



The Right to Health, the UN Disability Rights Convention & Persons with Intellectual Disabilities

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Why is WHO working on health and human rights?

- Opportunity
- Need
- Obligation



What are human rights?

- **Legal norms and principles generated by governments** (e.g. the UN Convention on the Rights of the Child).
- "All human beings are born free and equal in dignity and rights..."
→ Aim to protect **the inherent dignity** of persons
- **Universal**
- **Inalienable and indivisible**
- **Interrelated and Interdependent**
- **Primarily about the relationship between the individual (& groups) and the state.**





Historical overview: The International Bill of Rights

- **Universal Declaration of Human Rights (1948)**
 - **International Covenant on Economic, Social and Cultural Rights (1966)**
 - **International Covenant on Civil and Political Rights (1966)**



Other key international human rights treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (1963)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention on the Rights of the Child (1989)
- Convention on the Rights of Migrant Workers (1990)
- Convention on the Rights of Persons with Disabilities (2006)



Where are human rights enshrined?

At the international, regional & national levels:

- **International human rights instruments** (e.g. UN Covenant on Economic, Social & Cultural Rights)
- **Regional human rights instruments** (e.g. the African Charter on Human & Peoples' Rights)
- **National human rights instruments** (e.g. national constitutions)



International human rights law



National constitution



National laws & policies



State practice



Some health-related human rights

- The right to life, survival, and development
- The right to equality and freedom from discrimination
- The right to adequate food
- The right to adequate housing
- The right to social security
- Freedom from torture & inhuman & degrading treatment
- The right to association
- The right to the benefits of scientific progress
- The right to education
- Freedom of movement
- The right to bodily integrity and security of the person
- The right to an identity
- The right to privacy
- Freedom to seek, receive & impart information
- The right to water



Human Rights

Obligation to

Respect

Protect

Fulfill

**Duty-bearer to
refrain from
interfering with
enjoying the
right**

**Duty-bearer to
prevent others
interfering with
the enjoyment
of the right**

**Duty-bearer to
adopt appropriate
measures towards
full realization of
the right**



“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

Health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

(the WHO Constitution)





The right to the highest attainable standard of health

- **WHO Constitution (1946)**
 - **International Covenant on Economic, Social and Cultural Rights (1966)**
- **Universal Declaration of Human Rights (1948)**
 - **International Covenant on Civil and Political Rights (1966)**
- **Declaration of Alma Ata (1978) and the World Health Declaration (1998)**
- **General Comment on the right to health (2000)**
- **Special Rapporteur on the right to health (2002)**



General obligations for all rights:

- Non-discrimination
- Progressive achievement
- Maximum available resources

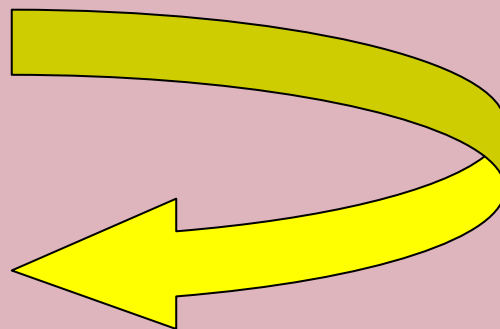
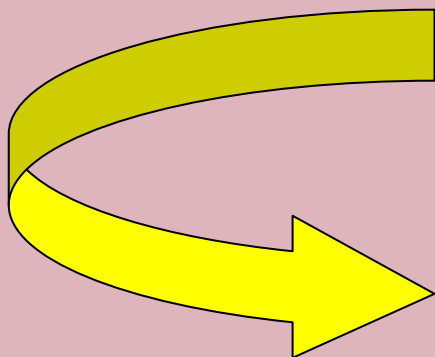


Article 12, ICESCR:

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... to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.



“The right to health”



Underlying determinants

water, sanitation, food, nutrition, housing, healthy occupational and environmental conditions, education, information, etc.

Health-care

AAAQ

Availability, Accessibility, Acceptability, Quality

(General Comment No. 14 of the Committee on Economic, Social and Cultural Rights)

The right to health:

- Availability
- Accessibility (affordability; non-discrimination; physical accessibility; information accessibility)
- Acceptability
- Quality

(General Comment 14, CESCR)



Article 25 on the Right to Health (CRPD)

"States Parties (S/P) recognize that persons with disabilities have **the right to the enjoyment of the highest attainable standard of health without discrimination** on the basis of disability.

S/P shall take appropriate measures to ensure **access for persons with disabilities to health services** which are gender-sensitive, including health-related rehabilitation. In particular, S/P shall....."



The Right to Health (art.25 CRPD) cont...

- a) health-care of same range, quality & standard
- b) health services needed by persons with disabilities
- c) health services as close as possible to communities
- d) health professionals to provide same quality care, including on the basis of free & informed consent
- e) prohibit discrimination in provision of health & life insurance
- f) prevent discriminatory denial of health care or food



Principle of progressive realization:

Obligation to take steps, individually and through **international assistance and cooperation**, especially economic and technical, to the **maximum of its available resources** with a view to achieving progressively the full realization of the rights...



Principle of progressive realization

- Deliberate, concrete & targeted steps
- Important to distinguish government *incapacity vs. unwillingness*
- Statistics and data collection (art.31 CRPD)
- Use indicators (structural, process & outcome) and benchmarks



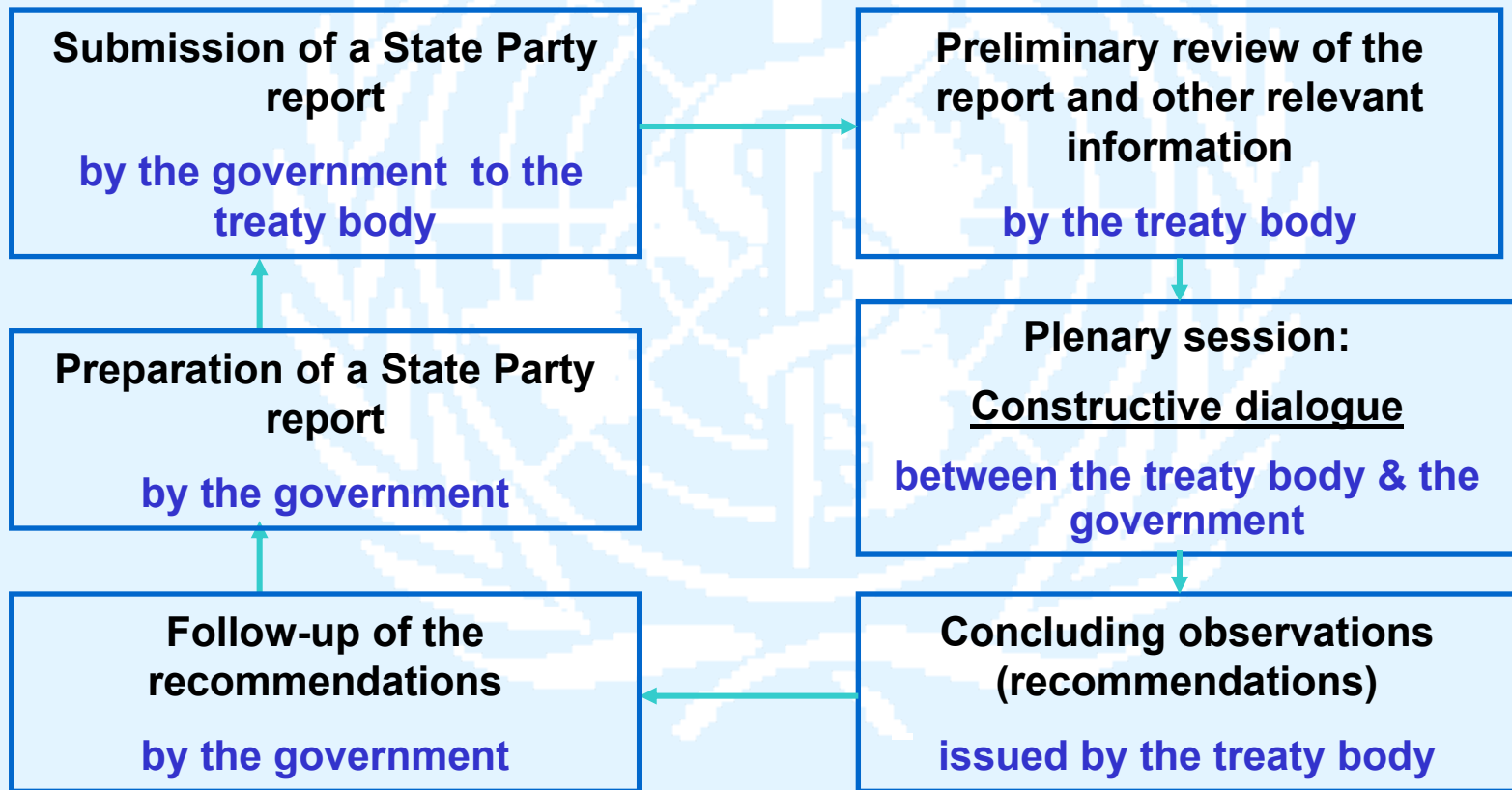
How the right to health can support MoHs:

- **Human rights are *the first priority* of governments**
- **Enshrined in international and national law**
- **Obligation of Governments *as a whole*, includes ministries of finance and planning**
- **Obligation to *protect* human rights, i.e. must regulate non-state actors.**
- **Monitoring mechanisms to enhance accountability**



The UN human treaty bodies monitoring process helps generate accountability for the realization of human rights

Monitoring process (one cycle: 4 years)



Equality

- Stigma
- Equality: Equal before the law and entitled to the equal protection of the law.
- Discrimination: any distinction, exclusion, restriction or preference based on....which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights in the political, economic, social, cultural or any other field of public life.
- Reasonable accommodation
- Special measures → de facto equality



A human rights based approach:

✓ Outcome:

The realization of human rights is the *objective*

✓ Process:

Human rights principles *guide* all stages of design, implementation, monitoring & evaluation

✓ Capacity-building:

Development cooperation is about building the capacity of *rights-holders to claim their rights & duty-bearers to fulfil their obligations*



Practical steps to apply HRBA

1. Causal analysis

Identify the immediate, underlying & root causes

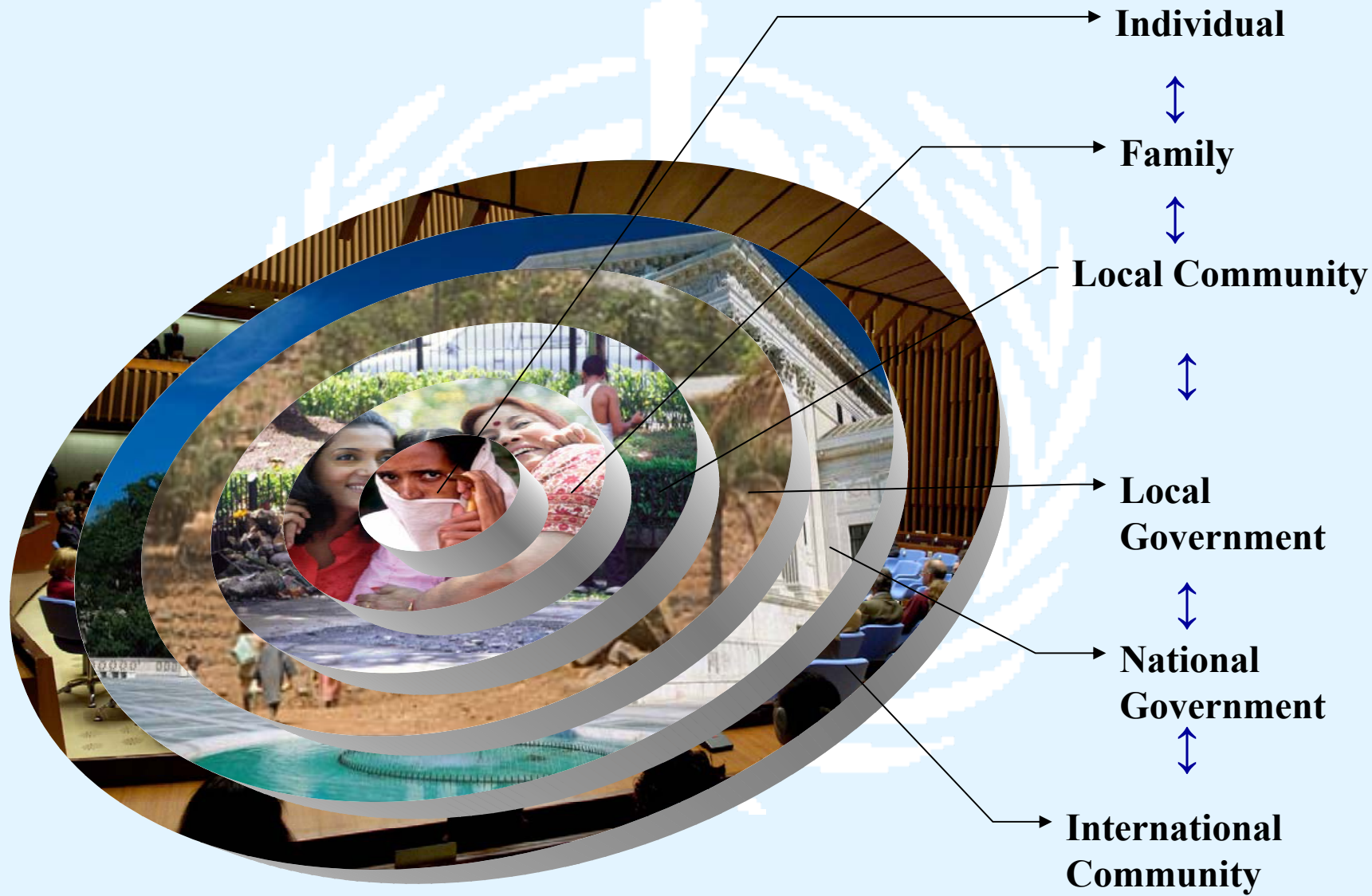
2. Roll/obligation analysis

Identify who are the rights-holders and duty-bearers

Identify their corresponding entitlements and obligations



Identification of rights-holders & duty bearers



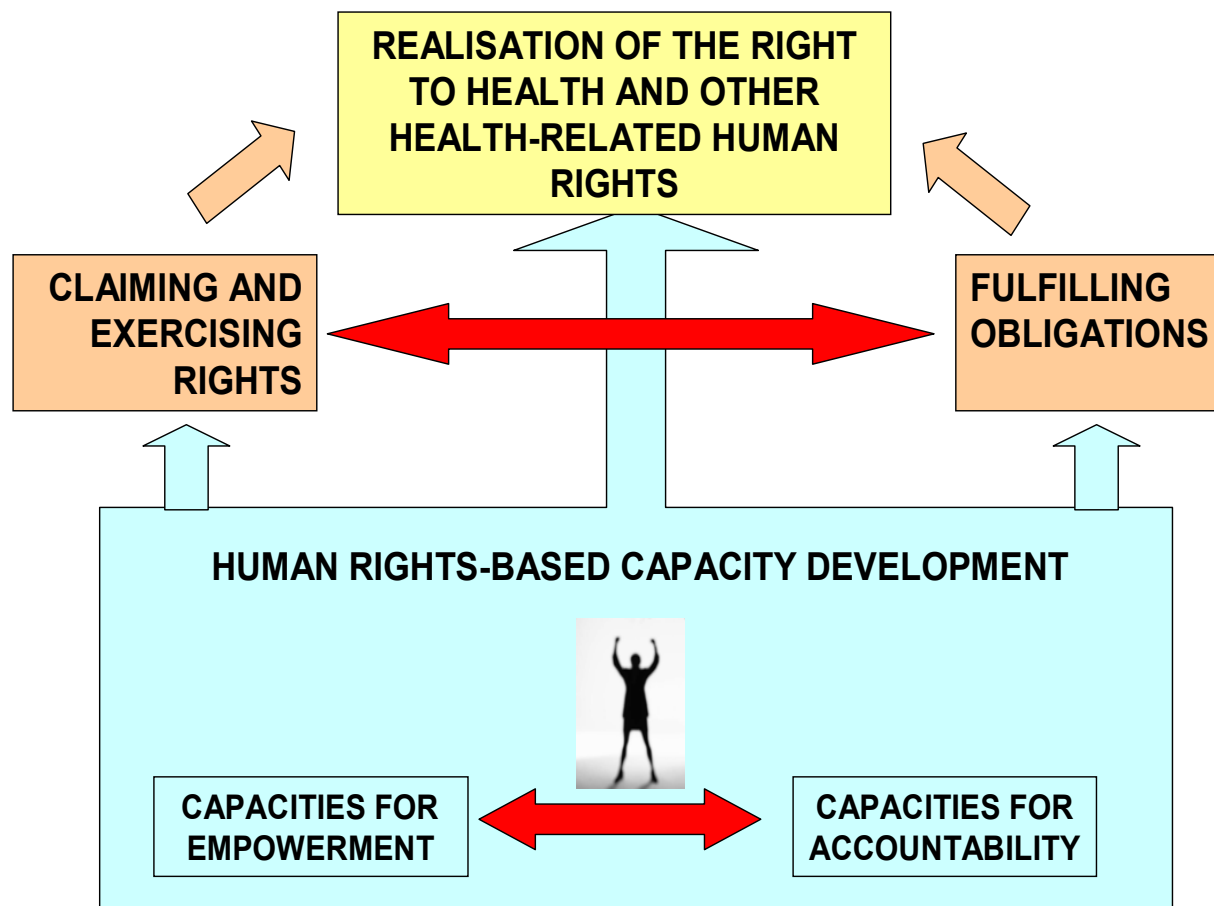
3. Capacity gap analysis

- ✓ **Understanding of the issue and the claims/duties at stake**
- ✓ **Resources at their disposal (financial, technical, human)**
- ✓ **Exposure to risks arising from making a claim (RH) or fulfilling obligations (DB)**
- ✓ **Authority, attitudes and motivation**

➤ **HRBA leads to deeper, more robust analysis of power relationships**



The role of Capacity Development



Value-added of a human rights based approach

- Universally recognized values enshrined in international law
- Recognizes persons with intellectual disabilities as rights holders
- “Empowering” strategy for health
- Entitlements generate corresponding obligations
- Monitoring & enforcement mechanisms
- Enhanced accountability



Thank you!

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