INFORMATION DOCUMENT

Rights-based approach to Health

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1 Rights-based approach

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR):

> *"A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress." (OHCHR 2006: 15)*

In addition to the human rights perspective, in rights-based development the ethical position is shared that **all people are entitled to a certain standard of material and spiritual wellbeing.** The rights-based development supports people who suffer injustice through acknowledging their equal worth and dignity and emphasises on rights and responsibilities. It recognises excluded and marginalised populations as active **rights-holders**, and states and other actors as **duty-bearers** to whom claims can be held. The element of accountability shifts the focus to development **by** people and not **for** people putting **participation and empowerment** into the focus. The rights-based approach as a concept aims at the fulfilment of the obligation for all actors and at all levels towards the achievement of human rights and a meaningful and systematic inclusion of the most vulnerable. (The Danish Institute for Human Rights 2007)

Human rights are central to human development

> *"Human rights are legal rights enshrined in the Universal Declaration of Human Rights; various human rights Covenants, Conventions, Treaties and Declarations; Regional Charters; National Constitutions and laws. ...*
> *Human rights (...) provide the values, principles and standards essential to safeguard that most precious of all rights — the right to be human, (of which the right to be woman is an integral component)."* (UNDP 2006: 1)

The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in 1948 as a common standard of achievements for all peoples and all nations. It sets out – for the first time – fundamental human rights to be universally protected.

One of the fundamental elements of human rights is the recognition of every human being as a rights-holder. Accordingly, every human right has a corresponding duty-bearer, which in principle is the state. A rights-holder is entitled to rights, to claim rights, to hold the duty-bearer accountable, and has a responsibility to respect the rights of others. Duty-bearers have the obligation to **respect, protect, and fulfil** the rights of the rights-holders. The overall responsibility for realising human rights obligations is with a state and its organs who are **legal duty-bearers** such as parliaments, ministries, local authorities, justice authorities, police, state educational institutions, government extension workers. However, every rights-holder has the responsibility to respect the rights of others. This means that every individual or institution with its power to influence the lives of rights-holders is a **moral duty-bearer**, be it private companies, local leaders, civil society organisations, NGOs and FBOs (faith-based organisations), heads of households, and parents. In principle, every individual is a moral duty-bearer. The state as a legal duty-bearer has the duty to regulate the actions of moral duty-bearers in order to ensure that they respect human rights. (The Danish Institute for Human Rights 2007)

RBA focuses on **participation and empowerment** of the poor and their right to hold governments and other actors responsible and encourages them to claim their rights. RBA also wants to enable duty-bearers to meet their obligations rather based on dialogue than confrontation. However, it does not mean that one organisation has to work on both levels necessarily, but may network and share tasks with other organisations. This results in different approaches which are used to address both levels: providing support to strengthen the accountability of duty-bearers and providing support in capacitating rights-holders to demand their rights. Combined efforts on both levels have more chance to finally achieve institutional & legal, environmental, economical/technical, and social/cultural change which again changes people's lives. Thus networking and liaising with other organisations are crucial in achieving changes.

2 Realisation of human rights in development work

4 focus areas for organisations which give clear direction to RBA programming and some of their immediate implications for development. These and related critical questions are stated below:

Focus on the **most vulnerable groups** (including issues of gender and discrimination)

- Do we target/include vulnerable, disadvantaged or excluded groups in our development efforts?
- Do we pay attention to structural and indirect forms of vulnerability and discrimination in terms of public policies (or lack thereof), local power structures or cultural practices?
- Do we highlight not just what is done and who is reached but also what is not done and those who are excluded?

Focus on **root causes** of poverty, deprivation and human rights violations

- Do we describe a situation not simply in terms of needs, but in terms of society's obligation to respond to the rights of individuals?
- Are our development approaches comprehensive and consider the full range of rights which will form the basis for setting priorities?
- Does development not only target economic improvements, but expands to people's choices and their capabilities to exercise their rights and freedoms?

Focus on the relationship between **rights-holders and duty-bearers**

- Do we recognise beneficiaries as rights-holders and strengthen their ability to claim their rights?
- Do we target duty-bearers' ability to fulfil their obligations towards rights-holders?
- Are we well informed about laws and policies etc. and do we use or target them to demand accountability from duty-bearers?
- Do we seek to install legal and administrative procedures that strengthen accountability and make it possible for ordinary people to claim their rights?

Focus on **empowerment**

- Do we consider the inclusion of beneficiaries, stakeholders and partners as a must when deciding development strategies and goals?
- Do we regard participation not just as a tool, but also as a goal for development?
- Do we promote platforms and networks for mobilisation and support people's ability to take part in governance and claim their rights individually and in groups?

(The Danish Institute for Human Rights 2007)

3 Key elements of rights-based approach to health and references

3.1. Definition of health and right to health and relevant declarations

The right to health refers to the right to the enjoyment of a variety of goods, facilities, services and conditions which are necessary for the realisation of the highest attainable standard of physical and mental health. State parties play an important role in this realisation. The right to health does NOT mean the right to be healthy, but rather the right of everyone to the enjoyment of "the highest attainable standard of physical and mental health" (OHCHR/WHO 2008).

The definition of health is laid down in the preamble of the WHO Constitution (signed 1946, entered into force 1948):

> *"Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."*

It is further stated that the right to health is one of the fundamental human rights:

> *"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."*

In the Universal Declaration of Human Rights (1948), Article 25-(1), health is mentioned as part of the right to an adequate standard of living:

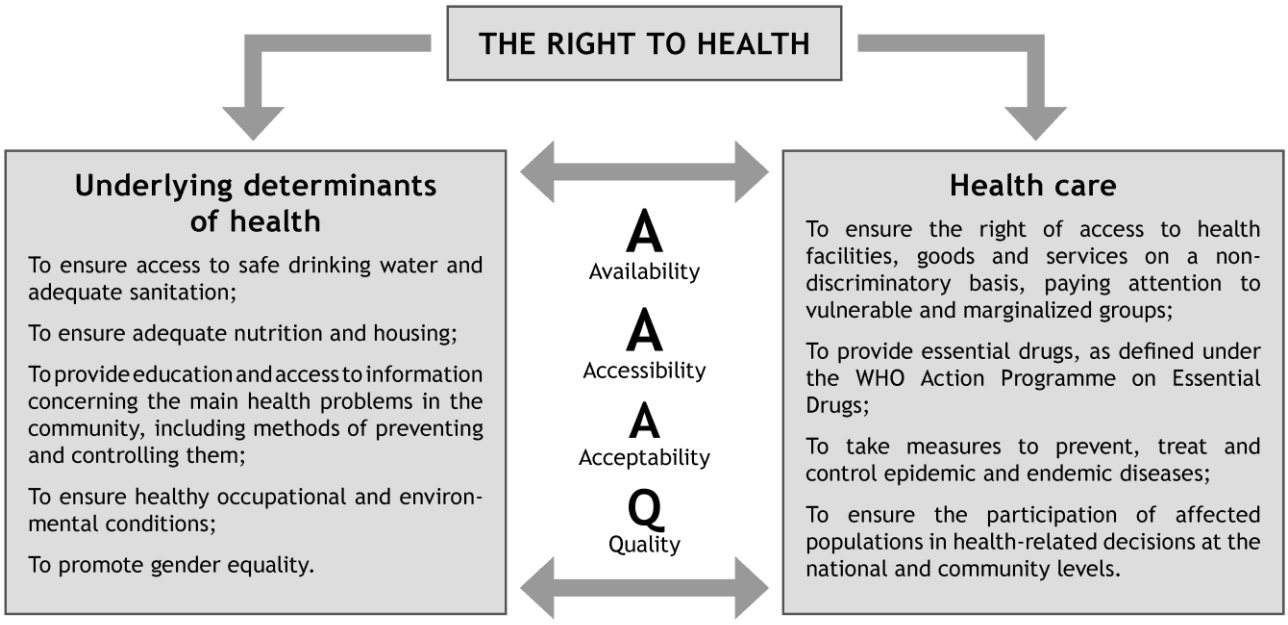
> *"(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."*

Health as a fundamental human right was restated in the Alma Ata Declaration on primary health care (1978), in which the existing gross inequalities in the health status of the people between developed and developing countries as well as within countries are proclaimed to be politically, socially, and economically unacceptable. The declaration affirms the important role of primary health care, which addresses the main health problems in the community, providing promotive, preventive, curative and rehabilitative services accordingly (Article VII). It also stresses that "*access to primary health care is the key to attaining a level of health that will permit all individuals to lead a socially and economically productive life (Article V) and to contributing to the realisation of the highest attainable standard of health*" (OHCHR/WHO 2008). The right to the highest attainable standard of health has been firmly endorsed in further international and regional human rights instruments (OHCHR/WHO 2008).

The right to health ensures the access to health care for all, especially for vulnerable and marginalised groups, with the participation of the affected population **and** the underlying determinants of health, such as access to safe and portable water and adequate sanitation, adequate supply of food, nutrition and housing, healthy occupational and environmental conditions, access to health-related education and information and promotes gender equality. The underlying determinants of health are beyond health facilities, goods, and services, and include factors and conditions that protect and support health. The right to health contains 4 interrelated and essential elements important for realisation and which can also be used for monitoring and

evaluation: **availability, accessibility, acceptability, and quality.**[1] The precise application depends on the conditions prevailing in a particular state party.

The graph below shows the composition of right to health at a glance:



Availability, Accessibility, Acceptability and Quality

Availability: Functioning public health and health care facilities, goods, services and programmes have to be available in sufficient quantity.

Accessibility: Health facilities, goods and services have to be accessible to everyone: There should be non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility.

Acceptability: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, sensitive to gender and age, as well as being designed to respect confidentiality and improve the health status of those concerned.

Quality: Health facilities, goods and services must be scientifically and medically appropriate and of good quality.

(OHCHR/WHO 2008, WHO/OHCHR 2010; plus the author's additions)

In the year 2000, 147 heads of State and Government, and 189 nations in total, agreed upon the United Nations Millennium Declaration with its **Millennium Development Goals (MDGs)**. The MDGs are relevant in regard to right to health and are based on a vision for the future. The eight MDGs provide a framework of time-bound targets by which progress can be measured (United Nations 2000a). See also Resolution 55/2 of the United Nations Millennium Declaration (United Nations 2000b).

Succeeding the MDGs, the **Sustainable Development Goals (SDGs)** have defined 17 goals and 169 targets related to sustainable development that are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental (United Nations 2015). 9 goals out of 17 are directly related to health and underlying determinants of health.

[1] This goes hand in hand with the goal of universal health coverage which is to ensure that all people obtain the promotive, preventive, curative, rehabilitative and palliative health services they need, of sufficient quality to be effective without suffering financial hardship when paying for these services (WHO 2014).

3.2 Work in practice for NGOs and FBOs: Applying a rights-based approach in analysis and assessment of the right to health and sample of indicators

Applying a rights-based approach to every focus area needs a situation analysis. The People's Health Movement guide "The assessment of the right to health and health care at the country level" (2006) has well elaborated on how to use legal international and national instruments in the right to health. It contains valuable checklists and gives detailed and useful hints about main areas to assess such as health topics and important sections of respective legal instruments as well as relevant issues to explore in regard to health. If one does not feel capable of doing this work, collaboration and networking with other organisations with expertise may be the best option.

A situation analysis is needed before planning and implementing rights-based approach to health. Four main steps and related questions are to be used regarding a specific context (e.g. community, region):

Steps	Questions	Context
1. Assessment	What is happening, where is it happening, and who is more affected?	For every health challenge, identify the interrelated human rights standards and the groups suffering from a greater denial of rights.
2. Causal analysis	Why do these problems occur?	Identify the underlying and root causes of exclusion, discrimination and inequality.
3. Role analysis	Who has the obligation to do something about it?	Identify individual and institutional duty-bearers and their corresponding obligations.
4. Capacity analysis	What capacities are needed for those affected, and for those with a duty to take action?	Identify the skills, abilities, resources, responsibilities, authority, and motivation needed by those affected to claim their rights and those obliged to fulfil the rights.

(WHO/OHCHR 2010)

Based on the results of this situation analysis, meaningful activities – alone or together with other organisations and groups – can be planned and implemented, which address duty-bearers and rights-holders. Below are some examples of indicators in regard to rights-based approach to health at different levels and formulated in very general terms:

- The MoU (Memorandum of Understanding) between the organisation/community representatives and the government is signed and implemented.
- Number of vulnerable population accessing and benefiting from government social security and health schemes (e.g. health insurance scheme) has increased.
- Number of functioning government health facilities and programmes has increased due to different project activities such as joint lobby work with other organisations and community actions.
- Availability, accessibility, acceptability, and quality of government services including quality of service delivery by health personnel has improved.
- Access to (specified) medicines of good quality at affordable price has increased.

- Access of identified vulnerable population to underlying determinants of health such as safe drinking water & sanitation, availability of adequate nutrition and housing, and/or education & information has increased, gender equality has improved.

NGOs and FBOs (faith-based organisations) are moral duty-bearers and are in the position to influence the lives of rights-holders. They play an important role in achieving the right to health due to their direct health interventions: through available and accessible health services of quality which are accepted by the communities also in regions and areas where others are not working.

The leading principle has to be the goal of universal health coverage which is to ensure that all people obtain health services they need, of sufficient quality to be effective without suffering financial hardship when paying for these services. This requires a strong, efficient, well-run health system that meets priority health needs through people-centred integrated promotive, preventive, curative, rehabilitative and palliative health care which are affordable for them. Access to essential medicines and technologies and sufficient capacity of well-trained and motivated health workers to provide services on best available evidence are equally important to achieve the goal of universal health coverage. (WHO 2014)

References

International Conference on Primary Health Care, Alma Ata (1978): Declaration of Alma Ata. USSR, 6-12 September 1978. http://www.who.int/publications/almaata_declaration_en.pdf

OHCHR (2006): Frequently asked questions on a human rights-based approach to development cooperation. http://www.ohchr.org/Documents/Publications/FAQen.pdf

OHCHR/WHO (2008): The right to health. Fact sheet No. 31.

People's Health Movement (2006): The assessment of the right to health and health care at the country level. A people's health movement guide.

The Danish Institute for Human Rights (2007): Applying a rights-based approach. An inspirational guide for civil society.

UNDP (2006): Applying a human rights-based approach to development cooperation and programming: a UNDP capacity development resource.

United Nations (1948): Universal Declaration of Human Rights. http://www.un.org/en/documents/udhr/index.shtml#ap

United Nations (2000a): Millennium Development Goals Indicators. The official United Nations site for the MDG Indicators. http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Indicators/About.htm

United Nations (2000b): Resolution adopted by the General Assembly. 55/2. United Nations Millennium Declaration. http://mdgs.un.org/unsd/mdg/Resources/Static/Products/GAResolutions/55_2/a_res55_2e.pdf

United Nations (2015): Transforming our world: the 2030 agenda for sustainable development. https://sustainabledevelopment.un.org/post2015/transformingourworld

United Nations (2015); Sustainable Development Goals. 17 goals to transform our world.
http://www.un.org/sustainabledevelopment/sustainable-development-goals/
https://sustainabledevelopment.un.org/sdgs

WHO (2006): Constitution of the World Health Organization.
http://www.who.int/governance/eb/who_constitution_en.pdf

WHO (2014): What is universal health coverage? Online Q&A. Reviewed December 2014.
http://www.who.int/features/qa/universal_health_coverage/en/

WHO/OHCHR (2010): A human rights-based approach to health.
http://www.ohchr.org/Documents/Issues/ESCR/Health/HRBA_HealthInformationSheet.pdf