

Children have a right to health: General Comment No. 15 of the UN Committee on the Rights of the Child

Stamm, Lena; Striek, Judith

Veröffentlichungsversion / Published Version

Arbeitspapier / working paper

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

Deutsches Institut für Menschenrechte

Empfohlene Zitierung / Suggested Citation:

Stamm, L., & Striek, J. (2017). *Children have a right to health: General Comment No. 15 of the UN Committee on the Rights of the Child*. (Information / Deutsches Institut für Menschenrechte, 3). Berlin: Deutsches Institut für Menschenrechte. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-51607-9>

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Children have a Right to Health

General Comment No. 15 of the UN Committee on the Rights of the Child

Information

In its General Comment No. 15, the UN Committee on the Rights of the Child provides information on the right of the child to the enjoyment of the highest standard of health. The Committee's key recommendations addressed to States parties provide helpful advice for development cooperation practitioners. This publication¹ summarizes General Comment No. 15 and outlines approaches for how development cooperation may contribute to the realisation of children's right to health.

In 2013 the UN Committee on the Rights of the Child (hereafter: Committee) published its General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health.² The main theme of article 24 of the UN Convention on the Rights of the Child (hereafter: CRC) is the right to the highest attainable standard of health. The Committee understands the rights within article 24 as inclusive rights, extending not only to timely and appropriate health services and prevention, but also the right of every child to grow and develop to their full potential. Article 24 covers the following areas: the reduction of child mortality, medical assistance and primary health care, combat of disease and malnutrition, pre-natal and post-natal care for mothers, education about health and nutrition, the provision of clean drinking water, protection from environmental pollution, the development of preventive health care, guidance for parents, and

family planning education and services. It takes a holistic approach to the issue of children's health in accordance with article 1 of the CRC "for every child below eighteen".

The Committee emphasises the key principles of the Convention in this General Comment. These principles are: non-discrimination; the best interests of the child; the child's right to life, survival and development; and the right to be heard (article 2, 3, 6, and 12). These are crucial to an understanding of how the substantive articles of the Convention should be implemented. Further, the Committee also refers to the children's evolving capacities.

The human right to health

The Committee adopts the World Health Organisation's (WHO) definition of health as "a state of complete physical, mental and social well-being and not merely absence of the disease or infirmity."³

The right to the highest attainable standard of health is an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to full potential. This includes freedoms such as the control of one's health and body as well as entitlements such as access to a range of facilities, goods and services that work towards providing equal opportunities.

Article 24 of the UN Convention on the Rights of the Child

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Realization of the right to health

A key determinant of children's health is the fulfilment of the mother's right to health, particularly universal access to a comprehensive package of pre- and post-natal health services. States are further advised to adopt child-sensitive health approaches in different periods of childhood such as baby-friendly hospitals or adolescent-friendly health services that meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. Further, the Committee recommends a "child health in all policies" strategy. This means that it is recognised that public policy decisions often have an impact on health and health systems. States should aim to improve the health of their populations and avoid harmful impacts. The best interests of the child (article 3) should be placed at the centre of all decisions concerning,

for example, the allocation of resources or the implementation of policies. In order to fulfil this obligation at the local level States parties should provide guidance for health workers on how to assess the best interests of the child.

The Committee emphasises that all policies and programmes implemented to attain the highest standard of health must be equipped with sufficient financial resources. The circumstance that there are limited resources cannot be used as a valid argument for withholding the highest possible standard of health. Furthermore, the Committee reminds States to meet the United Nations target of allocating 0.7 per cent of gross national income to international development assistance, as financial resources have positive implications for the realization of children's right to health in resource-limited States.

Responsibilities of States parties

The responsibility for the implementation of article 24 remains with the State even if States parties delegate provision of services to non-state actors.

The Committee's key recommendations in this General Comment are:

- The full implementation of the right to the highest attainable standard of health requires States parties to develop a long-term national plan as a national priority. This should also facilitate cooperation between government ministries and all other institutions involved.
- Conduct an in-depth analysis of priority health problems and responses as well as of vulnerabilities of children in general or of particular groups of children. Further, States parties should collect all relevant data disaggregated by age, sex, disability, socio-economic status, socio-cultural aspects as well as geographic location.
- Provide adequate health services in terms of quantity and quality. These services must be physically and financially accessible to all children, with special attention to under-served areas and populations.
- Develop a comprehensive primary health care system alongside proven community-based efforts, including preventive care, treatment of specific diseases and nutritional interventions.
- States parties are urged to provide a functional and accessible complaints procedure. This mechanism should be community-based and make it possible for children to put forward a complaint when their right to health is violated or at risk.
- States parties should report on all aspects of child health to the Committee within the regular reporting procedure. States' parliaments are advised to hold the executive accountable for the implementation of recommendations arising from independent review processes such as under the Convention.

- States parties should invest in children's health. A specific proportion of public expenditure should be allocated to children's health which should also be subject to a systematic independent evaluation. States parties should meet WHO recommended minimum health expenditure per capita and prioritize children's health in budgetary allocations.

Structure of health services

The health services provided by the State must be available in sufficient quantity and quality, functional and within the physical and financial reach of all sections of the child population without discrimination. Article 2 of the CRC prohibits racial discrimination and discrimination based on colour, national, ethnic or social origin, language, sex, religion, political or other opinion, property, disability, birth or other status. These also include sexual orientation, gender identity, health status and mental health. The Committee points out further reasons such as sexual orientation, gender identity, health status and mental health. This also means that the most vulnerable groups such as disabled children need sufficient and sometimes special services according to their needs.

The Committee points out four criteria which States parties should ensure when establishing health services: availability, accessibility, acceptability and high quality.

- **Availability** refers to the quantity of health services that are available to all parts of the child population including pregnant women and mothers. Whether the services are sufficient depends on the need within the population including under-served areas.
- **Accessibility** has four basic dimensions. Non-discrimination requires that all services, equipment and supply must be accessible to all children, pregnant women and mothers without any discrimination. The physical accessibility refers to the fact that all services must be within an accessible distance. Economic affordability means that a lack of financial means should not lead to denial of access. All information provided must be in a language and format that is understandable to children and their caregivers (access to information).

- **Acceptability** means that the services provided must take account of children's needs, expectations, cultural backgrounds, views and languages. This should include attention to certain groups, such as migrants or religious minorities.
- **Quality** refers to the services as well as to the goods provided, e.g. training of medical personnel, hospital equipment, medicines and treatments. They must meet scientifically and medically approved standards. Quality of services should be regularly assessed.

Gender-based discrimination

Discrimination poses a serious threat to the attainment of the highest possible standard of health. Gender-based discrimination may affect girls in particular, and is a threat to their health. The practice of female infanticide/foeticide or discriminatory feeding practices amount to violations of the human rights of girls including their rights under article 24. The Committee points out that special attention must be paid to harmful gender-based practices which are interwoven with traditions and customs. These harmful practices⁴ include female genital mutilation (FGM) or child marriage and are a violation of article 24 para 3.

Responsibilities of non-state actors

States may delegate the provision of services in the health sector to non-state actors. This holds true for a wide range of services such as the provision of safe and clean drinking water and sanitation, health technology or the provision of

information. All non-state actors are called upon to act in compliance with the provisions of the CRC. However, States parties remain responsible for the realisation of children's right to health. The States parties' obligation includes a duty to promote awareness amongst non-state actors of their responsibilities. Further, States parties must monitor and regulate the obligations of all non-state actors to recognise, respect and fulfil their responsibilities to the child under the Convention.

Monitoring of implementation

The review and monitoring of the implementation of States parties' obligations under article 24 should be conducted in a cyclical process in which children should participate when reviewing implementation and designing new programmes. Further, a mechanism should be put into place to ensure that all valuable information is fed back into the system. This includes the reporting of cases of rights violations and injustices to the relevant authorities.

The monitoring and review of the implementation should be guided by article 3 of the CRC, i.e. children's best interests are the yardstick for evaluating the impact of existing policies and programmes. Monitoring should be guided by a well-structured and appropriately disaggregated set of indicators, including the provision of data on the health status of children and regular reviews of the quality of children's health services. Further, a detailed budgetary analysis of how much is spent on which services and who profits from these services should be provided.

Approaches for bilateral development cooperation based on this General Comment

Development cooperation can advise partner countries on how the child's right to the highest attainable standard of health can be implemented. General Comment No. 15 can be used as guidance. Human rights-based development cooperation aims at promoting respect, protection and fulfilment of human rights, including children's rights. Development cooperation should contribute to the progressive realisation of article 24 worldwide through financial and technical cooperation.

- Children and adolescents should be involved when designing, implementing and evaluating any measures in order to assess their particular needs and ensure the best interests of the children involved. The right to be heard (article 12) as well as the best interests of the child (article 3) should be implemented to the fullest extent possible.
- Development cooperation should take a holistic approach to the issue of children's health. Therefore all major health problems affecting children, pregnant women and mothers should be identified and addressed. With respect to youth, health care should include reproductive rights and empower them to adopt a responsible lifestyle. The collection and evaluation of disaggregated data should be at the centre of any programmes to reform and support the health care services in partner countries.
- Support and advice to health governance should aim at a strategy which makes health care services available, accessible, and acceptable and of the highest possible quality. Special attention must be paid to the most vulnerable groups such as poor children, populations in remote places or families with children with disabilities. Health care services should be child-centred, child-friendly, and empowering.
- Development cooperation should strengthen the cooperation and joint effort of all state and non-state actors. State actors have the responsibility for analysis, data, strategy, monitoring and oversight. It is important that non-state actors have a child rights focus and adequate qualification. If development cooperation supports the privatization of health care provision, the state's capacity for regulation and oversight should be strengthened.
- Development measures targeted at realising the child's right to the highest attainable standard of health should include education and training on child-centred health care services of all actors involved, such as health care professionals or health administration.
- In the design of humanitarian assistance programmes, States parties should prioritise the realisation of children's right to health. This includes the management of resources such as safe water, food and medical supplies. The provision of special psychosocial care to prevent or to address traumata should also be considered.
- Children and adolescents have the right to information on all aspects of health which enables them to make informed choices. The support of existing community efforts is essential when designing development measures in the field of information on health. A peer-based approach may be particularly successful in the area of health-based education for adolescents. Promising results have been achieved in the area of HIV prevention.

State party obligations

All obligations which States parties enter into when ratifying the Convention are important. The Committee has emphasised certain obligations which are of particular importance when implementing article 24 of the Convention. This is a non-exhaustive list of obligations:

- Review national and subnational legal and policy framework concerning health care and all related issues in accordance with article 24. Where necessary, laws and policies should be amended.
- Ensure universal coverage of quality primary health care services, including prevention, health promotion, care and treatment services, and essential drugs.
- Develop and implement policies and budget plans that constitute a human rights-based approach to the fulfilment of children’s right to health. These policies and plans should be monitored and evaluated.

- 1 This information is a continuation of the publication series of the German Institute for Human Rights “ABC of children’s rights”: <http://www.institut-fuer-menschenrechte.de/en/topics/childrens-rights/general-comments/> (last accessed: Feb. 20, 2017).
- 2 UN, Committee on the Rights of the Child (2013): General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24). 17 April 2013, UN Doc. CRC/C/GC/15. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15 (last accessed: Feb. 20, 2017).
- 3 World Health Organization (WHO) (1946): Preamble to the Constitution of the WHO as adopted by the International Health Conference, New York, 22 July 1946.
- 4 This General Comment does not cover the topic of harmful practices explicitly. Please see the joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices 14 November 2014, UN CEDAW/C/GC/31-CRC/C/GC/18, UN Doc. CRC/C/GC/18. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement> (last accessed: Feb. 20, 2017).

Imprint

Information | March 2017 | ISSN 2509-9493 (online)
 Translation of the German “Information Nr. 3”
 PUBLISHER: German Institute for Human Rights
 Zimmerstrasse 26/27 | 10969 Berlin, Germany
 Tel.: +49 30 259 359-0 | Fax: +49 30 259 359-59
info@institut-fuer-menschenrechte.de
www.institut-fuer-menschenrechte.de
 In cooperation with Deutsche Gesellschaft für
 Internationale Zusammenarbeit (GIZ) GmbH
 © German Institute for Human Rights, 2017
 AUTHORS: Lena Stamm, Dr. Judith Striek

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