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Constitutional rights to health, public health and medical care: The status of health protections in 191 countries

Jody Heymann^{a*}, Adèle Cassola^b, Amy Raub^a and Lipi Mishra^b

^a*Fielding School of Public Health, University of California, Los Angeles, CA, USA;* ^b*Institute for Health and Social Policy, McGill University, Montreal, Canada*

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United Nations (UN) member states have universally recognised the right to health in international agreements, but protection of this right at the national level remains incomplete. This article examines the level and scope of constitutional protection of specific rights to public health and medical care, as well as the broad right to health. We analysed health rights in the constitutions of 191 UN countries in 2007 and 2011. We examined how rights protections varied across the year of constitutional adoption; national income group and region; and for vulnerable groups within each country. A minority of the countries guaranteed the rights to public health (14%), medical care (38%) and overall health (36%) in their constitutions in 2011. Free medical care was constitutionally protected in 9% of the countries. Thirteen per cent of the constitutions guaranteed children's right to health or medical care, 6% did so for persons with disabilities and 5% for each of the elderly and the socio-economically disadvantaged. Valuable next steps include regular monitoring of the national protection of health rights recognised in international agreements, analyses of the impact of health rights on health outcomes and longitudinal multi-level studies to assess whether specific formulations of the rights have greater impact.

Keywords: right to health; constitutions; public health; medical care; health care

Introduction

The right to health was recognised in the United Nations' (UN) foundational document, the 1948 Universal Declaration of Human Rights (UDHR; UN General Assembly, 1948), and has been reaffirmed in numerous subsequent conventions. Article 25 of the UDHR establishes that all human beings have the right to a healthy standard of living, medical treatment and assistance in case of illness.

Subsequent global agreements that focus on the rights of specific populations have repeatedly included the right to health. For example, the Convention on the Rights of the Child (UN General Assembly, 1989), agreed to by all but two UN member states, protects children's right to 'the highest attainable standard of health' as well as to medical treatment when they are sick (Article 24). Similarly, a series of conventions and declarations designed to prevent discrimination and promote equality guarantee the right to health. Article 25 of the Convention on the Rights of Persons with Disabilities (UN General Assembly, 2006) includes commitments to provide equitable and affordable access to public health

*Corresponding author. Email: jody.heyman@ph.ucla.edu

programmes, sexual and reproductive health services, health insurance and other health measures. In addition, the right to health is included in Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (UN General Assembly, 1966a), Articles 10H and 12 of The Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979) and Articles 39 and 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN General Assembly, 1990).

While some conventions speak in broad terms about the right to health, others are quite specific about its components. For instance, Articles 7, 11 and 12 of The International Covenant on Economic, Social and Cultural Rights (ICESCR; UN General Assembly, 1966b) detail what the right to health for all would mean:

...the enjoyment of the highest attainable standard of physical and mental health [...] the reduction of [...] infant mortality and [...] the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Despite agreement at the international level, to truly evaluate the global status of health rights, we need to examine what countries have done to guarantee them nationally. This study sheds light on one aspect of countries' legal commitments to their citizens' health by analysing the protections contained in national constitutions. While health protections may also be outlined in national laws and policies, constitutional rights are typically more difficult to repeal than other legal provisions (for a more in-depth discussion of the importance of constitutional rights, see Heymann & McNeill, 2013). The right to health is also intricately related to broader social and economic rights, such as labour protections, education and non-discrimination. Although we have addressed these and other social determinants of health in previous work (e.g. Heymann & Earle, 2010; Heymann, Earle, & McNeill, 2013; Heymann & McNeill, 2013; Heymann, Raub, & Earle, 2011), this study is concerned with constitutional protection of the specific rights to public health, medical care and overall health.

Previous work in this area has contributed importantly to the question of whether constitutions include provisions on the right to health (Backman et al., 2008; Kinney & Clark, 2004). However, these studies have not analysed in detail the ways in which countries protect the right to health in their constitutions. Constitutional approaches to protecting health differ in both their specificity and focus; some guarantee access to specific health measures in detailed language, while others phrase the right to health in broad terms. Additionally, constitutions refer to different categories of health rights, including the rights to public health, medical care and overall health. In their valuable review, Kinney and Clarke (2004) categorised constitutional provisions on health and health care according to the level of protection granted, but did not differentiate among these different types of health rights. Important work by Backman et al. (2008) examined the presence of right to health guarantees in a state's constitution, bill of rights and other statutes, but did not examine variability in the nature of the right or level of protection.

This article presents new findings on the types of health rights that are protected in constitutions around the world. We carried out a comprehensive analysis of the constitutions of 191 UN member states to examine the extent to which individuals were guaranteed access to public health measures, medical care services and the overall right to health as of 2007 and 2011. We examined how protections varied across the year of constitutional adoption, regional location and national income level, and for children, the elderly, persons with disabilities and the socio-economically disadvantaged within each country.

Methodology

In order to obtain the information on health rights necessary for this study, a coding team fluent in several official UN languages reviewed the constitutions of 191 UN member states as amended to two points in time: August 2007 and June 2011. Constitutions were retrieved from government sources in their original languages and in official English, French or Spanish translations. When government-provided versions of the constitutions were unavailable, these documents were located using three additional resources: *Constitution Finder*, a database of sources for constitutions from the University of Richmond (Richmond, University of Richmond School of Law, 2012); HeinOnline's (2012) *World Constitutions Illustrated*; and *Constitutions of the Countries of the World* (Blaustein & Flanz, 2007). When retrieving the constitutions from non-governmental sources, we prioritised documents made available by the UN, universities and legal institutes.

While the vast majority of countries have codified constitutions, there are a few countries that either do not have a written constitution or that have a series of constitutional laws, rather than a single text. In both cases, we identified and coded those documents or laws that are considered to have constitutional status. If clauses of a constitution explicitly stated that other pieces of national legislation had constitutional status, these laws were collected and coded as well. To our knowledge, Myanmar was the sole country that neither had a constitution nor any form of constitutional documents in force as of August 2007, and Fiji was the only UN member state without a constitution in force as of June 2011.

Each constitution was carefully reviewed in its entirety by two coders. Through this process, we identified and captured three categories of health protection that constitutions addressed: the broad right to health, the right to public or preventive health and the right to medical care. The following sections describe the types of provisions we included in our conceptualisation of each of these rights, and how we captured the varying levels of strength and specificity with which they were granted.

Categories analysed

The right to health

Our right to health category captures constitutional references to physical or overall well-being, health protection, health security and/or a life free of illness or disease. While a broad vision of the right to health would reasonably include preventive services and medical care, a general constitutional protection of health is open to interpretation by different countries and courts. As our aim is to provide a detailed

picture of the rights explicitly guaranteed in the constitution, we looked separately at each distinct approach to guaranteeing health rights.

In this study, we did not assume that a constitutional guarantee of one or more elements of a right implied protection of the overall right. We therefore did not consider references to specific areas of health, such as occupational health or sexual health, to be equivalent to a right to health. Finally, we did not capture provisions outlining citizens' duty to protect their own health unless a concurrent right of citizens or obligation of the state was specified.

The right to public health

Constitutions addressed the concept of preventive or public health in various ways. The most common formulations outlined the state's duty to conserve or defend the health of citizens, bound the state to prevent disease or illness, guaranteed access to preventive or prophylactic services, or simply protected the right to public health itself. The public health category used in this study captures each of these types of provisions. Although the closely related rights to protection from epidemics and to a healthy environment were not considered equivalent to the right to public health in this study, in this article we report cases where these were the only aspects of public health included in the constitution.

Countries that both protected the broad right to public health using any of the equivalent terms outlined above, and also guaranteed specific aspects of the right, were coded as protecting public health. Provisions that protected sub-components of the right to public health, such as family planning or nutrition, were not captured in this study if only these specific elements of the broader right were mentioned.

The right to medical care

The medical care category used in this study captures references to the state's commitment to cure, restore or rehabilitate citizens' health, to ensure adequate health facilities for the population and/or to provide access to health care services, curative services, medical aid, medical assistance or treatment. Provisions specifying that access to health care services was free for the population as a whole or for specific groups were coded separately and are included in the results below.

Provisions that were not considered equivalent to a right to medical care included a state's commitment to regulate the production and sale of pharmaceutical products, a state's obligation to promote modern medicine or medical technology, and guarantees of access to specific kinds of treatment, such as reproductive or mental health services.

Categorising bases of protection

Each health right that a constitution protected was recorded separately in our database and categorised according to the group covered and the level of protection granted. We captured rights protections across gender, age, socio-economic status, political opinion, religious belief, racial or ethnic group, linguistic group, disability, sexual orientation and identity, citizenship, national origin, imprisonment and criminal record. The universal protections that we analysed in this study were coded

when the constitution specified that everyone or all citizens possessed a right, or when it stated generally that the government had a duty to provide a service or ensure the enjoyment of a right.

Among constitutions that addressed the above-mentioned health rights for specific groups, the most common protections were for individuals who are vulnerable because of their age, disability or lack of economic resources. This study therefore describes constitutional protections of health rights for children, the elderly, persons with disabilities and the socio-economically marginalised. We coded a right as granted to children when provisions specifically mentioned ‘children’, ‘minors’, ‘boys and girls’ or those under a certain age. We considered the elderly to be protected when provisions mentioned ‘senior citizens’, ‘the aged’, ‘elderly persons’ or ‘persons of advanced age’. When constitutions guaranteed a health right to individuals of all ages, we coded protections for both children and the elderly.

Persons with disabilities were considered to be protected when the constitution referred to ‘disability’, ‘physical disability’, ‘mental disability’, ‘the handicapped’ or ‘persons with special needs’. Finally, we considered a right to be granted to economically disadvantaged citizens when the constitution referred to ‘the poor’, ‘the deprived’, ‘those who lack economic means’, those marginalised because of their ‘social origin’ or ‘economic condition’, ‘the underprivileged’ or ‘the indigent’.

Categorising levels of protection

Constitutions varied in the degree to which they protected health rights. Although the ICESCR allows for progressive realisation, meaning that countries are expected to implement health rights according to the resources available to them, this study distinguishes among countries that explicitly phrased the protection of health rights as dependent on the State’s capacities and those that guaranteed these rights using unequivocal language. We also captured references to potential positive actions for specific groups.

When a right was phrased as an aim or objective, we categorised it as an aspirational protection. This included cases where constitutions declared promoting citizens’ health to be a goal of the state and where the enforcement of health rights was specified to be limited by the availability of resources. Similarly, if a state’s duty to protect citizens’ health was explicitly stated to be non-enforceable, it was interpreted to be an aspiration rather than a guaranteed right. For example, Articles 8 and 14 of Sierra Leone’s constitution [Const. Sierra Leone, 1991 (amended to 2008)] specified that:

...[t]he State shall direct its policy towards ensuring that [...] there are adequate medical and health facilities for all persons, having due regard to the resources of the State [...] the provisions contained in this Chapter shall not confer legal rights and shall not be enforceable in any court of law, but the principles contained therein shall nevertheless be fundamental in the governance of the State [...]

In the rare cases where a health right was only mentioned in a constitution’s preamble and the constitution did not contain a provision specifying that the preamble was an integral part of the constitution, we coded the right as an aspiration.

Constitutional articles that unequivocally protected health rights or phrased them as a duty or obligation of the state were coded as guaranteed rights. Thus, Article 64 of Portugal's constitution [Const. Portuguese Republic, 1976 (amended to 2005)] stated that '[e]veryone shall possess the right to health protection' and in Venezuela [Const. Bolivarian Republic of Venezuela, 1999 (amended to 2009), art. 83], '[h]ealth is a fundamental social right and the responsibility of the State, which shall guarantee it as part of the right to life'.

When constitutions encouraged or mandated affirmative measures to promote health protection for particular groups, we coded the provisions as allowing potential positive action. For example, Article 56 of Kenya's constitution specified that '[t]he State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups [...] have reasonable access to water, health services and infrastructure', and defined marginalised groups to include those disadvantaged on the basis of their 'social origin', 'age', or 'disability' (Const. Kenya, 2010, art. 27).

Categorising constitutions by era

This study describes health protections in the constitutions currently in force in 191 countries, as amended up to August 2007 and June 2011. In order to account for the possibility that constitutional protection of health rights became more prevalent with increased recognition at the international level and improved public health and medical care options, we also analysed the presence of health rights by year of the constitution's adoption. We categorised constitutions into five time periods: those introduced before 1970 and those adopted in each subsequent decade.

While a proportion of current constitutions across all regions had been adopted before 1970, there are also clear regional trends in constitutional adoption coinciding with decolonisation, democratisation and post-conflict nation-building. For example, in the Americas, 57% of the constitutions were introduced between 1970 and 1989. A majority of the constitutions in sub-Saharan Africa (85%) and Europe and Central Asia (55%) were adopted after 1989, and half of South Asia's constitutions were introduced between 2000 and 2011.

Results

Right to public health

Globally, a quarter (25%) of constitutions either guaranteed or aspired to protect the right to public health for all citizens in 2011.¹ This represents a slight increase from 23% in 2007. An additional 3% of constitutions did not mention a broad right to public health, but committed the state to preventing or treating epidemic diseases. Of the 143 constitutions that did not protect the overall right to public health in 2011, 65 (45%) either guaranteed or aspired to grant the right to a healthy environment (Table 1).

Public health protections were most common in the Americas, where 37% of countries guaranteed this right and an additional 9% aspired to do so in 2011. In the Middle East and North Africa, 42% of countries constitutionally guaranteed or

aspired to protect this right. The constitutions of Europe and Central Asia were least likely to mention public health, with just 11% offering some level of protection.

Constitutional protection of the right to public health also varied by income level, as defined by the World Bank income groups. Thirty per cent of lower middle-income countries and 29% of upper middle-income countries phrased public health as a goal or a guarantee in 2011, compared to 23% of low-income countries and 18% of high-income countries (Table 2).

Public health protection was typically expressed as a duty or obligation of the state. For example, in Spain [Const. Spain, 1978 (amended to 1992), art. 43], '[i]t is incumbent upon the public authorities to organize and watch over public health by means of preventive measures and the necessary benefits and services'. At the same time, constitutions varied considerably in the level of specificity with which they protected this right. Provisions tended to fall into one of two categories: those that outlined a broad protection and those that listed detailed aspects of the right that were included in that protection. Thus, Article 15 of Kuwait's constitution (Const. Kuwait, 1982) identified public and preventive health as concerns of the state without outlining what it must do to protect them: 'The State cares for public health and for means of prevention and treatment of diseases and epidemics'. In contrast, Articles 109 and 110 of Panama's constitution [Const. Republic of Panama, 1972 (amended to 2004)] went into considerable detail about the state's role in preventive and other aspects of health:

Table 1. Protection of right to public health, medical care services and overall health.

Type of protection	2007 constitutions (%)	2011 constitutions (%)
Right to public health		
Not granted in the constitution	146 (76)	143 (75)
Granted to specific groups, but not universally	0 (0)	0 (0)
Aspirational	20 (10)	21 (11)
Guaranteed	25 (13)	27 (14)
Right to medical care services		
Not granted in the constitution	88 (46)	84 (44)
Granted to specific groups, but not universally	8 (4)	7 (4)
Aspirational	27 (14)	27 (14)
Guaranteed	68 (36)	73 (38)
Right to health		
Not granted in the constitution	92 (48)	90 (47)
Granted to specific groups, but not universally	9 (5)	8 (4)
Aspirational	23 (12)	24 (13)
Guaranteed	67 (35)	69 (36)

'Not granted' means that the constitution does not protect or aim to protect the right for all citizens or specific groups.

'Granted to specific groups' means that the constitution guarantees the right to certain categories of citizens, such as women or children, but not to all citizens.

'Aspirational' means that the constitution designates the protection of the right for all citizens as an aim or objective of the state, specifies that its enforcement is limited by the state's resources or abilities, only mentions the right in the constitution's preamble, or declares that it is not defensible in court.

'Guaranteed' means that the right is granted in authoritative language to all citizens.

Table 2. Protection of right to public health by region and income in 2011.

	Not granted (%)	Granted to specific groups (%)	Aspirational (%)	Guaranteed (%)
By region				
Americas	19 (54)	0 (0)	3 (9)	13 (37)
East Asia and Pacific	23 (79)	0 (0)	6 (21)	0 (0)
Europe and Central Asia	47 (89)	0 (0)	1 (2)	5 (9)
Middle East and North Africa	11 (58)	0 (0)	3 (16)	5 (26)
South Asia	5 (62)	0 (0)	2 (25)	1 (12)
Sub-Saharan Africa	38 (81)	0 (0)	6 (13)	3 (6)
By income				
Low-income countries	27 (77)	0 (0)	5 (14)	3 (9)
Lower middle-income countries	38 (70)	0 (0)	7 (13)	9 (17)
Upper middle-income countries	37 (71)	0 (0)	5 (10)	10 (19)
High-income countries	41 (82)	0 (0)	4 (8)	5 (10)

'Not granted' means that the constitution does not protect or aim to protect the right for all citizens or specific groups.

'Granted to specific groups' means that the constitution guarantees the right to certain categories of citizens, such as women or children, but not to all citizens.

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'Guaranteed' means that the right is granted in authoritative language to all citizens.

The individual, as part of the national community, is entitled to promotion, protection, conservation, recovery and rehabilitation of his/her health [...]. In matters of health, the State is primarily obliged to develop the following activities, integrating the functions of prevention, cure and rehabilitation in the: 1. Establishment of a 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 individual 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 [...].

Only two countries explicitly protected broad public health measures according to socio-economic status, age or disability. In Uruguay, the constitution guaranteed that 'the State will provide gratis the means of prevention and treatment to both indigents and those lacking sufficient means' [Const. Oriental Republic of Uruguay, 1967 (amended to 2004), art. 44]. Similarly, Portugal guaranteed 'access by every citizen, regardless of economic situation, to preventive, curative and rehabilitative medical care' (Article 64).

Right to medical care services

The right to medical care was more commonly granted in constitutions than the right to public health. In 2011, 38% of countries worldwide guaranteed this right, compared to 36% in 2007. Of these, 9% guaranteed universal access to free health

care. An additional 14% of countries granted aspirational protection of the right to medical care to all citizens, and 4% did not grant the right universally but protected specific groups. A majority of the countries in the Middle East and North Africa (58%) and Europe and Central Asia (55%) guaranteed the right universally in 2011 (Tables 1 and 3).

Fifty-nine per cent of middle-income countries protected this right either in aspirational or authoritative language, compared to 52% of low-income countries and 38% of high-income countries. Protection of free health care was most common in South Asia and Europe and Central Asia, where 25% and 19% of the constitutions, respectively, guaranteed this right universally. A small minority of constitutions around the world guaranteed or aspired to protect medical care for persons with disabilities (11%), the socio-economically disadvantaged (7%), children (6%) or the elderly (4%) (Table 4).

Constitutions assigned different levels of responsibility to the state for the provision of these services and, as with the right to public health, they described the scope of health care protections in varying degrees of detail. For example, Article 111 of Latvia's constitution [Const. Republic of Latvia, 1922 (amended to 2009)] was conservative in promising that '[t]he State shall . . . guarantee a basic level of medical assistance for everyone'. In Nicaragua [Const. Republic of Nicaragua, 1986 (amended to 2005)], 'free health care is guaranteed for the vulnerable sectors of the population, giving priority to the completion of programs benefiting mothers and children' (Article 105) and Italy 'provides free medical care to the poor' (Const. Italian Republic, 1947 (amended to 2007), art. 32).

Table 3. Protection of right to medical care services by region and income in 2011.

	Not granted (%)	Granted to specific groups (%)	Aspirational (%)	Guaranteed (%)
By region				
Americas	15 (43)	3 (9)	3 (9)	14 (40)
East Asia and Pacific	15 (52)	0 (0)	5 (17)	9 (31)
Europe and Central Asia	19 (36)	1 (2)	4 (8)	29 (55)
Middle East and North Africa	8 (42)	0 (0)	0 (0)	11 (58)
South Asia	2 (25)	1 (12)	3 (38)	2 (25)
Sub-Saharan Africa	25 (53)	2 (4)	12 (26)	8 (17)
By income				
Low-income countries	16 (46)	1 (3)	8 (23)	10 (29)
Lower middle-income countries	19 (35)	3 (6)	10 (19)	22 (41)
Upper middle-income countries	19 (37)	2 (4)	7 (13)	24 (46)
High-income countries	30 (60)	1 (2)	2 (4)	17 (34)

'Not granted' means that the constitution does not protect or aim to protect the right for all citizens or specific groups.

'Granted to specific groups' means that the constitution guarantees the right to certain categories of citizens, such as women or children, but not to all citizens.

'Aspirational' means that the constitution designates the protection of the right for all citizens as an aim or objective of the state, specifies that its enforcement is limited by the state's resources or abilities, only mentions the right in the constitution's preamble, or declares that it is not defensible in court.

'Guaranteed' means that the right is granted in authoritative language to all citizens.

Table 4. Right to medical care for vulnerable groups in 2011.

Type of protection	Children (%)	Elderly (%)	Persons with disabilities (%)	Socio-economically disadvantaged (%)
Aspirational provisions for the group	3 (2)	2 (1)	10 (5)	3 (2)
Guaranteed to the group	8 (4)	6 (3)	11 (6)	9 (5)
Free medical care guaranteed universally or specifically to group	20 (10)	18 (9)	18 (9)	24 (13)
Potential positive action for the group	5 (3)	4 (2)	5 (3)	3 (2)

'Not granted' means that the constitution does not protect or aim to protect the right for all citizens or specific groups.

'Granted to specific groups' means that the constitution guarantees the right to certain categories of citizens, such as women or children, but not to all citizens.

'Aspirational' means that the constitution designates the protection of the right for all citizens as an aim or objective of the state, specifies that its enforcement is limited by the state's resources or abilities, only mentions the right in the constitution's preamble, or declares that it is not defensible in court.

'Guaranteed' means that the right is granted in authoritative language to all citizens.

'Potential positive action' means that the constitution encourages or mandates affirmative measures to promote protection of the right for this group.

Ecuador's citizens can expect the state to provide 'permanent, timely and non-exclusive access to programs, actions and services promoting and providing integral healthcare [...] governed by the principles of equity, universality, solidarity, interculturalism, quality, efficiency, effectiveness, prevention, and bioethics, with a gender and generational approach'(Const. Republic of Ecuador, 2008, art. 32). Moreover, Ecuador provides elderly persons '[c]are in specialized centers that guarantee their nutrition [and] health, [...] [p]rotection, care, and special assistance when they suffer from chronic or degenerative diseases [...] and] [a]dequate economic and psychological assistance guaranteeing their physical and mental health' (Article 38). Those with disabilities are guaranteed '[s]pecialized attention in public and private entities that provide healthcare services for their specific needs, which shall include the free provision of medicines' (Article 47).

Overall right to health

Many constitutions also protected the broad right to health, with or without providing specific rights to public health and health care services. Globally, 36% of countries guaranteed this right and 13% aspired to protect it for all citizens in 2011, with an additional 4% granting the right only to specific groups of citizens (Table 1). Thirty-nine countries that guaranteed the right to health also guaranteed the right to medical care services universally. Of these, 19 also guaranteed the right to public health for all citizens.

Half of the countries in Europe and Central Asia, as well as the Americas, guaranteed the right to health in authoritative language; this number drops to 34% in sub-Saharan Africa, 17% in East Asia and the Pacific and 16% in the Middle East and North Africa. No countries in South Asia guaranteed health protection universally. Right to health provisions were most common in low-income countries, with 71% offering some level of universal or group-specific protection. Fifty-nine percent of upper middle-income countries, 48% of lower middle-income countries

Table 5. Protection of broad right to health by region and income in 2011.

	Not granted (%)	Granted to specific groups (%)	Aspirational (%)	Guaranteed (%)
By region				
Americas	15 (43)	0 (0)	2 (6)	18 (51)
East Asia and Pacific	17 (59)	0 (0)	7 (24)	5 (17)
Europe and Central Asia	17 (32)	2 (4)	7 (13)	27 (51)
Middle East and North Africa	14 (74)	0 (0)	2 (11)	3 (16)
South Asia	6 (75)	1 (12)	1 (12)	0 (0)
Sub-Saharan Africa	21 (45)	5 (11)	5 (11)	16 (34)
By income				
Low-income countries	10 (29)	5 (14)	5 (14)	15 (43)
Lower middle-income countries	28 (52)	1 (2)	6 (11)	19 (35)
Upper middle-income countries	21 (40)	1 (2)	9 (17)	21 (40)
High-income countries	31 (62)	1 (2)	4 (8)	14 (28)

'Not granted' means that the constitution does not protect or aim to protect the right for all citizens or specific groups.

'Granted to specific groups' means that the constitution guarantees the right to certain categories of citizens, such as women or children, but not to all citizens.

'Aspirational' means that the constitution designates the protection of the right for all citizens as an aim or objective of the state, specifies that its enforcement is limited by the state's resources or abilities, only mentions the right in the constitution's preamble, or declares that it is not defendable in court.

'Guaranteed' means that the right is granted in authoritative language to all citizens.

and 38% of high-income countries affirmed a right or aspirational protection of health, either in universal or specific terms (Table 5).

Globally, 20 countries (10%) guaranteed the right to health specifically to children, including eight in Latin America and six in sub-Saharan Africa. Four per cent of the world's constitutions encouraged positive action for children's health. Protection of other vulnerable groups was less common: the health of the elderly was

Table 6. Right to health for vulnerable groups in 2011.

Type of protection	Children (%)	Elderly (%)	Persons with disabilities (%)	Socio-economically disadvantaged (%)
Aspirational provisions for the group	6 (3)	2 (1)	1 (1)	2 (1)
Guaranteed to the group	20 (10)	5 (3)	1 (1)	1 (1)
Potential positive action for the group	8 (4)	0 (0)	0 (0)	2 (1)

'Not granted' means that the constitution does not protect or aim to protect the right for all citizens or specific groups.

'Granted to specific groups' means that the constitution guarantees the right to certain categories of citizens, such as women or children, but not to all citizens.

'Aspirational' means that the constitution designates the protection of the right for all citizens as an aim or objective of the state, specifies that its enforcement is limited by the state's resources or abilities, only mentions the right in the constitution's preamble, or declares that it is not defendable in court.

'Guaranteed' means that the right is granted in authoritative language to all citizens.

'Potential positive action' means that the constitution encourages or mandates affirmative measures to promote protection of the right for this group.

guaranteed or aspired to in 4% of countries, while persons with disabilities and the socio-economically disadvantaged were explicitly granted aspirational protection, guaranteed rights or potential positive action in just 2% and 3% of countries globally (Table 6).

As with other health rights, constitutions differed in their focus, specificity and the level of responsibility assigned to the state when it came to overall health. In Hungary [Const. Republic of Hungary, 1949 (amended to 2010), art. 70D], everyone ‘shall have the right to the highest possible level of physical and mental health’ and in Guyana [Const. Co-Operative Republic of Guyana, 1980 (amended to 2001), art. 40], ‘[e]very person . . . is entitled to the basic right to a happy, creative and productive life, free from [. . .] disease [. . .]’. Bolivia’s constitution (Const. Republic of Bolivia, 2009) specified in Article 37 that, ‘[t]he State has the irrevocable obligation to guarantee and sustain the right to health, which is a supreme function and primary financial responsibility. The promotion of health and the prevention of diseases shall be prioritized’. In Guatemala [Const. Republic of Guatemala, 1985 (amended to 1993), art. 93], the focus was on equity: ‘The right to health is a fundamental right of the human being without any discrimination’.

Senegal protected all citizens’ right to health and went on to specify that ‘[t]he state and the public collectively shall have the social duty to watch over the physical [. . .] health of the family and, in particular, of the handicapped and the aged’ [Const. Republic of Senegal, 2001 (amended to 2009), art. 17]. In Nepal, ‘[e]very child shall have the right to nurture, basic health and social security’ (Article 22); furthermore, ‘[t]he State shall pursue a policy of uplifting the economically and socially backward indigenous peoples, Madhesi, Dalit, marginalized communities, and workers and farmers living below the poverty line, by making a provision of reservation in [. . .] health’ [Interim Const. Nepal, 2006 (amended to 2008), art. 35].

Constitutions often discussed the rights to health, public health and health care services in the same section or article. Like many others, Article 29 of the Seychelles’ constitution [Const. Republic of Seychelles, 1993 (amended to 2000)]:

. . . recognises the right of every citizen to protection of health and to the enjoyment of the highest attainable standard of physical and mental health and with a view to ensuring the effective exercise of this right the state undertakes - (a) to take steps to provide for free primary health care in state institutions for all its citizens; (b) to take appropriate measures to prevent, treat and control epidemic, endemic and other diseases; (c) to take steps to reduce infant mortality and promote the healthy development of the child; (d) to promote individual responsibility in health matters [. . .]

Protection of health rights over time

There is a clear trend towards greater constitutional protection of health rights over time. While only 33% of the constitutions that were adopted prior to 1970 addressed at least one health right, 60% of those introduced between 1970 and 1979 included the right to health, public health and/or medical care. Three quarters of the constitutions introduced in the 1980s and 94% of those adopted in the 1990s protected at least one of these rights. Only one of the 33 constitutions adopted between 2000 and 2011 (3%) did not protect at least one health right (Figure 1).

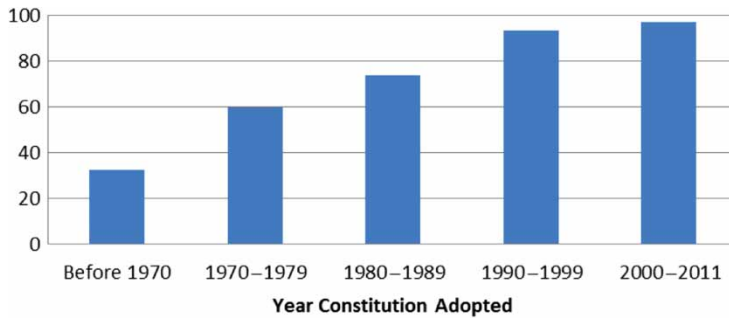


Figure 1. Percentage of constitutions addressing health rights.

Discussion

Although all UN member states have agreed in international conventions to protect their citizens' right to health, this right remains absent from many countries' constitutional frameworks. When we systematically reviewed all of the world's constitutions and analysed the full range of ways that broad health rights can be guaranteed, we found that 86 countries (45%) did not guarantee their citizens any kind of health protection.

In international conventions and agreements, health protection is articulated as a right both to public health or preventative measures and to medical care services. With respect to these specific rights, the status of the world's constitutions can be described as either half empty or half full. Seventy-three countries (38%) guaranteed the right to medical care services and another 27 (14%) aspired to protect this right in 2011. Nine per cent of countries provided a constitutionally guaranteed right to free health care. When it came to guaranteeing public health, the global performance was poorer. Only 27 countries (14%) guaranteed this right, and 21 (11%) aspired to it.

Specific protection of vulnerable groups was even less common in the world's constitutions. Twenty-five countries (13%) guaranteed health or medical care specifically to children and 12 (6%) protected one of these rights for persons with disabilities. The elderly and the economically disadvantaged were each guaranteed at least one of these rights in 10 countries (5%). Only two countries addressed public health services for one of these groups (the economically disadvantaged). Importantly, as new constitutions are passed and existing constitutions are amended, they increasingly protect health rights. This can be demonstrated by the steady increase in the inclusion of health rights in each decade since 1970, and the increase in constitutional protection of the rights to medical care services and public health observed even over the short time frame between 2007 and 2011.

These findings suggest steps worth taking in terms of the passage of legal rights at the national level as well as for future research. For the internationally recognised right to health to have practical meaning, it is important that all signatory countries guarantee health protection at the national level. In some countries, the ratification of international conventions automatically makes the elements of those agreements domestically enforceable. However, this is not the case for the majority of countries, where it is crucial that international aspirations be translated into national law. The right to health is typically embodied in constitutions, although national legislation

more commonly takes specific steps to ensure that public health and medical care services are provided. Our analysis of 191 constitutions suggests that the rights to health, public health and medical care services may not be legally guaranteed in many countries, despite their international commitments. A natural step for the World Health Organisation and for the UN bodies that monitor the implementation of these conventions would be to map progress annually on national guarantees and to make the information available in a publicly accessible format. This work could expand beyond global constitutional health rights to include national legislation that provides universal protection of these rights.

It is important to note that countries with strong constitutional protections may have poor records of implementing health rights on the ground, and those lacking constitutional provisions may have excellent health care systems in place. The latter is particularly true in the case of older constitutions that have not been significantly amended since constitutional rights to health became common.

In order to better understand the conditions under which constitutional guarantees impact health outcomes on the ground, future research should use longitudinal analyses and multilevel modelling of constitutional rights at a national level and observed public health, medical care, and health outcomes on community and individual levels. Focusing future studies on the varying degrees of success with which these constitutional rights have been implemented – as well as on countries where the rights have not yet been legislated nationally – could provide important insights into the barriers that need to be overcome to ensure that the right to health is truly guaranteed for everyone.

The global recognition that the right to health is universal was a powerful step in the movement to guarantee fundamental human rights for all people. Ensuring that this right moves from philosophy to practice requires a kind of transparency and accountability where the public can readily access information on which countries guarantee the rights to public health and medical services, and the extent to which these guarantees are implemented. At the same time, this accountability should take place in an environment that seeks to understand the barriers to making the right to health real so that all nations can find a way to move forward together on this basic human right.

Note

1. For details on which rights are protected in specific countries around the globe, please visit: <http://childrenschances.org/>

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