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Global accountability to human rights in healthcare

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Abstract: *Human rights are fundamental rights that are inherently essential, with accountability being a crucial element in protecting individuals' rights when they have been infringed. Human rights accountability has encountered many challenges, including apertures and lack of clarity across regional and State measures, with innumerable differences throughout the various bodies of international law and legal jurisprudence. The right to health is a fundamental human right that is guaranteed through most international instruments, but oftentimes lacks the necessary protections at the State level due to lack of global health governance, health inequalities and distinctions in the application of health laws across judicial systems. This article discusses: (1) healthcare as a fundamental human right guaranteed under international instruments; (2) States as duty-bearers within regional mechanisms to uphold the right to healthcare; (3) an approach to accountability, through an examination of legal jurisprudence within the regional human rights mechanisms of the Inter-American System of Human Rights, European Court of Human Rights, and the African Court on Human and Peoples' Rights; and (4) the role of non-State actors in complying with human rights standards. Additionally, this article seeks to examine the concept of human rights accountability of states, as primary duty-bearers, and the role of non-State actors in conjunction with global health governance, which unconsciously denotes the inequalities in healthcare protections within certain societies. Further, the article notes the disconnect in human rights protection in healthcare and the experiential crises that exist therein.*

Keywords: *human rights; healthcare; regional mechanisms; accountability; right to health*

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1. Introduction

The protection of human rights is inherently essential in order to promote life and health within a society. Having access to healthcare is crucial for an individual to have the opportunity to experience an effective and abundant life. States, as duty-bearers, are under an obligation to protect the human rights of rights-holders, the individual. This duty is violated when an individual suffers an infringement on a right and the State does not protect the individual. While the duties of non-State actors are more limited than States, non-State actors do have a level of accountability to comply with human rights standards. The question then becomes, how can duty-bearers be held accountable when oftentimes, there can be a gap in the procedure of accountability?

A remedy-centric approach to human rights protections can be successful in holding duty-bearers accountable through the application of providing remedies to rights-holders. Remedies as a form of accountability can be effective as applied to all human rights, including the right to health, which is an essential right for the individual to have the opportunity to achieve a full life and be a productive member of society. Remedies can be applied in cases of healthcare violations in several ways: through direct compensation, reparations, and ensuring the continued accessibility of legal avenues of due process for the harmed individual (CESCR 2016, 1).

While the justiciability of socio-economic rights continues to be an ongoing analyse, the gaps that exist in accountability through international law and specifically between State versus non-State actors is evolving through more recognition and discourse. This evolution and continued dialogue are essential in bridging the gap that exists in international law and across international instruments and regional mechanisms. As healthcare advances globally, the right to health is reinforced as a right that is essential to the life of an individual, and thus if it is not protected, it would have a direct negative impact on other fundamental human rights (IACtHR 2021, para. 124). This paper primarily focuses on the State as the primary duty-bearer to individual rights-holders.

2. The right to health

The right to health is a fundamental right recognised internationally through various systems, including international instruments and through numerous case law within regional mechanisms. It is a right that is consummately debased through the lack of accountability of State actors that fail to uphold and protect the right. States, as duty-bearers, have the duty to uphold the right to health and that can be accomplished through a remedy-centric approach to accountability. International instruments serve as governing guidance on the right to health as a fundamental human right and they provide direction as to the ways in which the right is to be protected.

2.1. International instruments

2.1.1. Universal Declaration of Human Rights

Article 25 of the Universal Declaration of Human Rights (UDHR) (1948) recognises the right to health for all persons, declaring that every person has a "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…" (UDHR 1948, Article 25). The intent of the United Nations (UN) General Assembly can be assumed to be that of recognising the importance of health and by virtue, access to healthcare, with its declaration that it is a right that is encompassed within other rights. Similar to the UDHR, the UN would adopt further measures to recognise and protect the right to health through various international documents, treaties, and commentary, which are protected by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

2.1.2. International Covenant on Economic, Social and Cultural Rights

The UN General Assembly further fortified the right to health as an internationally recognised human right within the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty that was first adopted and ratified in 1966 and entered into force in 1976 (ICESCR 1966, Article 12). Article 12 declares that all State Parties to the ICESCR "recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (ICESCR 1966, Article 12). It further provides certain steps for State Parties to ensure the promotion and protection of the right, outlining clear safeguards that distinguish State Parties as duty-bearers (ICESCR 1966, Article 12).

2.1.3. General Comment No. 14 of the ICESCR

In furtherance of Article 12 of the ICESCR, the OHCHR adopted General Comment No. 14 in 2000, which expands the dialogue surrounding the right to health (CESCR 2000, para. 2). Specifically, General Comment No. 14 acknowledges the gaps that exist within the right, stating in paragraph 5:

> "The Committee is aware that, for millions of people throughout the world, the full enjoyment of the right to health still remains a distant goal. Moreover, in many cases, especially for those living in poverty, this goal is becoming increasingly remote. The Committee recognises the formidable structural and other obstacles resulting from international and other factors beyond the control of States that impede the full realisation of article 12 in many States parties" (CESCR 2000, para. 5).

The Committee's acknowledgement that the right to health is still an evolving process due to the inequities and disparities that exist within certain societies, is an important addendum because it understands that the right to health is oftentimes dependent upon other socioeconomic factors. For instance, General Comment No. 22 recognises the right to sexual and reproductive health as an essential right encompassed within the right to health (CESCR 2016, para. 1).

2.1.4. Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is another international treaty that was adopted by the UN in 2006 that explicitly declares the right to health. (CRPD 2006). The CRPD discusses the right to health under Article 25, specifically identifying the importance of the protection of the right to health for persons with disabilities and that such persons are to be afforded equal health rights as individuals without disabilities (CRPD 2006, Article 25(a)). This affirmation exemplifies the importance of health rights and the UN's commitment to ensuring all persons are afforded the right.

2.1.5. World Health Organization

The World Health Organisation (WHO) declares the right to health as a basic human right as set forth in its Constitution. Article 1 of the WHO's Constitution declares that persons have the right to the highest possible level of health (WHO 1946, Article 1(1)). To achieve this purpose, WHO acts as the direct authority on all forms of work within health at the international level, as well as seeks to foster support within the UN and other various governmental bodies and agencies (among other objectives) (WHO 1946, Article 2(a)(b)). The creation of WHO demonstrates the importance of recognising health as a fundamental human right and the collaboration necessary amongst international forums to achieve the purpose set forth within the various international instruments.

3. States as duty-bearers – regional mechanisms

3.1. African System of Human and Peoples' Rights

3.1.1. African Charter on Human and Peoples' Rights

The right to health is an established right within the African system of human rights noted in multiple instruments and within case law. In Article 16 of the African Charter on Human and Peoples' Rights (ACHPR), the right to health is an explicitly guaranteed right, with State Parties under a duty and obligation to protect the health of their citizens, specifically, in the ability to access medical care when needed (ACHPR 1981, Article 16(2)).

3.1.2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

Article 17 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities declares the right to health for all persons with disabilities on an equal basis, expressly by ordering State Parties to take the appropriate measures to ensure all persons with disabilities are provided with the same level of healthcare as persons without disabilities (Protocol to the African Charter 2014, Article 17(2)(a)). States must also comply by ensuring that all health services are provided on a free basis and "providing persons with disabilities with health-care in the community" (Protocol to the African Charter 2014, Article 17(2)(d) and (e)). The ACHPR's explicit declaration of the right to health is an acknowledgment of the importance of protecting the health rights of all persons and the importance of all persons receiving equal access to care.

3.1.3. African Court on Human and Peoples' Rights

Centre for Human Rights and Others v. United Republic of Tanzania

In its recent February 2025 ruling, the African Court on Human and Peoples' Rights (AfCHPR), explicitly recognised the right to health. In this case, the applicants were persons with albinism (PWA) and, among several claims, asserted that the respondent State violated their right to the "enjoyment of the highest attainable standard of health" (AfCHPR 2025, 1). The applicants contended that many PWA die of skin cancer between the ages of 30 and 40 years old, in part due to the condition of albinism, but that their predisposition is increased by the State's classification and negative treatment of them within society (AfCHPR 2025, para. 327). In turn, this forces them to take lower paying jobs, and thus they are unable to afford the proper healthcare treatment for their condition (AfCHPR 2025, para. 327).

In citing the Persons with Disabilities Act, the State counterargued that it enacted Section 26(1) specifically in regards to the health of persons with disabilities, "which provides for reasonable standard of health care services for all the population, without discrimination" (AfCHPR 2025, para. 328). The amici in the matter further contended that the right to health is an essential right to the enjoyment of all other human rights (AfCHPR 2025, para. 331). The AfCHPR defined the right to health in this case to include "availability, accessibility, acceptability and quality" (AfCHPR 2025, para. 339). The burden of proof is on the State to prove that it has made available adequate resources to ensure the right to health for all persons (AfCHPR 2025, para. 342).

Specifically addressing accessibility and availability, the AfCHPR ruled that due to their treatment within society because of their condition, those with albinism are often denied treatment on a discriminatory basis, which

violates the right to health (AfCHPR 2025, para. 350). In its decision, the AfCHPR found that the State violated the applicants' right to health, specifically in violation of Article 16 of the African Charter on Human and Peoples' Rights, amongst others (AfCHPR 2025, para 355).

The AfCHPR's reliance on the Persons with Disabilities Act in its finding that the State violated the applicant's right to health is significant because it provides an extenuation of the right to health to include *all* persons, including those with disabilities. The Court's application of the Act provides an extra layer of protection for individuals and extends the obligation of a State Party, subject to the jurisdiction under the ACHPR, to protect the health rights of all.

3.2. Inter-American system of human rights

3.2.1. American Convention on Human Rights

The most notable international instrument used to protect basic fundamental human rights within the Inter-American System, is the American Convention on Human Rights (ACHR). Adopted in 1969 and entered into force in 1978, the ACHR remarkably does not contain an explicit guarantee to the right to health in its original form. However, the right to health can be implied through several of the other explicitly guaranteed rights, including the right to life (Article 4) and the right to humane treatment (Article 5) (ACHR 1969, 1). Additionally, Article 26 of the ACHR provides for the protection of progression development, which the ACHR conditions State Parties must take measures to protect all of the "rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organisation of American States" (ACHR 1969, Article 26). A legitimate argument can be made that the right to health can be implied as a protection under Article 26 of the ACHR. We do not see an explicit guarantee to the right to health under the ACHR until the adoption of its Additional Protocol, which was entered into force in 1999.

3.2.2. Additional Protocol to the American Convention on Human Rights

While the ACHR does not account for an explicit affirmation of the right to health, the Additional Protocol to the Convention does recognise the right to health as a basic fundamental right that State Parties to the ACHR are bound to protect (Additional Protocol 1999, Article 1). Article 10 specifically addresses the right to health, which encompasses the ability to enjoy the highest level of well-being, and asserts the criteria necessary to uphold the protection of the right (Additional Protocol 1999, Article 10(1)). The Additional Protocol recognises the right to health to include, "universal immunization against principal infectious diseases, prevention

and treatment of endemic, occupation and other diseases, and education of the population on the prevention and treatment of health problems" (Additional Protocol 1999, Article 10(2)(c), (d), and (e)). This extension of the ACHR to include a specific definition of the right to health of all persons subject to their State Party jurisdiction, exemplifies the importance of health rights within society. Article 11 also includes the right to a healthy environment with "access to basic public services", an additional measure to protect the health rights of the individual (Additional Protocol 1999, Article 11(1)).

3.2.3. Inter-American Court of Human Rights

Vera Rojas et al. v. Chile

The case of *Vera Rojas et al. v. Chile* is a recent landmark case that was heard before the Inter-American Court (IACtHR) in 2021 after the Inter-American Commission ("IACHR") found that Chile committed certain human rights violations of the applicant, including the right to health (amongst others), for its failure to provide adequate regulation and monitoring of a health insurer whom discontinued home hospitalisation that the IACHR deemed "essential for the survival of Martina Rebeca Vera Rojas, a child diagnosed with Leigh syndrome" (IACtHR 2021, para. 1).

Most notable in the State's initial preliminary argument is that the IACtHR lacked jurisdiction to hear any alleged violations of the State under Article 26 of the ACHR, arguing that it contains an overarching broad obligation to protect progressive development, and not an explicit right to health (IACtHR 2021, para. 29). The IACtHR ultimately determined that the right to health is an enumerated right protected under Article 26 of the ACHR due to the IACtHR's ability to rely on other laws and treaties to interpret the State's duties and obligations under the ACHR (IACtHR 2021, para. 34).

Martina Vera Rojas (Vera Rojas or applicant) was a child that was diagnosed with Leigh Syndrome and suffered many neurological and muscular symptoms that significantly impacted her overall health (IACtHR 2021, para. 51). Essential to her ability to live with her condition, she was provided with "home health hospitalisation" through her private insurance company, which provided a multitude of care and treatment, similar to that of being in a physical hospital (IACtHR 2021, para 52). After almost three years of home health hospitalization services, Vera Rojas' insurance company informed her parents that they would be discontinuing the services for her, stating that her condition is a chronic disease that is not covered under the standard home heath hospitalisation (IACtHR 2021, para. 53). The insurance provider also asserted that if Vera Rojas suffered a medical issue that required hospitalisation, the local hospital is responsible for her care (IACtHR 2021, para. 53). The parents of Martina Vera Rojas

filed various motions for protection and appeals throughout the Chilean courts system, but were denied protections, which led to Vera Rojas not receiving the adequate care she required for her condition (IACtHR 2021, paras. 56–58).

Amongst recognising the rights of the child and social security, the IACtHR acknowledged that the right to health was at issue in this case, notably, whether or not the State upheld its obligations to protect these rights for the applicant (IACtHR 2021, para. 72). The IACtHR held that even though the applicant was under the care of a private health care company, the State is still under an obligation to "regulate, monitor and supervise the provision of private healthcare" (IACtHR 2021, paras. 81 and 86). Expounding upon this determination that States have a duty to uphold an individual's health rights even when they are under private insurance, the IACtHR ruled that "given that health is a public good whose protection is the States's responsibility, the State has an obligation to prevent third parties from unduly interfering in the exercise of the rights to life and personal integrity" (IACtHR 2021, para. 89). Further, States are under an obligation to regulate health care within its jurisdiction, regardless of public or private insurance, and this protection is to include *all* healthcare institutions, not just public hospitals (IACtHR 2021, para. 89).

The determination made by the IACtHR in the *Vera Rojas* case that there is no distinction between public versus private health care when determining the State's obligation to protect the health rights of an individual is noteworthy, as it shrinks the gap of any prospect of an individual's health rights being infringed upon based on their insurance classification. The IACtHR has set an important precedent in this matter, determining that despite a person's health insurance classification, the duty remains on the State to protect the health rights of the individual, noting that "given that health is a public good that States are responsible for protecting, States have an obligation to prevent undue third party interference in the enjoyment of the rights of life, personal integrity, health, and social security" (IACtHR 2021, para. 124). This statement by the IACtHR makes clear that the right to health is a fundamental human right and it further supports the argument that failure to protect the right to health of an individual can also lead to the interference of other fundamental human rights.

3.3. European human rights system

3.3.1. European Convention on Human Rights

Similar to the ACHR, the European Convention on Human Rights (ECHR), which entered into force in 1953, does not contain an explicit distinction of the right to health until the implementation of the Revised European Social Charter. However, as with the ACHR, it can be argued and assumed

that the right to health is implicitly protected through various other rights, including but not limited to, the right to life (Article 2) and the prohibition of degrading treatment (as defined under Article 3 – prohibition against torture). The European Court of Human Rights (ECtHR) has also confirmed the implicit guarantee of health rights through other human rights through its legal jurisprudence.

3.3.2. Revised European Social Charter

Adopted by the Council of Europe in 1996, the right to health is explicitly recognised under Article 11 of the Revised European Social Charter (RESC), declaring that State Parties to the Charter must provide educational institutions that promote health and implement measures to prevent diseases and epidemics. Further, the RESC declares the right to social and medical assistance under Article 13. Specifically, Article 13 declares that State Parties subject to the jurisdiction of the RESC must "ensure that any person who is without adequate resources…be granted adequate assistance, and in case of sickness, the care necessitated by his condition" (RESC 1996, Article 13(1)).

3.3.3. Charter of the Fundamental Rights of the European Union

The European Union further expanded the recognition of the right to health in Article 35 of the Charter of the Fundamental Rights of the European Union (CFR), which entered into force in 2009 under the Treaty of Lisbon and became legally binding to all European Union Member States (European Union 2012, art. 35). Article 35 of the CFR states that "Everyone has the right of access to preventative health care and the right to benefit from medical treatment under the conditions established by national laws and practices". This further extenuation of the right to health within the European human rights system is most notable due to its legally binding status upon all EU Member States and it serves as a further expansion of the protection of health rights of the individual.

3.3.4. European Court of Human Rights

Kaprykowski v. Poland

In the case of *Kaprykowski v. Poland*, heard by the ECtHR in 2009, the applicant had a long history of suffering from epilepsy, daily seizures and neurological disorders and argued that he was not given adequate medical treatment for his health issues while in prison (ECtHR 2009, 1). Various experts in the fields of psychology, psychiatry and neurology, appointed by a Poland regional court, determined that the applicant's seizures, dementia and other neurological conditions rendered him incapable of being able to perform basic undertakings, such as bathing, dressing and using the bathroom and he would require permanent care

and daily assistance (ECtHR 2009, para. 33). The applicant asserted that he did not receive adequate medical care, specifically, that he was given a generic medication to treat his epilepsy instead of the drug that doctors had determined was the most effective for his condition (ECtHR 2009, para. 35). Additionally, he contended that his right to the prohibition of inhumane and degrading treatment was violated under Article 3 of the ECHR, because he was not provided daily assistance that medical experts had previously determined he would need (ECtHR 2009, para. 49).

The State of Poland argued that the applicant had been provided with adequate medical care as required by his condition and he had been detained with other inmates who were aware of his health conditions, all of whom were knowledgeable on how to respond should he suffer from an epileptic seizure (ECtHR 2009, para. 66). The State also asserted that, when necessary, the petitioner was transported to the hospital to receive additional medical care and that at the time he was provided with the generic epilepsy medication, he was under direct supervision of doctors at the local hospital (ECtHR 2009, paras. 66–67).

The ECtHR determined that the applicant "had at least three serious medical conditions which required regular medical care" (ECtHR 2009, para. 71). The ECtHR also relied on the determinations previously made by various medical experts that he required daily specialised medical care, and without such would pose serious risks (ECtHR 2009, para. 72). Furthermore, the ECtHR expressed its contempt to the State's assertion that the applicant was detained with other inmates whom were knowledgeable on how to proceed should the petitioner have a seizure – noting that the applicant should not have to rely on the assistance of his fellow inmates and was often not treated by a doctor immediately (ECtHR 2009, para. 73).

Decidedly, the ECtHR held that the State Party of Poland violated the applicant's right to health due to its failure to provide adequate medical assistance by (1) providing him with the generic epilepsy drug instead of the medication most beneficial to his condition, which in turn, increased his epileptic seizures; and (2) the prison's reliance on the applicant's fellow cellmates to provide him with care, should he have a seizure (ECtHR 2009, paras. 75–76). The ECtHR ruled that the State violated the applicant's right to be free from inhumane and degrading treatment due to its failure to provide him with adequate medical care and continued detention without such care (ECtHR 2009, para. 77).

The ECtHR's ruling that the State violated the applicant's right to be free from inhumane and degrading treatment by its failure to provide adequate medical assistance is one of several cases in which the Court has implicitly recognised the right to health, despite the ECHR's failure to explicitly

define such right. The ECtHR's interpretation of Article 3 of the ECHR to include health rights as a fundamental human right due to its relation and subsequent overlap of other guaranteed rights is similar to that of the IACtHR's interpretation in *Vera Rojas*.

It is clear that the Courts within the regional mechanisms that do not have an explicit guarantee to the right to health defined within their original controlling treaties (i.e., ACHR and the ECHR, respectively) are willing to recognise the intersection between other explicitly defined rights and implicitly interpret health rights encompassed within those rights.

4. Non-State actors

States are primary duty-bearers in protecting the human rights of the individual and historically, most international legal instruments were intended to apply to States. However, as international law has progressed, non-State actors (NSAs) also have a role in human rights accountability. Acting independently of the State, an NSA may hold a certain amount of power that is relative to State power (Berger 2025, 72). Examples of NSAs include, non-governmental organisations (NGOs) and corporations. While international law primarily applies to the State, a State can choose to hold an NSA accountable for violation of an individual's rights or even further, international law may apply to NSAs based on their level of power. For example, if an NSA exercises certain enumerated powers primarily reserved for the State, such as territorial control, international law may apply in holding an NSA accountable for violating an individual's rights (Ronen 2013, 28).

In its 2017 thematic report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment outlined the responsibility of NSAs. While the report primarily focuses on the role of States, particularly in armed conflict, it also provides consideration beyond armed conflict and as it applies to NSAs, declaring:

> "Most notably, under international humanitarian law, both States and non-State actors are absolutely prohibited from resorting to torture and other cruel, inhuman or degrading treatment or punishment for reasons related to an armed conflict. Moreover, any person resorting to torture or other cruel, inhuman or degrading treatment or punishment amounting to a war crime, a crime against humanity, or even genocide is subject to prosecution under international criminal law. Arguably, the universal prohibition of torture and other cruel, inhuman or degrading treatment or punishment can also be based on a general principle of law, namely what the International Court of Justice referred to as 'elementary considerations of humanity'" (United Nations 2017, para. 48).

Additionally, the Special Rapporteur further asserts:

> "Throughout his tenure, the Special Rapporteur will therefore aim to contribute to closing the protection gap for victims of torture and other cruel, inhuman or degrading treatment or punishment at the hands of non-State actors, including by advocating for the mutual reinforcement of human rights and international humanitarian law obligations" (United Nations 2017, para. 48).

The Special Rapporteur's report clearly acknowledges its primary goal of protecting individuals from cruel, inhuman or degrading treatment. An argument can be made that healthcare rights can be causally linked to other rights (as noted in Section 3), such as the right to be protected from cruel, inhuman or other degrading treatment. Denying medical care and lack of adequate care are forms of cruel, inhuman and degrading treatment, and thus, the Special Rapporteur's analysis can justifiably extend to the right to healthcare, specifically holding NSAs accountable.

Thus, while international law primarily applies to the State as the primary duty-bearer, NSAs may be held accountable in certain contexts. The nature to which an NSA has control or power will determine its level of accountability. As international law continues to develop and norms are challenged, the evolution of accountability will continue to further progress as it applies to NSAs.

5. Evolving global recognition and accountability

The three cases examined in Section 3 are noteworthy, as they provide a central recognition of the right to health, as determined by their respective courts, in recognising the right applies to *all* persons, including but not limited to persons with disabilities (*Centre for Human Rights and Others*), children (*Vera Rojas*) and incarcerated persons (*Kaprykowski*). Further, these three cases each provide an example of how courts use their authority under the law to make reasonable interpretations to acknowledge the right to health through the application of other protected rights.

Holding State actors accountable for the dereliction of its duty to protect the right to health of the individual is essential to ensure other human rights are not infringed. One such way to hold State actors accountable is through a remedy-centric approach, a key component in rectifying those violations.

In *Centre for Human Rights and Others*, the AfCHPR issued reparations against the State for its violation of the right to health against persons with albinism. Amongst these reparations, the AfCHPR ordered the State to provide direct remedies in the form of adequate housing for those with albinism that were displaced from their homes due to unprovoked attacks

based on their condition (AfCHPR 2025, para. 361(v)). In addition to direct remedies, the AfCHPR also implemented reparations in the form of additional training, educational training, and to develop a national strategy to eliminate discrimination (AfCHPR 2025, para. 361(i)(vi)(ix)).

The IACtHR issued reparations in *Vera Rojas*, ordering the State to reinstate the home health hospitalisation services for both her current medical issues and any future medical needs, through oversight of Vera Rojas' private health insurer (IACtHR 2021, paras. 164–166). Additionally, the IACtHR ordered that the State provide Vera Rojas with a neurological wheelchair, noting it was necessary in the event she needed to travel to the hospital for additional treatments (IACtHR 2021, para. 164). Further, the State is to provide medical, psychological, and psychiatric treatment for the parents of Vera Rojas – free of charge – for the anxiety, post-traumatic stress and the visual impairment her father suffered that prevented his ability to work and financially provide for his family due to the extreme stress he suffered in response to the violations their family experienced (IACtHR 2021, para. 164).

It is important to note the IACtHR's findings of liability of the State for the violation of the personal integrity of the applicant's parents, and ordered that they are entitled to specific reparations as well, including medical, psychological and psychiatric treatment (IACtHR 2021, paras. 164–165). The IACtHR's recognition and protection of the mental, physical and emotional health of the applicant's parents is insightful because it holds the State party liable for the indirect violation of the health rights of individuals.

At the time of the ECtHR's ruling in *Kaprykowski,* the applicant was no longer incarcerated, having been released from prison at the conclusion of his sentence (ECtHR 2009, para. 24). The ECtHR issued reparations in the form of non-pecuniary damages in the amount of 3,000 EUR to be paid by the State to the applicant (ECtHR 2009, para. 86).

Each of the three cases outlined in Section 3 vary in terms of the level in which their respective Courts issued restitution to the applicants. However, it is essential to note that while gaps may exist in some of the legally-binding treaties that the various regional mechanisms use in their original form, supplemental international instruments and additional protocols have assisted in bridging those gaps within those treaties that did not contain an explicit guarantee to the right to health. The adoption and ratification of additional protocols within the regional systems have helped to expand the definitions and guarantees of additional basic fundamental rights. As society changes, it is crucial to implement additional protections and guarantees to ensure that the basic and fundamental human rights of the individual are protected. Where the right to health is not explicitly stated in original treaties within some of the regional systems, each of the

three courts have shown an individual's health rights oftentimes can be violated by the violation of other rights and thereby the implicit right is noted in courts' legal jurisprudence.

6. Recommendations and challenges

While international instruments identify and recognise the right to health, additional steps must be taken to protect the health rights of the individual and to ensure that States comply with this right. First, States must take a proactive approach in providing safe healthcare. Second, States must make healthcare accessible to all regardless of socioeconomic status. Third, States must identify any gaps or barriers to access and utilise a proactive methodology to bridging those gaps. Lastly, States must protect other basic human rights to ensure that an infringement upon other rights does not cause it to fail to fulfil its right to protect health. Ensuring the protection of other basic human rights set forth by international law, for example, the right to life, is crucial because the dereliction of other basic human rights can unjustly affect the right to health.

However, there are potential challenges to protecting the right to health that go beyond simply complying with international law, particularly in regard to the economic inequities that exist within a country's infrastructure. Notably, less developed countries are oftentimes unable to meet the needs of the individual in terms of healthcare, simply because they lack the available resources. In his article, *The Human Right to Health: Fundamentals of a Complex Right*, Michael Krennerich notes:

> "In particular, many developing countries have significant difficulties when it comes to ensuring a comprehensive provision of medical care and overcoming the partly serious defects in the healthcare system… This does not though relieve developing countries of their obligation to take measures to realise the right to health progressively based on their available resources" (Krennerich 2017, 42).

Thus, while the availability of resources will be a country-by-country differential when it comes to providing for the healthcare of the individual, with those needs often not met due to lack of resources, it is still the State's obligation under international law to protect the right to health (Krennerich 2017, 42). There will no doubt be gaps in protections within healthcare systems globally, however the State must take a practical approach to utilise its available resources to proactively protect the health rights of the individual rather than take a reactive stance.

In *Interpreting the International Right to Health in a Human Rights-Based Approach to Health*, Paul Hunt discusses the need for development assistance in low-and middle-income countries in implementing health policies and programmes (Hunt 2016, 116). Specifically, he

denotes that "the international right to health encompasses progressive realisation, maximum available resources, and international assistance and cooperation" (Hunt 2016, 116). This interpretation is useful in acknowledging the empirical importance of international intervention and global support needed to assist low-and middle-income countries that lack the necessary resources on their own to protect the health rights of their individuals. The challenge with reliance on international assistance from other countries is inexplicably complicated, but nonetheless imperative in serving as a key component in the evolution of global health progression and accountability across nations.

General Comment No. 3 of the ICESCR (Article 2(1)) first defines the concept of progressive realisation and "acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect" (United Nations 1966, Article 2(1)). In outlining State obligations, the ICESCR further denotes that two of the most important obligations of the State are "the 'undertaking to guarantee' that the relevant rights 'will be exercised without discrimination'" (United Nations 1966, Article 2(1)). As noted in the paragraph above, not all States are equal when it comes to available resources, thus, the question remains – how can States, as primary duty-bearers, undertake to guarantee that the right to health is protected without discrimination if the State lacks the necessary resources to implement health programmes and adequate healthcare?

As Amrei Müller asserts in *The Minimum Core Approach to the Right to Health: Progress and Remaining Challenges*, there have been arguments for both "state-specific minimum cores" and "absolute international minimum cores"; the former argued to recognise that not all States are economically equal and thus cannot be expected to be measured on the same level internationally; while the latter is argued to put even low-income countries in the same position as other countries (Müller 2017, 60). Nonetheless, until there is global consensus as to the methodology of adequately measuring the minimum level of care required in protecting the right to health, the State bears the primary duty of care in protecting the healthcare rights of the individual.

7. Conclusion

Access to safe and basic healthcare plays a vital role in an individual's life and his or her ability to live a full and successful life. If an individual does not have access to basic healthcare, it becomes an impediment to their ability to lead a life that is healthy and it hinders his or her ability to be a productive member of society. Local, national and international societies have a duty to protect the individual's right to health care through providing avenues to access to basic healthcare, as well as a duty to provide remedies to an individual when their right to healthcare is infringed upon. Failing to protect an individual's right to health can also lead to infringement of

other basic human rights, such as the right to life and the right to humane treatment. Protecting the right to health is a crucial fundamental factor in the function of society because when individuals have access to health care, they can have the opportunity to lead a full life and be productive members of society.

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