

# 23 HUMAN RIGHTS & ACCOUNTABILITY

KNOWLEDGE SUMMARY: WOMEN'S & CHILDREN'S HEALTH

Progress has been made in reducing maternal and child mortality, yet millions continue to die from preventable causes. These deaths represent an accountability challenge and a major concern shared by both the health and human rights communities. The Millennium Development Goals (MDGs) commit to reducing these deaths. Powerful complementarities exist between MDGs and human rights.<sup>1</sup> The MDGs generate attention, mobilise resources and contribute technical health monitoring approaches. Human rights offer a fundamental emphasis on accountability, systematic and sustained attention to inequities and a legal grounding of commitments. This knowledge summary explores human rights accountability systems at community, country, regional and international levels and the potential synergies for achieving both human rights and public health goals including, and beyond, the MDGs.



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# The challenge

Maternal and child mortality rates have reduced by 47% and 41% since 1990; yet, everyday 800 women die of pregnancy-related causes and 19,000 children die.<sup>2,3</sup> These deaths are largely preventable: they reflect systematic violations of women’s and children’s rights. The Millennium Development Goals (MDGs), the Global Strategy for Women’s and Children’s Health and “Every Woman, Every Child” among other initiatives represent shared commitments to address these deaths. Accountability is the key challenge.

The Commission on Information and Accountability for Women’s and Children’s Health recommended the development of a framework for global reporting, oversight and accountability for women’s and children’s health and to strengthen linkages with human rights mechanisms.<sup>4</sup> As the global community considers the unfinished MDG agenda, lessons learned from operationalising the human rights framework, which fundamentally emphasises accountability, could help achieve greater and more equitable improvement in key health indicators and realise health and human rights objectives.<sup>5</sup>

## Background

“The right to health does not mean the right to be healthy... But it does require ... policies and action plans which will lead to available and accessible health care for all...this is the challenge facing both the human rights community and public health professionals.”

- Mary Robinson, former UN High Commissioner for Human Rights

Nine legally-binding international treaties address health-related rights and have corresponding committees to monitor implementation.<sup>1</sup> Every country is party to at least one of these treaties and has obligations to respect, protect and fulfill the rights outlined.<sup>6</sup> These treaties, in addition to the Universal Declaration of Human Rights form the foundation for a “rights based approach to health.”<sup>7</sup> The right to health cannot be fully realised if other rights are violated; hence, the holistic nature inherent in human rights approaches.

## The “AAAQ” Framework

The “AAAQ” framework identifies availability, accessibility, acceptability and quality of health care facilities, goods and services as essential elements of the right to health.<sup>8</sup> Accessibility contains several elements: non-discriminatory access, physical access, affordability and information access. This framework was used in the United Nations High Commissioner for Human Rights’ technical guidance on a rights based approach for reducing maternal morbidity and mortality.<sup>9</sup> The AAAQ framework is a good starting point that both communities can use to monitor, review and act for accountability.

## Accountability

Accountability depends on effective, accessible, transparent monitoring mechanisms and independent review for remedies of human rights violations.<sup>10, 11</sup> A range of review and oversight mechanisms are relevant to ensuring the right to health. They can be categorised by systemic level and as non-judicial, quasi-judicial or judicial (Figure 1).<sup>11</sup>

Figure 1

Human Rights Accountability Mechanisms categorised by systemic level and type

	Judicial	Quasi-Judicial	Non-Judicial
Community	<ul style="list-style-type: none"> <li>Local courts</li> <li>Traditional courts</li> </ul>	<ul style="list-style-type: none"> <li>Health tribunals</li> </ul>	<ul style="list-style-type: none"> <li>Maternal death reviews</li> <li>Health facility complaint procedures</li> <li>Community-based monitoring</li> <li>Participation</li> <li>Media</li> </ul>
National	<ul style="list-style-type: none"> <li>Constitutional courts</li> <li>National courts</li> <li>Civil and criminal tribunals</li> </ul>	<ul style="list-style-type: none"> <li>National Human Rights Institutions</li> <li>Political and legislative processes</li> </ul>	<ul style="list-style-type: none"> <li>Human Rights Impact Assessments</li> <li>Civil society organisations</li> <li>Professional Associations</li> <li>Media</li> </ul>
Regional	<ul style="list-style-type: none"> <li>Regional courts</li> <li>Regional parliamentary resolutions</li> </ul>		<ul style="list-style-type: none"> <li>Civil society organisation</li> <li>Professional Associations</li> <li>Media</li> </ul>
International		<ul style="list-style-type: none"> <li>Treaty monitoring body committees</li> <li>Optional protocols</li> </ul>	<ul style="list-style-type: none"> <li>Universal Periodic Review</li> <li>Civil society organisations</li> <li>Special Procedures</li> <li>Media</li> </ul>

# What works

## Community accountability mechanisms

Participation is a critical element of a rights based approach to health. A randomised control trial in Uganda found community-based monitoring can have a profound effect on quality and uptake of health services and outcomes.<sup>12</sup> Other community-based mechanisms include: Human Rights Impact Assessments, maternal death reviews, health tribunals, local courts and traditional courts.<sup>11</sup>

## National accountability mechanisms

Judicial mechanisms include constitutional courts, civil and criminal tribunals. When State constitutions include the right to health, violations can be handled through the courts. Latin American courts have been proactive in addressing systematic violations, often requiring immediate action.<sup>13</sup>

National human rights institutions (NHRI) and political and legislative processes are quasi-judicial monitoring mechanisms.<sup>11</sup> NHRIs exist in over 100 countries and are growing in number and capacity; however they are limited by resource constraints, lack of independence or operational mandates.<sup>14</sup> National parliaments are critical mechanisms for legislating policies and reviewing practices affecting the right to health.

Other mechanisms include civil society advocacy and professional accreditation systems. Healthcare professional

## Case Study – Ministry of Health v. Treatment Action Campaign, South Africa

In 2000, the South African Ministry of Health (MOH) restricted provision of Nevirapine, a drug used to prevent mother to child transmission of HIV (PMTCT) to pilot sites. The drug was available in the private sector, but most mothers could not access it. The Treatment Action Campaign issued a constitutional challenge as the South African bill of rights includes access to healthcare. The Constitutional Court ruled in their favour, ordering the MOH to make Nevirapine available throughout public health sector and provide the court with a plan of action.<sup>15</sup> By 2010 PMTCT was offered at 98% of health facilities; 87% of HIV-positive pregnant women received antiretrovirals.<sup>16</sup>

associations can incorporate human rights into quality of care reviews and accreditation procedures to focus on preventing violations.

## Regional accountability mechanisms

Regional courts such as the African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights address the right to health. As the legislative arm of the African Union, the Pan-African Parliament resolutions on maternal and child health are binding. Since the African Union launched the Campaign for Accelerated Reduction of Maternal Mortality in Africa (CARMMA) in 2009, 37 of 46 sub-Saharan African countries have generated political support, country-specific commitments and solutions with ongoing oversight and monitoring.

## International accountability mechanisms

Through the adoption of optional protocols some UN treaty monitoring bodies can receive State human rights reports and individual complaints of violations. Non-judicial mechanisms include the Universal Periodic Review (UPR) and special procedures of the Human Rights Council. All countries undergo a UPR every four years. In this diplomatic process, every country is reviewed by their peers resulting in specific recommendations on their human rights record irrespective of treaties signed.

## Non-state actor accountability mechanisms

News and social media may be the most responsive mechanisms. One example is the worldwide furor in 2012 over the death of Savita Halappanavar who was denied an abortion of a non-viable fetus in Ireland.<sup>18</sup> In response to the outrage and

## Some terms explained

**Accountability:** A cyclical process of monitoring, reviewing and acting that emphasises human rights principles of equality, non-discrimination, transparency and partnership.<sup>17</sup>

**Human Rights Council:** The inter-governmental UN body responsible for the overall promotion, protection and monitoring of all human rights through UN mechanisms, including the Universal Periodic Review, special procedures and receiving individual complaints.

**Progressive Realisation:** An assumption that the realisation of rights depends on resource availability and progressive achievement. Some obligations are immediate. States must take concrete steps, invest maximal financial and political efforts and prioritise marginalized communities.

**Rights based Approach to Health:** Reframes health needs as essential legal entitlements protected by international and national law, with corresponding legally binding government obligations. Principles of human rights include: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.<sup>15</sup>



following an investigation, legislation is being introduced to expand access to abortion when a women's life is at risk.

"Few accountability mechanisms exist that address private sector maternal and child health commitments," although there are initiatives reporting on compliance for baby food standards and pharmaceutical access programs.<sup>19</sup> In 2011, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released guidance on corporate responsibility to respect human rights.<sup>20</sup> In contexts with a large private health sector, such as India, regulation is a major challenge. In 2010 the Delhi High Court ordered a maternal death audit of the pregnancy-related death of Shanti Devi, reparations paid to her family and an overhaul of government schemes to finance healthcare and nutrition services for poor women.<sup>21</sup>

In many cases individuals need support to realise their rights; civil society can act as intermediaries, empowering individuals to realise their rights (see case studies).

### Remedies and action

A remedy is recourse for anyone who alleges that their rights have been violated. Reparations involve compensation,

### Case Study – Alyne da Silva Pimental v. Brazil

Alyne died when her local health centre delayed providing emergency obstetric care. Her mother, through the support of a local non-profit, Advocaci and the Centre for Reproductive Rights brought her case to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee. The 2011 landmark ruling found that Alyne had been denied her basic human rights regarding access to healthcare and non-discrimination accorded to her by Brazil's constitution and the CEDAW, and recommended Brazil:

- Ensure women's right to safe motherhood and affordable access to emergency obstetric care
- Provide training for health workers
- Fully implement the National Pact for the Reduction of Maternal and Neonatal Mortality, including establishing maternal death review committees
- Ensure access to remedies when women's reproductive rights have been violated
- Pay reparations to Alyne's family<sup>22</sup>

rehabilitation and guarantees of non-repetition. To ensure implementation of remedies and reparations increasingly courts maintain a continual process of engagement.

## Conclusion

The case is strong for the contribution of a rights based approach for maternal and child health. Integrating the human rights and health accountability frameworks can reduce fragmentation and parallel systems, improve continuity and

sustainability, and enhance the equity and accountability required to realise shared goals, including the MDGs.<sup>1</sup> Human rights also are being substantively integrated in discussions on the post-MDG development agenda.

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