

Parliament roles in protecting rights to health in East and Southern Africa

Parliaments have a significant role to play in ensuring that people are able to access the right to health, that health rights are enshrined in national laws, and that national governments make proper provisions for implementing health rights. This brief sets out the international legal framework for the right to health and the responsibilities of national legislatures in making that right to health real. Parliaments and their committee structures play a key role in the process of ratifying international human rights commitments, passing and reviewing laws to implement these commitments, overseeing the executive and monitoring implementation of these laws, and in including civil society in such processes. Parliament thus plays a critical role in protecting the right to health.

Recommendations

Parliamentarians in east and southern Africa can ensure commitments to the right to health are put into law and practice by:

- ▶ Ensuring people understand and can express their views about international treaties and their health implications, and that they are debated by parliament before their adoption
- ▶ Following up on commitments made to international treaties affecting health to see whether laws need to be amended or enacted to meet these commitments.
- ▶ Checking laws and regulations to make sure they meeting human rights commitments to health
- ▶ Ensuring that appropriate budget allocations are made and programmatic actions are taken to put commitments into action – particularly to progressively increase access to health care and the conditions needed for health
- ▶ Providing oversight and holding officials accountable by:
 - Bringing them to present evidence before the National Assembly or its committees;
 - Monitoring activities, programmes and expenditure to assess whether commitments are being honoured (like the Abuja commitment of 15% government spending on health);
 - Inviting public input on budgets, treaties and laws; and
 - Initiating mechanisms such as site visits, public hearings and engaging civil society to assess the delivery on and impact of commitments within communities.

The right to health in international agreements

According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) (2000), General Comment 14: *'Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest standard of health conducive to living a life in dignity.'*

States must take steps to ensure that the right to health is met and that all persons have an equal chance to live a long and healthy life. The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976) states that conditions need to be created for everyone to enjoy their economic, social and cultural rights. These include the right to a safe, clean living environment, with clean water, adequate housing, adequate nutrition, social security and education and the right to expect and demand adequate healthcare. The right to health is for everyone, rich and poor, without discrimination and includes the right to available, accessible, acceptable and quality healthcare and the conditions necessary for health.



Regional and international commitments

Numerous international and regional instruments provide for health as a human right and outline what is intended by this. Besides the ICESCR, the African Charter on Human and Peoples' Rights is a uniquely African human rights document adopted by the Organization of African Unity in 1979. It confirms the idea that

"Every individual shall have the right to enjoy the best attainable state of physical and mental health"

and that government must

"... take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.."

Treaties impose obligations on states who have ratified them to implement health rights in different ways. Towards this parliaments:

- ▲ Draft or approve laws that respect and protect rights set out in the treaties;
- ▲ review laws to ensure compliance with human rights commitments;
- ▲ hold the executive accountable for implementation;
- ▲ encourage public participation to achieve the right to health.

Implementing commitments in national law and programmes

A treaty is an international agreement entered into by two or more states governed by International Law. The principle international human rights treaties are multilateral, and are open to any states that want to join. A treaty may be referred to by many different names, such as "convention", "covenant" and "protocol". The obligations in a treaty are based on consent. States that have agreed to be bound by a treaty are known as 'states parties'.

Acceptance of a treaty is when a state expresses its intention to consent to a treaty subject to ratification. It is a step towards signature and ratification.

The text of a multilateral treaty is adopted by the consent of all states, whether or not they were involved in negotiating the text. Adoption is invariably associated with a call to all states to sign the treaty. The treaty thus becomes 'open for signature'.

Signature is the signing and exchange of treaty instruments by states. A state may sign a treaty, thereby indicating its intention to become a party, following domestic legislative or executive action, such as approval by Parliament and/or the passage of enabling legislation.

When a state did not take part in negotiating a treaty but wishes to enter and be bound by its provisions, it may agree to accession, which has the same effect as signature and ratification.

Rights are given content and substance when enacted into national law. The table below shows some of the treaties ratified by countries in east and southern Africa by 2005.

Beyond the ICESCR and the ACHPR described earlier, the African Charter on the Rights and Welfare of the Child (ACRC) states that every child shall have the right to enjoy the highest attainable state of physical, mental and spiritual health. The Protocol to the African Charter on Human & Peoples' Rights on the rights of Women in Africa (ACRW) states that the states shall ensure that the health of women including sexual and reproductive health is respected and protected.

Further information on these and other treaties and their content relevant to health can be found at www.equinet africa.org.

Once a commitment is made, governments become responsible for progressively realising the rights covered by allocating budgets, passing laws and putting in place programmes. If government cannot afford a level or form of health intervention or service now, it must take measures to ensure that it will, in future, be

Ratification of Human Rights Treaties in east and southern Africa as of 2005

| Treaty | Angola | Botswana | DRC | Kenya | Lesotho |
|---|---------|----------|---------|---------|---------|
| ACHPR African Charter on Human & Peoples' Rights (1990) | Mar-86 | Jul-82 | Jul-83 | NA | Feb-88 |
| ACRC African Charter on the Rights and Welfare of the Child (1990) | Apr-88 | Jul-97 | - | Jul-96 | Sep-95 |
| ACRW Protocol to the African Charter on Human & Peoples' Rights on the rights of women in Africa (2003) | N/A | N/A | Dec-03* | Dec-03* | Oct-00 |
| ICESCR International Covenant on Economic, Social & Cultural Rights (1966) | Jan-92a | - | Nov-76a | May-72a | Sep-92a |

Dash means country has not acted yet. Date only indicates date ratified.

*Codes after dates as follows: * means signatory only, "a" means accession.*



able to provide this. While recognising that governments do not have unlimited resources, parliamentary committees should expect the executive to expand services to protect the rights committed to, especially for poor communities.

Some international agreements can also threaten the right to health. For example, the Central American Free Trade Agreement (CAFTA) threatens the ability of Costa Rica's social security system to provide universal health coverage or to purchase lower price generic medicines. When executives sign such treaties or agreements, Parliaments have the power to accept or reject them.

No treaty or agreement can come into force in a democratic country without being ratified by its Parliament. Massive public opposition in Costa Rica to the CAFTA meant that Costa Rica's parliament delayed voting to ratify it, despite huge pressure.

There have been similar concerns in our region about health sector commitments made to the World Trade Organisation General Agreement on Trade in Services, as this can limit governments' flexibility to regulate for-profit health services.

What happens after ratification?

States are expected to take appropriate action to make these agreements real. This means reviewing existing laws to check that they are consistent with treaty commitments. If needed, states should pass new laws to cover the treaty commitments or the appropriate institutional and budget support. Any new national laws should be checked in light of the treaty commitments.

Appropriate monitoring measures must also be put in place. For example, if a country signs on to Convention for the Elimination of Discrimination Against Women, it should provide adequate budgets to address issues of violence against women, and monitor whether this reduces rates of violence and whether services to support women on issues of violence are improving. Without such measures to monitor effective implementation, rights will be meaningless.

There is often weak monitoring of the implementation of treaty commitments after ratification. Some protocols and agreements relevant to health may be passed with inadequate information to or assessment by Parliaments of their health implications, such as through health impact assessments.

Parliaments can ask for information to support their decisions on treaties and to monitor them from their research departments, from the executive, and from civil society and academic institutions.

Ratification is the formal confirmation and approval of the treaty by a state and acceptance to be bound by the treaty contents legally. Ratification is also known as 'acceptance', 'approval' or 'confirmation'.

Entry into force is where the treaty provision begins to apply where consent to be bound has been established by all negotiating states. Ratifications by a minimum number of states is often needed before a treaty can enter into force.

A reservation is a formal state declaration that it does not accept as binding on it a certain part or parts of a treaty. States cannot reserve on critical provisions that go to the heart of the treaty.

An Optional Protocol establishes additional rights and obligations to a treaty. It is usually adopted at the same time, but is subject to independent ratification. Such protocols enable certain states to establish obligations which reach further than the general treaty and to which not all parties of the general treaty consent. The Optional Protocol to the International Covenant on Civil and Political Rights of 1966 is an example of this (<http://untreaty.un.org/English/guide.asp>).

| | | | | | | | | | | |
|------------|---------|-----------|------------|---------|--------------|-----------|----------|---------|---------|----------|
| Madagascar | Malawi | Mauritius | Mozambique | Namibia | South Africa | Swaziland | Tanzania | Uganda | Zambia | Zimbabwe |
| NA | Nov-85 | Jun-88 | Feb-85 | Jul-88 | Jul-92 | Sep-91 | Feb-80 | NA | Jan-80 | May-86 |
| Mar-01 | Sep-95 | Feb-88 | Jul-94 | Jul-00 | Jan-96 | Jun-92* | Mar-99 | Aug-90 | Feb-92* | Jan-91 |
| Feb-04* | May-01 | Jan-05* | Dec-03* | Aug-00 | Dec-00 | Dec-04* | Nov-03* | Dec-03* | Aug-05* | Nov-03* |
| Sep-71a | Dec-93a | Dec-73a | - | Nov-94a | Oct-94* | Mar-04a | Jun-76a | Jan-87a | Apr-84a | May-91a |



Overseeing adherence to international commitments on health

As parliamentary committees check whether your Government has ratified the existing treaties on human rights. If not,

- △ raise a question on whether government intends to sign those instruments;
- △ request for evidence and information from state officials, civil society and academia on the costs and benefits of signing up to the treaties, or of not signing;
- △ if the health impacts are positive, encourage the executive to start the signing and ratification process without delay.

If your government has already ratified existing treaties:

- △ Check whether your country has made any reservations to the treaties and whether these are still necessary. If you conclude that they are not, take action for their withdrawal. For example, when Zambia ratified the ICESCR in 1984, it posted a reservation on the right to primary education, which argued that, while it fully accepted the principles it did not have the resources to fully apply them at this stage.
- △ Check whether your Government has made the necessary declarations or ratified the relevant Optional Protocols. For example, lobbying by civil society has led to the proposal of an optional protocol for the ICESCR which allows for individuals or groups of individuals to seek justice in an international forum for the violation of their economic, social and cultural rights by a State Party if national mechanisms have failed them.
- △ If government is in the process of signing a convention, check whether it intends to make reservations to the treaty. If so, obtain evidence and take input on whether the reservations are necessary and compatible with the content and purpose of the treaty. If the reservations appear groundless, argue for the executive to reverse its position.

Ratification of treaties is not an end in itself. Parliamentary committees on health can oversee that:

- △ laws or policies are enacted or amended to put the treaty into practice;
- △ services and budget allocations are provided to meet the specific treaty needs;
- △ decision-makers and the general public understand the implications of a treaty for their right to health;
- △ monitoring and evaluation is being done, including of changes in the violation of particular rights since ratification of a treaty and of the impact at community level of the treaties and the laws and programmes to implement them.

The research departments in parliament can keep committees updated on the commitments made, being considered or being implemented.

Resources

1. World Health Organisation (2002) *25 Questions and Answers on Health and Human Rights*, available at: www.who.int/hhr/information/25_questions_hhr.pdf
2. United Nations (1997) *A summary of major international human rights instruments*, available at: <http://www.hrweb.org/legal/undocs.html>
3. The United Nations Committee on Economic, Social and Cultural Rights (2000) 'The right to the highest attainable standard of health,' *General Comment No. 14*, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument)
4. United Nations (1976) *The International Covenant on Economic, Social and Cultural Rights*, available at: www.unhchr.ch/html/menu3/b/a_ceschr.htm
5. Kamupira M, London L (2005) 'Human Rights Commitments relevant to health made by states in Southern Africa: Implications for health equity,' *EQUINET Discussion Paper 25*. EQUINET: Harare, available at: <http://www.equinet africa.org/bibl/docs/DIS25rights.pdf>

For further information see www.equinet africa.org or contact EQUINET at admin@equinet africa.org

Produced by EQUINET, TARSC and UCT in cooperation with SEAPACOH
Design and layout by Blue Apple Design
Printed by Ideas Studio