not a requirement because health insurance does not necessarily promote the affordability or accessibility of services. The phrase ‘combines modern and traditional medicine and pharmaceutical practices’ describes the initiative to harmonize traditional and modern practices that underlies the goal of achieving cultural acceptability for medically sound therapies. This article gives priority to vulnerable groups based on ethnicity and geography, specifically recognizing ethnic minorities and highlanders.
Annex 6: Articles including the most health steps/components and principles

These constitutions were selected on the basis of the number of health rights, human rights principles (i.e. accountability, equality, attention to vulnerable groups, participation) and guiding principles (i.e. affordability, accessibility, availability, quality, acceptability) that were included. Keep in mind that the text in this annex does not necessarily impose the highest State duty to fulfill these criteria. Constitutions that include the greatest number of health rights and principles are:

- Constitution of Cuba
- Constitution of Dominican Republic
- Constitution of Ecuador
- Constitution of Ethiopia
- Constitution of Peru
- Constitution of Philippines
- Constitution of Venezuela

Constitution of Cuba (1992)

Figure 6.1
Diagram of health rights addressed in the Constitution of Cuba (1992). The boxes in black were mentioned; the boxes in grey were absent.
Article 43.
The state consecrates the right achieved by the Revolution that all citizens, regardless of race, skin color, sex, religious belief, national origin and any situation that may be harmful to human dignity:
- be given health care in all medical institutions;

Article 44.
Women and men have the same rights in the economic, political, cultural and social fields, as well as in the family. The state looks after women’s health as well as that of their offspring, giving working women paid maternity leave before and after giving birth and temporary work options compatible with their maternal activities:
- by promoting the health publicity campaigns, health education, regular medical examinations, general vaccinations and other measures to prevent the outbreak of disease.

All the population cooperates in these activities and plans through the social and mass organizations.

Article 50.
Everyone has the right to health protection and care. The state guarantees this right;
- by providing free medical and hospital care by means of the installations of the rural medical service network, polyclinics, hospitals, preventative and specialized treatment centers;
- by providing free dental care;
- by promoting the health publicity campaigns, health education, regular medical examinations, general vaccinations and other measures to prevent the outbreak of disease.

All the population cooperates in these activities and plans through the social and mass organizations.

Author’s Comments:
Article 50 considers geographical barriers to health care and instructs the installation of care facilities in varied locations (rural medical service network) at all levels of medical care (polyclinics, hospitals, preventative and specialized treatment centers). This constitution is one of the few to include vaccinations as part of the right to health. Education initiatives mention both public education and health publicity campaigns.
Constitution of Dominican Republic (1966 amended 2000)

Part 15. With the purpose of strengthening women’s stability and well-being, her moral, religious and cultural life, the family will receive from the State the greatest possible protection. Maternity, whatever condition or state of the woman, will enjoy the protection of public powers and have right to the formal attendance in case of neglect. The State will take the measures including caring for hygiene and others to avoid, as far as possible, infantile mortality and to realize the healthy development of the children.

Part 17. The State shall encourage the progressive development of social security so that every person shall be able to enjoy adequate protection against unemployment, sickness, disability, and old age. The State shall offer its protection and assistance to old people, in a manner determined by law in order that their health shall be preserved and their well-being ensured. The state shall also offer social assistance to the poor. This assistance shall consist of food, clothing, and insofar as possible, adequate housing. The State shall strive for improvement in nourishment, sanitary services, and hygienic conditions; it shall seek means of preventing and treating diseases, epidemic, endemic and others, as well as, of providing free medical and special attention to those who require it owning to their meager economic resources. The State shall combat the social vices by adequate measures and with the help of international conventions and organizations. Specialized centers and organs shall be established for the correction and eradication of these vices.
Author’s Comments:
Article 8.15 acknowledges the goals of mother and child health (to avoid infant mortality and realize the healthy development of children) but the steps that must be taken to achieve this goal could be clearer (i.e. clearer than care for hygiene, maternity (women in labour) have right to the formal attendance).

Article 8.17 referencing social services includes medical attention and the underlying determinants of health (food, adequate housing), which are directed towards vulnerable groups (the poor, to old people, meager economic resources). This part lacks provisions for universal access to these services.

**Constitution of Ecuador (1998)**

![Diagram of health rights addressed in the Constitution of Ecuador (1998). The boxes in black were mentioned; the boxes in grey were absent.]

**Figure 6.3**

Article 42.
The state guarantees the right to health, its promotion and protection, through the development of food security, the provision of potable water and basic sanitation, the promotion of family health, work and community environment, and the possibility of permanent an uninterrupted access to health services, in conformity with the principles of equity, universality, solidarity, quality and efficiency.

Article 43.
Public health programs and initiatives shall be free of charge for everyone. The public services for medical attention, shall be [free of charge] for those persons that need it. Emergency attention shall not be denied in public or private establishments for any reason.

The state shall promote a culture of health and life, with emphasis on the
food and nutritional education of mothers and children, and sexual and reproductive health [education], through the participation of society and the collaboration of the means of social communication.

[The State] shall adopt programs that tend to eliminate alcoholism and other addictions.

Article 44.

The State shall create an national health policy and shall oversee its applications; it shall control the functioning of the entities of the sector; it shall recognize, respect, and promote the development of traditional and alternative medicines, the use of which shall be regulated by law[,] and it shall impulse scientific-technological advances in the area of health, subject to bioethical principles.

Article 45.

The State shall organize a national health system, which shall be composed of the public, autonomous, private and community entities of the sector. It shall function in a decentralized, dispersed and participatory manner.

Author’s Comments:

Article 42 states explicit rights (the state guarantees the right to health) and lists the concrete and targeted actions that will be undertaken to achieve this right (food security, potable water, basic sanitation, health services, etc.). The same article also describes the principles on which health services will be provided: availability (permanent uninterrupted access), universality (equity, universality), and quality.

Article 44 regarding a national health policy is aimed at, inter alia, acknowledging the use of traditional and alternative medicines and the importance of user safety through regulation. This is the only article that proclaims the application of health technologies in health.
Constitution of Ethiopia (1994)

Article 25.
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

Article 35.
Woman shall have a right:
(9) To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.

Article 89. Economic Objectives.
(8) Government shall endeavor to protect and promote the health, welfare and living standards of the working population of the country.

Article 90. Social Objectives.
(1) To the extent the country’s resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.
Constitution of Peru (1993)

Equality before the law. Nobody may be discriminated against by reason for origin, race, sex, language, religion, opinion, economic condition or of any other nature.

Everyone has the right to protection of his health and of the family environment and community and a duty to contribute to the betterment and defense. Anyone unable to take care of himself because of a physical or mental deficiency has the fight to respect for his dignity and to a legal system of protection, care, rehabilitation, and security.

The government determines national health policy. The Executive Branch regulates and oversees its application. It is responsible for designing and directing it in a pluralistic, decentralizing manner in order to guarantee everyone equal access to health services.

The government guarantees free access to health care and retirement through public, private, or joint public-private agencies. It also oversees their efficient operation.
Author’s Comments:
Note that in Article 9, the goal of the national health policy is to guarantee universal access to health care. This provision takes into account the barriers to access, including affordability. Vulnerable groups could be given particular attention in this article.

**Constitution of the Philippines (1987)**

The State shall adopt an integrated and comprehensive approach to health development, which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

Article II. Section 14. The state shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

Article II. Section 15.
The State shall protect and promote the right to health of the people and instill health consciousness among them.

Author's Comments:

Figure 6.6
Diagram of health rights addressed in the Constitution of the Republic of the Philippines (1987). The boxes in black were mentioned; the boxes in grey were absent.
In Article II, Section 11, the State strives to provide essential goods and health services in accordance with the principles of universality (available to all people), affordability (at an affordable cost), with priority to vulnerable groups (underprivileged sick, elderly, disabled, women and children).

**Constitution of Venezuela (1976 amended 2004)**

![Diagram of health rights](image)

Figure 6.7
Diagram of health rights addressed in the Constitution of Venezuela (1972 amended 1994). The boxes in black were mentioned; the boxes in grey were absent.

Article 83.

Health is a fundamental social right [and an] obligation of the State, which shall guarantee it as part of the right to life. The State shall promote and develop policies oriented towards improving the quality of life, common welfare and access to services. All persons have the right to protection of health, as well as the duty to participate actively in the furtherance and protection of the same, and to comply with such health and hygiene measures as may be established by law, and in accordance with international covenants and treaties subscribed and ratified by the Republic.

Article 84.

In order to guarantee the right to health, the State creates, exercises guidance over and administers a national public health system that crosses sector boundaries, and is decentralized and participatory in nature, integrated with the social security system and governed by the principles of gratuity, universality, completeness, fairness, social integration and solidarity. The public health system gives priority to promoting health and preventing disease, guaranteeing prompt treatment and quality rehabilitation. Public health assets and services are the property of the State and shall not be privatized. The organized community has
the right and duty to participate in the making-of decisions concerning policy planning, implementation and control at public health institutions.

Article 85.
Financing of the public health system is the responsibility of the State, which shall integrate the revenue resources, mandatory Social Security contributions and any other sources of financing provided for by law. The State guarantees a health budget such as to make possible the attainment of health policy objectives. In coordination with universities and research centers, a national professional and technical training policy and a national industry to produce health care supplies shall be promoted and developed. The State shall regulate both public and private health care institutions.

Article 122.
Native peoples have the right to a full health system that takes into consideration their practices and cultures. The State shall recognize their traditional medicine and supplementary forms of therapy, subject to principles of bioethics.

Author’s Comments:
Article 83 asserts the universal right to health protection in addition to the duty to abide by health measures established in accordance with international covenants and treaties subscribed and ratified by the Republic. This could mean that those health rights not included in this constitution are indirectly implied from this article.

Article 84 outlines a universal health care system that will ensure the right to health. The System is based on the principles of participation, universality, fairness, and guaranteed treatment. Public participation is specifically encouraged in areas of policy planning, implementation and control at public health institutions.

In Article 122 the needs of native people are addressed with particular concern for cultural appropriateness of interventions (recognize their traditional medicine) and safety (subject to the principles of bioethics).
Annex 7: Comprehensive constitutional health provisions

A comprehensive text is one that commits the highest State duty and/or gives an individual entitlement to the greatest number of the steps and core contents of the right to health and also considers human rights and guiding principles of international law. The most comprehensive constitutional provisions on the right to health were found in the following constitutions:

- Constitution of Honduras
- Constitution of Panama
- Constitution of South Africa
- Constitution of Uganda

**Constitution of Honduras (1982)**

Figure 7.1
Diagram of health rights addressed in the Constitution of Honduras (1982). The boxes in black were mentioned; the boxes in grey were absent.
Article 123.
All children shall enjoy the benefits of social security and education. Every child shall have the right to grow and develop in good health, for whom special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, housing, education, recreation, exercise and adequate medical services.

Article 145.
- The right to protection of one’s health is recognized. It is everyone’s duty to participate in the promotion and preservation of the personal health and the community. The State will maintain the suitable environment to protect the health of the people.

Article 149.
- The Executive authority through the Ministry of Public Health and Social Attendance, will coordinate all the public activities of the centralized and decentralized institutions of this sector, by means of a national plan of health, in which priority will occur to the neediest groups more. It is the responsibility of the State to supervise the private activities of health according to the law.

Article 150.
- The Executive authority will promote the integrated programs to improve the nutritional state of the Hondurans.
Constitution of Panama (1972 amended 1994)

Article 19.
There shall be no public or private privileges or discrimination by reason of race, birth, social class, handicap, sex, religion, or political ideology.

Article 52.
The state protects marriage, motherhood and the family. What is relative to civil status shall be determined by law. The State shall protect the physical, mental and emotional health of minors and shall guarantee their rights to support, health, education and social security. In an equal manner, the elderly and the sick who are destitute shall have the right to this protection.

Article 109.
It is an essential function for the state to protect the health of all the people of the Republic. The individual, as part of the national community, is entitled to promotion, protection, conservation, recovery and rehabilitation of his health and obligation to preserve it, health being understood to be complete physical, mental and social well-being.

Article 110
In matters of health, the State is primarily obligated to develop the following activities, integrating the functions of prevention, cure and rehabilitation in the:
1. Establishment of national policy of food and nutrition, ensuring optimum nutritional conditions for the entire population, by promoting the availability, consumption, and biological benefit of suitable food.

2. Training of individuals and social groups by means of educational actions concerning individuals and collective rights and responsibilities, with respect to personal and environmental health.


4. Combating of contagious diseases through environmental health, development of potable water availability, and adopting methods of immunization, prophylaxis, and treatment to be provided collectively and individually to all the population.

5. Establishment, in accordance with the requirements of each region, of centers which provide comprehensive health care services, and supply medicines to all the people. These services and medicines shall be given free to those who lack economic means to purchase them.

6. Regulation and supervision of the fulfilments of conditions of health and safety in places of work, establishing a national policy of medicine and hygiene for Industry and Labor.

Article 111.

The state shall envelop a national policy regarding medical products that promotes the production, availability, obtain ability, quality, and control thereof throughout the country.

Article 116. Communities have the duty and the right to participate in the planning and execution and evaluation of different health programs.

Section 27.
(1) Everyone has the right to have access to –
   (a) Health care services, including reproductive health care;
   (b) Sufficient food and water; and
   (c) Social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

(3) No one may be refused emergency medical treatment.

Section 28.
1. Every child has the right:
   - to basic nutrition, shelter, basic health care services and social services;

Figure 7.3
Diagram of health rights addressed in the Constitution of South Africa (1996 amended 2003). The boxes in black were mentioned; the boxes in grey were absent.

Article 34. Rights of children.
3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.

7) The law shall accord special protection to orphans and other vulnerable children.

Article 39. Right to a clean and healthy environment.
Every Ugandan has a right to a clean and healthy environment.

Part XIV. Social and Economic Objectives
General Social and economic objectives. The State shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that:

- b) All Ugandans enjoy right and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

Part XX. Medical Services.
The State shall take all practical measures to ensure the provision of basic medical services to the population.
Part XXI. Clean and safe water.

The state shall take all practical measures to promote a good water management system at all levels.

Part XXII. Food security and nutrition.

The State shall:

a) take appropriate steps to encourage people to grow and store adequate food; b) establish national food reserves; and c) encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.
Annex 8: Constitutional provisions on essential medicines

These constitutions included articles specifically referencing essential medicines or essential goods related to health. The following constitutions are in this annex:

- Constitution of Mexico
- Constitution of Panama
- Constitution of the Philippines
- Constitution of the Syrian Arab Republic

Constitution of Mexico (1917)

Article 123.

The Congress of the Union, without contravening the following basic principles, shall formulate labor laws which shall apply to:

Figure 8.1 Diagram of health rights addressed in the Constitution of Mexico (1917). The boxes in black were mentioned; the boxes in grey were absent.
I. Social security shall be organized on the following minimum bases:
   a. It shall cover work accidents and occupational diseases, non-occupational illness and maternity; and retirement, disability, old age, and death.
   b. In case of accident or illness, the right to work shall be retained for the time specified by law.
   c. Women shall be entitled to one month’s leave prior to the approximate date indicated for childbirth and to two months’ leave after such date. During the nursing period, they shall have two extra rest periods a day, of a half hour each, for nursing their children. In addition, they are entitled to medical and obstetrical attention, medicines, nursing aid, and infant care services.
   d. Members of a worker’s family shall be entitled to medical attention and medicines, in those cases and in the proportions specified by law.

**Constitution of Panama (1972 amended 1994)**

![Figure 8.2 Diagram of health rights addressed in the Constitution of Panama (1972 amended 1994). The boxes in black were mentioned; the boxes in grey were absent.]

Article 110.

In matters of health, the State is primarily obligated to develop the following activities, integrating the functions of prevention, cure and rehabilitation in the: 5. Establishment, in accordance with the requirements of each region, of centers which provide comprehensive health care services, and supply medicines to all the people. These services and medicines shall be given free to those who lack economic means to purchase them.

Article II Section 11.

The State shall adopt an integrated and comprehensive approach to health development, which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
Constitution of Syrian Arab Republic (1973)

Article 46.

(1) The state insures every citizen and his family in cases of emergency, illness, disability, orphan hood, and old age.

(2) The state protects the citizens' health and provides them with the means of protection, treatment, and medication.

Article 47.

The state guarantees cultural, social, and health services. It especially undertakes to provide these services to the village in order to raise its standard.
Annex 9: Constitutional provisions by WHO Region

Constitutional provisions are visualized by WHO Region. The following provisions are in this annex:

- Constitutional health rights
- Highest State commitment to health rights
- International law superior to domestic law
- Constitutional provisions on equity and non-discrimination
- Right to essential goods and medicines

![Constitutional Health Rights](image)
Figure 9.2
High State commitment to health rights by WHO Region

Figure 9.3
International law superior to domestic law by WHO Region
Constitutional provisions on equity/non-discrimination by WHO Region

Right to essential goods and medicines by WHO Region
Annex 10: Constitutional provisions by World Bank Income Economy

Constitutional provisions are visualized by World Bank Income Economy (high, upper middle, lower middle, low) The following provisions are in this annex:

- Constitutional health rights
- Highest State commitment to health rights
- International law superior to domestic law
- Constitutional provisions on equity and non-discrimination
- Right to essential goods and medicines

Figure 10.1
Constitutional health rights by World Bank income economy
Figure 10.2
Constitutional health rights by World Bank income economy

Figure 10.3
International law superior to domestic law by World Bank income economy
Figure 10.4
Constitutional provisions on equality and non-discrimination by World Bank income economy

Figure 10.5
Right to essential goods & medicines by World Bank income economy
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