

**Update on Action to Achieve a Resolution on the Right to Health
at the World Health Assembly
Prepared by International-Lawyers.Org
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This is an update of activities to achieve a World Health Assembly resolution committing to the right to health and recognizing its importance to both WHO and its Member States.

Background

The overall objective of the WHO is the “attainment by all peoples of the highest possible level of health.” (art. 1 of the WHO Constitution) This objective is guided by the preamble of the WHO Constitution which states that the “enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.”

Moreover, every Member State of the WHO has agreed in one form or another to ensure the right to health. This right is found in numerous treaties as well as apart of customary international law. Despite this fact, however, the right to health is not achieved in all countries to the same degree and the WHO often shies away from a rights-based approach to health. This is changing slowly and it is recognized that the NGO community can contribute to this change. If NGOs do not contribute they will either be seen as indifferent to individual's right to health or merely complacent with the failure to achieve the right to health for all.

Within the reform process, the WHO Director-General in her initial paper on WHO reform cited as “constitutional objective ... [together] ... with universality, equity ... health as a human right ... [that is] ... at the centre of this mission.”¹ According to the Director-General “[t]his broad mission distinguishes WHO from organizations with a more narrow focus.” In the latest documents produced for the meeting on 27 and 28 February 2012, the right to health, together with gender and equity has been mentioned as one of the seven priority categories in the Eleventh General Programme of Work that covers the period 2006–2015. There is no longer mention of the right to health as guiding the overall work of WHO.

In the most recent document on the reform process priorities the Director General’s report to the WHA65 to be held in May 2012 (WHO Doc. 65/40), the right to health is not expressly mentioned although the report states that “[t]he priorities of WHO should be aligned with its Constitution, particularly the principles of the preamble and the objective of the Organization of the attainment by all peoples of the highest possible level of health.” The apparently intentional omission of a reference to the right to health in this report is troubling and indicates the Secretariat’s or States confusion about legal obligations that already exist.

Despite this confusion within the reform process WHO has slowly moved closer to embedding the right to health in its approach to global health over a long period of time. As early as 1946, WHO was the most significant substantial contributor to the drafting of article 25 on the right to health in the Universal Declaration of Human Rights. In 1972, the WHA adopted a resolution calling on the UN Secretary-General to prepare “a document dealing with the health aspects of human rights in the light of scientific and technological developments.” This was never followed up.

More recently in 2012, the Directive Council of WHO regional body, PAHO, adopted a resolution on health and human rights (CD50.R8-e). Since then the right to health has been incorporated into several WHO resolutions and other governmental international instruments including a WHA resolution on “Sustainable Health Financing Structures and Universal Coverage” (May 2011) and the EB resolution on the “Protection of Health Workers” (January 2012) as well as the UNGA’s Political Declaration on Non-Communicable Diseases (September 2011), and the intergovernmental Rio Declaration on Social Determinants of Health (October 2011).

Finally, within WHO there seems to be significant confusion about WHO’s commitment to the human rights approach. Although WHO is perhaps the most important actor for ensuring cooperation on global health and has almost two dozen staff whose tasks expressly include human rights, WHO frequently shies away from applying a human rights approach to health. This is unfortunate and sends a confusing signal about WHO’s commitment to the right to health to States.

Why a WHA resolution?

The adoption of a WHA resolution on the right to health is a small but significant step towards ensuring the right to health for all. It will encourage WHO, for the first time in its existence to apply the rights-based approach to health. It will also be a reaffirmation by Member States of their commitment to this right to which all of them have agreed in

1 WHO Executive Board Doc. EBSS/2/2 (15 October 2011).

legal instruments and/or under customary international law.

While there are other means of achieving this objective, but this means is something humble that we believe can be accomplished within a relatively short period of time within the resources we have available. This assessment is made based on discussion with more than forty Member States over the period of the past six years.

The achievement of this objective should be based on the unambiguous recognition that there is a human right to health for all people in all states of the international community. This understanding and commitment to it is essential for membership in the Working Group. Although we respect the right of every individual and member of civil society to form their own opinions on the existence of the right to health for the NGO Working Group on the right to health or its members to question the existence of this right would make it impossible for many NGOs to be associated with the Working Group as it would in fact be working against achievement of the right to health for all.

Activities 2012 and early 2013:

- In March 2012, during its 19th Regular Session the Human Rights Council decided that its next annual full day panel on children's rights at its 22nd Regular Session will be focused on the right to health. The Working Group established contact with the organizers and offered to provide a speaker or otherwise participate in this panel, if only through statements from the floor and a written contribution indicating the value-added of a WHA resolution on the right to health
- In February 2012, a short briefing paper was prepared by International-Lawyers.Org on the importance of a rights-based approach to health that was used as a lobbying instrument with States at the informals and intersessionals negotiating the Rio+20 texts in New York at UN Headquarters between 17 and 23 March 2012 and 26 and 28 March 2012. The result of the negotiations was that both "health" and "human rights" are mentioned in the Rio+20 text the "Future we Want," although in separate paragraphs, that emanated from the Rio+20 Summit 20-22 June 2012.
- In May 2012, during its 65th WHA, WHO organized a high level panel on mainstreaming the rights-based approach in its work. International-Lawyers.Org assisted the WHO in finding speakers.
- On 21 June 2012, International-Lawyers.Org sponsored and participated in a side-event at Rio+20 in Brazil that focused on the rights-based approach to development, including the right to health.
- In June 2012 during the 20th Regular Session of the Human Rights Council International-Lawyers.Org organized a side-event with the Special Rapporteur on the Right to Health and a person from the Department working on the human right to health at WHO.
- In September 2012 at the 21st Human Rights Council International-Lawyers.Org organized a side-event during the Council's first week of meetings in cooperation with the government of Brazil and other partners focusing on the interconnectedness between health and human rights based on the Rio+20 outcome document, the May WHA WHO Mainstreaming panel, the WHO Reform Process, and the Social Determinates Declaration from last year.
- In March 2012 the Office of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health presented a report on the rights of the child (A/HRC/22/31) in which the High Commissioner reiterated the right to health of the child as a priority and stressed the importance of international cooperation. International-Lawyers.Org participated in this event.
- On 7 March 2012, during the full day meeting on the rights of the child at the 22nd Human Rights Council, the Special Rapporteur on the right to health, Mr. Anand Grover, pointed out the crucial role of national laws and policies. National legislation should be in line with the State's obligation to respect, protect and fulfill the right of the child to health. International-Lawyers.Org participated in this event.
- During 2012 International-Lawyers.Org undertook consultations with:
 - Brazil: this government expressed a continued interest in the right to health and an eagerness to continue to work on this issue. Brazil was ambiguous about whether or not it would support a resolution.
 - Cuba: this government expressed an interest in taking up the right to health at the 67th WHA in 2014.

- In April 2013 the Special Rapporteur on the right to health held a public consultation on the right of health of the elderly. International-Lawyers.Org participated in this event.
- In May 2013 at its 66th WHA the WHO will be launching “Evidence of Impact of a Human Rights-Based Approach to Women’s and Children’s Health,” a study documenting evidence that human rights-based approaches have helped to improve women’s and children’s health. This is the first of several planned studies and provided valuable evidence for the rights-based approach. International-Lawyers.Org provided input into this report.
- In May 2013 International-Lawyers.Org is organizing, with the IJJP&HRs, its 8th dialogue with NGOs on a WHA resolution on the Right to Health in Geneva.

Opportunities for Activities in Rest of 2013:

- 28 May 2013 (first week of HRC23), room VIII from 12-14:00 we will convene a dialogue on the Right to Health: Synergies between WHO and the HRC.
- September 2013: Side-event on right to health at HRC24.
- September 2013: Consultations during HLS of the UNGA69.
- September-November 2013: This is the time when a draft resolution should be prepared and discussed.
- November 2013: If going through EB, this is when draft resolution should be presented.

Looking ahead to 2014:

- January/February 2014: EB134
- May 2014: WHA67

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