

Enforcing health rights:
'Rights and Reality'

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Where do I come from

- Research on 'Right to Health'
- Advising on the privatisation of the Dutch health care system

This presentation

- Health rights
- Enforceability
- Health realities
- Health policy solutions

‘Health and human rights’

Interdependence

- life
- remedy
- privacy and family life
- information
- physical integrity
- health
- social and medical assistance
- food
- housing

Core right

‘Right to the highest attainable
standard of health’

Right to health

- 12 ICESCR
- 11 ESC (right to the protection of health)

Right to health

- Access to health care
- Access to underlying conditions for health

General Comment 14

- ‘AAAQ’: policy analysis
- State obligations: legal analysis

'AAAQ-AP'

- Availability
- Accessibility
 - *Non-discrimination*
 - *Physical accessibility*
 - *Economic accessibility*
 - *Information accessibility*
- Acceptability
- Quality
- Accountability
- Participation

Tri-partite typology of State Obligations

Respect, protect, fulfil

State obligations

- Obligations to ‘respect’ (do no harm / respect access)
- Obligations to ‘protect’ (against others)
- Obligations to ‘fulfil’ (ensure access to services)

Legal enforcement: justiciability

- National
- International

National judicial enforcement

- Ireland
- Denmark
- Netherlands

International enforcement

UN

- ICESCR - Optional Protocol
- CEDAW - Optional Protocol
- CRPD - Optional Protocol

Council of Europe

- ESC - Collective Complaints mechanism

ESC

- Marangopoulos (MFHR) v. Greece
- ERRC v. Bulgaria
- INTERIGHTS v. Croatia



Back to life

Back to reality

Reality

- Increasing health disparities
- Rising costs of health care

Health disparities

- Between nations
- Within nations

Causes of the rising costs:

- Inefficiency
- Ageing of the population
- Improvements of medical techniques
- Rising expectations
- Over-consumption?

Solution to rising costs:

Health sector privatisation or
commercialisation

Forms of health care commercialisation

- health insurance
- health care provision
- multinational expansion
- out-of-pocket expenditure

The promise:

Enhance the consumer's range of
choice

Human rights law

- neutral
- yet: serious human rights consequences



How to address these realities?

‘Non-judicial enforcement’

- Empowerment of vulnerable groups
- Human Rights impact assessments
- Addressing non-state actors

Human rights impact assessments: 'AAAQ-AP'

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Non-state actors in the health sector

- Payers: insurance companies
- Providers: hospitals and health workers
- Suppliers: pharmaceutical industry, suppliers of medical equipment

Thank you