



**Preventing cervical cancer:
the imperative of women's right to health**
Background Paper 3



Fight against cervical cancer:
challenges and opportunities for women's right to health

27-28 September 2007, Brussels



Preventing cervical cancer: the imperative of women's right to health

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Introduction

This paper argues that the prevention of cervical cancer should be made a priority on national and international political agendas alike. Women's health issues do not receive the attention they merit and the consequences are tragic for women themselves, their families and their communities. Paul Hunt in his capacity as the United Nations Special Rapporteur on the Right to Health states that '[m]aternal mortality is a human rights catastrophe on a scale that dwarfs other human rights issues such as disappearances and the death penalty'.¹ Although the number of deaths estimated due to maternal mortality is almost twice the number of deaths due to cervical cancer², the latter is well within the parameters of a human rights catastrophe. Half a million new cases of cervical cancer are detected every year and of those an estimated 250,000 women will meet an early death by a disease that is by all medical accounts preventable³. Failure to provide available preventive techniques is a clear violation of women's right to health as well as of women's right to life. Preventing cervical cancer, a disease only befalling women, is a gender justice issue. It is also a question of social justice, as the prevalence rate is disproportionately large in the developing world which accounts for 80% of cervical cancer deaths and new cases detected.⁴ The opportunity to meet this challenge is now greater than ever with new preventive technologies developed for screening and vaccination.⁵ We have the moral and legal obligation to respect, protect and fulfil women's rights to health through ensuring that these medical developments benefit all women, particularly those who need them the most. A failure to act is in violation of international commitments to human rights and in breach of established international norms.

1. Hunt, Paul, Statement to the Human Rights Council, 28 March 2007, Accessed 02/08/07 at: http://www2.essex.ac.uk/human_rights_centre/rth/docs/PH's%20oral%20remarks%20to%20HRC%2028%20March%202007.doc

2. Alliance for Cervical Cancer Prevention, "The Case for Investing in Cervical Cancer Prevention (November 2004), Accessed 10/08/07 at http://www.path.org/files/RH_accp_case.pdf

3. Saraiya, Usha B, "Preventable but not prevented: the reality of cervical cancer", *Journal of Obstetrics and Gynaecology Research*, vol 29, issue 5, (2003)

4. Alliance for Cervical Cancer Prevention, "The Case for Investing in Cervical Cancer Prevention" (November 2004), Accessed 10/08/07 at http://www.path.org/files/RH_accp_case.pdf

5. See conference background paper "Cervical Cancer Prevention and Treatment: Science, Public Health and Policy Overview "

The right to health

The right to health in international legislation

The right to health is protected in numerous international, regional and domestic legal texts. It is referred to in Article 25 of the Universal Declaration of Human Rights (UDHR): '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'.

The right to health is further codified in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is legally binding for the 149 ratifying states. The article reads:

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
 - *The provision for the reduction of the stillbirth-rate and of infant mortality and for 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.*

The right to health is further recognised in the Convention on the Rights of the Child, The Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 12.1 of the CEDAW, ratified by 177 states, reads:

“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”

The General Recommendation 24 of the CEDAW further elaborates on this, essentially asserting that the failure of providing health care specifically needed by women amounts to discrimination.

The right to health is also explicitly recognised in several regional human rights treaties, including the European Social Charter, the Protocol of San Salvador



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and the African Charter on Human and People's Rights.⁶ In the domestic sphere the rights to health and to health care are protected in 73 countries' national constitutions (73 out of 187 countries reviewed, 165 of which had available written constitutions).⁷

General Comment No. 14

In 2000, the Committee on Economic, Social and Cultural Rights issued the General Comment No. 14 on the right to the highest attainable standard of health.⁸ In essence it was an attempt to elaborate on ICESCR Article 12 and give guidance on its implementation. The Committee states that the right to health should not be interpreted as the right to be 'healthy' as this is also determined by an array of biological pre-conditions. It does however mean the right to 'timely and appropriate health care' and socio-economic conditions necessary to lead a healthy life, including access to education and information on health related topics. It further emphasises the importance of the population's right to participate in their country's health-related policy-making process on all levels. The right to health contains according to the Committee the following elements:

- Availability – Goods and services provided through functioning health care systems have to be available in sufficient quantity
- Accessibility – The above-mentioned goods and services must be made accessible to everyone – this includes the principle of non-discrimination, the physical and economic accessibility as well as accessible information on health issues
- Acceptability – the provision of goods and services must be culturally appropriate and respectful of medical ethics
- Quality – the goods and services should be of good quality, i.e. skilled medical staff, good quality drugs and medical equipment

In interpreting Article 12.2 (c) on the right to prevention of diseases, the Committee highlights States' responsibilities to make available relevant technologies. The Committee's interpretation of Article 12.2 (d) further includes the provision of basic preventive health services, including regular screening programmes. The Committee also recommends the inclusion of a gender perspective in health related policies and calls for interventions aiming at the prevention and treatment of diseases befalling women. Although General Comment No. 14 is not of a legally

6. E/CN.4/2003/58 , para 15, Report of the Special Rapporteur Paul Hunt to the Economic and Social Council, The right of everyone to the enjoyment of the highest attainable standard of physical and mental health

7. Gauri, Varun, "Social Rights and Economics: Claims to Health Care and Education in Developing Countries", World Development, vol 32, No 3, (2004)

8. E/C.12/2000/4, Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights

binding nature it still has significant legal weight⁹ as it represents the opinion of a United Nations committee of experts on the interpretation of the right of health. International law in this respect has a strong socialising impact on actors in the international system, communicating an international consensus and guiding international policy-making.¹⁰ It further provides a normative foundation for advocacy efforts.

Obligations of duty holders

States

Health systems are widely seen as inequitable both between states and within states and they will continue to fail addressing the needs of the most vulnerable if there is no concerted effort to remedy this injustice.¹¹ The main obligation of respecting, protecting and fulfilling the right to health still rests with States Parties but assistance from the international community is often necessary. Article 2.2 in the ICESCR reads:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

In the General Comment No. 14, the Committee clarifies this obligation as the duty to respect, protect and fulfil the right to health. The duty to fulfil the right to health is particularly relevant for the prevention of cervical cancer as it includes the provision of immunization programmes as well as sexual and reproductive health services. Although the state is obligated to progressively achieve the full realisation of the right to health as outlined in Article 12, it has to act within its available resources.

The international community

When a state does not have the resources needed, other states should then facilitate the provision of essential health services and make sure that their membership in international organisations works towards the fulfilment of the right to health. This implies that states have responsibilities towards citizens of other states. This responsibility has been elaborated upon in terms of

9. Robinson, Mary, “Neglected Diseases and Neglected Communities: a Human Rights Perspective”, Speech given at MSF Neglected Diseases Group Meeting, Universiti Sains Malaysia, Penang, Malaysia, (February 6-7, 2004), Accessed 15/07/07 at <http://www.realizingrights.org/?option=content&task=view&id=61>

10. Coplin, William D., “International Law and Assumptions about the State System”, World Politics, vol 17, no 4, (July 1965)

11. Gwatkin, Davidson R, Abbas Buiya and Cesar G Victora, “Making health systems more equitable”, Lancet, vol 364, (October 2, 2004)





international security in the 2001 report on the Responsibility to Protect.¹² This report asserts that state sovereignty is a question of responsibility rather than control, and that if the state is **unable** or **unwilling** to protect its citizens from preventable catastrophes, it is the responsibility of the international community to intercede. The international doctrine on Responsibility to Protect subsequently endorsed by the UN General Assembly in 2005¹³, refers explicitly to crimes against humanity, genocide and war crimes but there are voices arguing for a broadened application of the principle to include human rights violations in terms of state unwillingness to confront infectious disease such as HIV/Aids.¹⁴ This argument is related to the concept of Human Security, which in essence is a broadening of the international security agenda to be people-centred in scope and to include threats of a non-military nature.¹⁵ While a full elaboration of this approach is beyond the scope of this paper the main point is that international security could also be conceptualized in terms of health, including security from preventable infectious disease. In this context of examining responsibilities towards citizens, the role of the international community in the prevention of cervical cancer becomes much more important.

Private sector and civil society organisations

The accessibility of drugs and preventive medical techniques is to a large extent dependent on pricing policies. The role of the private sector and the importance of a public-private partnership in ensuring the provision of essential health care cannot be underestimated. While the right to enjoy the benefits of scientific progress is outlined in the Article 15 of ICESCR, so is the right to protection of material interests resulting from authoring scientific production. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) protects the latter right which has been much debated, *inter alia* in the realm of pharmaceutical research.¹⁶ However, the World Trade Organisation has taken the decision to allow countries to produce and export generic copies of patented drugs under compulsory license to countries with limited drug manufacturing capacity.¹⁷ It

12. International Commission on Intervention and State Sovereignty (ICISS), The Responsibility to Protect: Report from the International Commission on Intervention and State Sovereignty, (2001), Accessed 02/08/07 at <http://www.iciss.ca/pdf/Commission-Report.pdf>

13. A/60/L.1 United Nations General Assembly, 2005 World Summit Outcome

14. Lewis, Stephen, "South Africans need the world", Ottawa Citizen, (Aug 16, 2007), Accessed 22/08/07 at <http://www.canada.com/ottawacitizen/news/opinion/story.html?id=4a79fee3-13c7-4cc6-98b0-53eff8496693>

15. United Nations Development Programme (UNDP), "New Dimensions of human security", Human Development Report, New York, Oxford: Oxford University Press, (1994) Accessed 01/08/07 at: <http://hdr.undp.org/reports/global/1994/en/>

16. See for example: Aginam, Obijiofor, "International law and communicable disease", Bulletin of World Health Organization, vol 80, issue 12, (2002)

Barton, John H., "TRIPS and the Global Pharmaceutical Market", Health Affairs, vol 23, issue 3, (May/June 2004)

Joseph, Sarah, "Pharmaceutical Corporations and Access to Drugs: The 'Fourth Wave' of Corporate Human Rights Scrutiny", Human Rights Quarterly, 25(2), (2003)

17. Robinson, Mary, "Neglected Diseases and Neglected Communities: a Human Rights Perspective", Speech given at MSF Neglected Diseases Group Meeting, Universiti Sains Malaysia, Penang, Malaysia, (February 6-7, 2004), Accessed 15/07/07 at <http://www.realizingrights.org/?option=content&task=view&id=61>

is also worth noting that under TRIPS Article 73 on Security Exceptions¹⁸, a country can be allowed to take actions contrary to the agreement if it deems it necessary for its essential security interests. Again, this could be applicable to the right to health depending on the conceptualisation of security. Furthermore, international recognition of corporate social responsibility and the duty placed on the private sector relating to human rights has spurred the creation of Global Compact¹⁹ and UN Norms for Businesses²⁰ where private sector stakeholders have voluntarily taken an active role in promoting human rights worldwide. The quote of Louis Pasteur, vaccine developer and humanitarian benefactor, seems appropriate in this context: 'Science knows no country, because knowledge belongs to humanity, and is the torch which illuminates the world.'

In the 2006 report by the International Task Force on Global Public Goods there was further emphasis on the need for greater international cooperation and public-private partnership in the combat of infectious disease. Since infectious disease knows no borders, prevention and treatment thereof is a global public good. The report emphasized the need for capacity building of public health systems in developing countries through international financing and human resources, calling upon governments, the private sector and civic actors to assist in this endeavour.²¹ Paul Hunt, the United Nations Special Rapporteur on the Right to Health, insists on having more attention devoted to health issues by the established NGOs working on human rights. He further calls for more health professionals to adopt a rights-based approach to their work.²² Advocacy efforts from women and community leaders should focus on the dissemination of information related to the prevention of cervical cancer and the right to demand participation in health policy making in line with General Comment No. 14.

The implementation of the right to health

Justiciability

The justiciability of a legal text refers to its ability to create legal effects. The right to health is enforceable through its inclusion in binding international and regional treaties, as well as in national constitutions. There are several cases where the right to health has successfully been argued in regional and national courts.²³ More frequent legal references to the right to health could increase

18. <http://www.wto.org>

19. <http://www.unglobalcompact.org/>

20. E/CN.4/Sub.2/2003/12/Rev.2, Commission on Human Rights, Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights

21. International Task Force on Global Public Goods, "Meeting Global Challenges: International Cooperation in the National Interest, (2006), Accessed 08/08/07 at <http://www.gpgtaskforce.org/bazment.aspx>

22. Hunt, Paul, Statement to the Human Rights Council, 28 March 2007, Accessed 02/08/07 at http://www2.essex.ac.uk/human_rights_centre/rth/docs/PH's%20oral%20remarks%20to%20HRC%2028%20March%202007.doc

23. Robinson, Mary, "Neglected Diseases and Neglected Communities: a Human Rights Perspective", Speech given at MSF Neglected Diseases Group Meeting, Universiti Sains Malaysia, Penang, Malaysia, (February 6-7, 2004), Accessed 15/07/07 at <http://www.realizingrights.org/?option=content&task=view&id=61>





its justiciability as it is a fluid concept that develops with time.²⁴ In relation to women's right to health there has also been cases of proven justiciability and although they are relating to maternal mortality they can also lead the way for asserting the prevention of cervical cancer as a human rights violation.²⁵

“Human rights tribunals are finding that failure to address preventable causes of maternal mortality violates women's human rights, including their rights to be free from all forms of discrimination, their right to life, and their right to health. In so doing, such tribunals are obliging governments to provide remedies to redress the violations of human rights that women and their families have undergone, and to prevent future violations.”²⁶

Development assistance

The right to health can and should be used to make cervical cancer a priority in development assistance. One barrier has been that it is seen as a disease of middle aged and older women 'who may be considered unproductive members of households and communities'²⁷. From a human rights perspective this is an appalling view of women's right to live their life in the highest attainable standard of health. Without having their rights recognised as being of intrinsic value, women are denied their legitimate position as subjects of international, regional and national human rights legislation. Even from a utilitarian perspective, the view of middle aged and older women as unproductive members of society is a highly erroneous assumption. They are at the very centre of community structure as main caretakers and food providers for their families.²⁸

If we were to use the Rawlsian approach to justice²⁹ and adopt a veil of ignorance to health policy questions, we would find it difficult to accept the inequities in health care around the world. Would we allow for the possibility that we could live in a country where existing preventive technologies were not accessible? Would we allow for the deaths of our mothers, wives and daughters by a preventable disease? If the veil of ignorance would strip us of class and gender affiliations, would we not ensure health care provisions that prevent and protect from infectious diseases such as cervical cancer?

24. Toebes, Brigit, "Towards an Improved Understanding of the International Human Right to Health", Human Rights Quarterly, vol 21 (3), (1999)

25. Cook, Rebecca J et al., "Advancing Safe Motherhood through Human Rights", World Health Organization, (2001), Accessed 05/08/07 at http://www.who.int/reproductive-health/publications/RHR_01_5_advancing_safe_motherhood/RHR_01_05_table_of_contents_en.html

26. Cook, Rebecca J and Maria Beatriz Galli Bevilacqua "Invoking human rights to reduce maternal deaths" Lancet, vol 363, (Jan 3 2004)

27. Alliance for Cervical Cancer Prevention, "The Case for Investing in Cervical Cancer Prevention" (November 2004), Accessed 10/08/07 at http://www.path.org/files/RH_accp_case.pdf

28. *ibid*

29. Rawls, John, A Theory of Justice, United States: Belknap (1971)

Conclusion

The recognition of women's rights to health must be translated into the implementation of women's rights to health. The General Comment no 14 calls for the development of indicators to monitor state progress towards its responsibility to respect, protect and fulfil the right to health as outlined in Article 12 of ICESCR.³⁰ The prevention of cervical cancer, as measured by the availability, accessibility and quality of preventive techniques, is a formidable indicator for state obligations under article 12 as well as a much needed monitoring mechanism for women's health care. As Usha B Saraiya asserts in her article, cervical cancer is more than a biomedical disease '[i]t is in fact an index of health care of women in a society'³¹. It is simply not enough to codify women's right to health in treaties and constitutions, this recognition must be implemented through concrete health policies benefiting women globally.



30. E/C.12/2000/4, Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights

31. Saraiya, Usha B, "Preventable but not prevented: the reality of cervical cancer", Journal of Obstetrics and Gynaecology Research, vol 29, issue 5, (2003)



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