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## Monitoring and Review to Assess Human Rights Implementation

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Accountability for the implementation of health-related human rights requires an independent means to assess compliance with international human rights standards. To press states forward in human rights implementation, human rights monitoring and review mechanisms have been established to provide external oversight of national human rights efforts. Forming a system of human rights accountability across national, regional, and international levels of governance, human rights monitoring and review bodies examine progress by collecting and analyzing sources of information, including public health data, that reflect the realization of human rights. This system of monitoring and review facilitates accountability for human rights implementation to the extent that all states are subject to external evaluation of, and receive recommendations to support, the realization of health-related rights. In seeking redress for human rights violations, monitoring and review support legal and policy reforms and other measures to implement human rights obligations and advance global health justice.

Despite growing acceptance of human rights to promote public health, there is limited evidence that state ratification of human rights treaties leads to meaningful human rights implementation. Monitoring and review procedures—with monitoring encompassing the process through which information is gathered and review including the process through which that information is critically analyzed—provide a foundation for accountability to assure human rights implementation for public health promotion. While many human rights monitoring and review bodies cannot impose legally binding obligations on states, they maintain an authoritative advisory role in assessing state efforts to advance health-related human rights, considering complaints of human rights violations, issuing recommendations to support implementation efforts, and clarifying treaty provisions for states parties. As part of an overlapping network of human rights accountability mechanisms—including human rights advocacy, litigation, and global governance—monitoring and review mechanisms interact with and support other forms of accountability to assure the implementation of human rights.

This chapter analyzes the fundamental importance of monitoring and review to facilitate accountability for the implementation of human rights to advance global health. Viewing oversight as central to human rights accountability, Part I outlines why human rights monitoring and review procedures are critical to the realization of health-related human rights and traces the historical development of human rights monitoring and review mechanisms. Part II examines the contemporary functions and roles of these institutions at the national, regional, and international levels, discussing the ways in which these monitoring and review mechanisms form an interconnected

and complementary “ecosystem” to assess human rights implementation. Addressing the creation and use of human rights indicators as a means to structure human rights monitoring and review, Part III analyzes the prospects of operationalizing public health data as a basis for assessing the implementation of health-related human rights. The chapter concludes by reflecting on the continuing importance of monitoring and review in facilitating human rights accountability, addressing why these accountability mechanisms will remain crucial to realizing human rights in global health.

## **I. Evolving Efforts to Monitor Human Rights Implementation**

Following from the codification of human rights under international law through the United Nations (UN), it was rapidly understood that human rights require independent oversight to assure accountability for human rights implementation. However, Cold War debates challenged early efforts to develop the machinery necessary to oversee the transformation of human rights ideals into domestic realities. As the human rights system evolved, human rights monitoring and review procedures were established across national, regional, and international levels of governance to assess national human rights implementation and hold states accountable for their obligations to realize health-related human rights. The number and scope of institutions that assess human rights progress have grown dramatically in recent years, now forming a complex system of monitoring and review procedures across multiple levels of governance.

### **A. Accountability through Monitoring and Review Procedures**

As duty-bearers under international law, states hold the primary obligation to respect, protect, and fulfill human rights. When a state ratifies an international human rights treaty, it assumes a legal obligation, as first discussed in Chapter 5, to implement the rights enshrined within that treaty. Accountability is critical to state implementation of these international legal norms for public health promotion, requiring a government to demonstrate how it has either realized, or taken steps to realize, its legal obligations to rights-holders. Accountability not only serves a corrective function, providing redress for individual or collective health grievances, but it also serves a preventive function, determining which aspects of health policy, programming, and practice are effective or need improvement (Potts 2008). Human rights accountability—whether overseen by judicial, quasi-judicial, administrative, political, or social mechanisms—broadly concerns the responsibility of government officials, answerability for human rights harms, and enforceability of normative standards. These elements together drive the corrective and preventative functions of accountability, which encourage national implementation of international law and promote universal respect for human rights.

As a basis for accountability, human rights monitoring and review procedures provide an external check on state efforts to implement human rights obligations and achieve the realization of human rights (O’Flaherty and Tsai 2012). In the absence

of a global judiciary, overlapping systems of monitoring and review influence states through:

- Information Diffusion—with monitoring and review institutions serving as a conduit for transferring information from national governments to civil society, providing transparency in human rights implementation; and
- Policy Persuasion—with monitoring and review institutions influencing state perceptions of human rights implementation, putting external pressure on governments to compel shifts in national practice (Simmons 2009).

Human rights monitoring and review procedures thus seek to deter violations and encourage implementation, spurring programmatic initiatives, policy and legal reforms, and individual remedies (Hafner-Burton 2008).

### B. The Importance of Monitoring and Review for Progressive Realization

Monitoring and review procedures have particular relevance in assuring accountability for the progressive realization of health-related human rights. Framed by the International Covenant on Economic, Social and Cultural Rights (ICESCR), the principle of progressive realization, as first noted in Chapter 2, holds that a state party is only obligated to take steps to implement rights “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights” (UN General Assembly 1966, art. 2). Beyond the minimum core content of each right, which is to be realized regardless of national resources, the principle of progressive realization formally recognizes that the full realization of economic and social rights depends on financial resources, providing a degree of flexibility to states in implementing these rights. As the state implementation process—from treaty ratification to domestic action—depends on a series of progressive steps over time (Getgen and Meier 2009), obligations subject to progressive realization require periodic monitoring and review to assess the pace of progress (CESCR 2000).

Monitoring and review bodies have adopted innovative approaches to uphold accountability for the implementation of economic and social rights, including their health-related dimensions. As many health-related human rights obligations are bound by the allocation of resources, there is a need for independent review of the appropriate speed, sequencing, and extent of human rights implementation. Reviewing national implementation to assess progress, select public health data (such as statistics on infant and maternal mortality) offer a partial way to structure human rights monitoring and an evidentiary basis for review body recommendations. To evaluate improvements or challenges in human rights implementation over time, such data allow monitoring of progressive realization and enable advocacy to reform policies, programs, and practices (Langford and Fukuda-Parr 2012). These public health data thereby provide a foundation for human rights assessment, allowing monitoring and review mechanisms to measure human rights implementation.

### C. The Establishment of Monitoring and Review Mechanisms

Independent monitoring and review institutions have long been seen as necessary to supervise government behavior and facilitate good governance. While monitoring institutions predate the modern human rights era,<sup>1</sup> these oversight mechanisms have expanded across domestic, regional, and international levels of governance as international human rights law has come to frame state obligations. States parties to the 1945 UN Charter pledged “to take joint and separate action in co-operation” with the UN to promote universal respect for and observance of human rights (UN 1945, art. 56), creating new oversight institutions within the UN architecture to develop and consider reports on human rights realization. Through the establishment of the Economic and Social Council (ECOSOC), the UN sought to provide independent review at the international level, with ECOSOC’s Commission on Human Rights charged with monitoring the observance of human rights throughout the world. ECOSOC encouraged states to extend this monitoring at the national level, considering the “desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights” (ECOSOC 1946, art. 5).

Yet, as states moved to codify the proclaimed rights of the 1948 Universal Declaration of Human Rights (UDHR) under international treaty law, they were divided on matters related to the monitoring and review of human rights implementation—with Cold War debates addressing:

- whether there should be separate reporting procedures for the two covenants;
- whether reporting procedures should be complemented by individual or interstate complaints procedures; and
- whether states should be held accountable before an international body (Alston 1987).

These early debates, together with the UN’s initial reluctance to engage in monitoring and review of member states through the Commission on Human Rights, sowed doubt that international mechanisms could meaningfully facilitate state compliance with human rights. Fueled by continuing disagreements related to treaty implementation, regional blocs formed their own oversight mechanisms and procedures to assess the implementation of human rights and provide redress for violations—beginning in Europe and expanding to the Americas and Africa (Shelton and Carozza 2013). As states developed human rights under international treaty law, Cold War divisions on issues of international human rights monitoring led to the adoption of human rights treaties, particularly the ICESCR, that included only weak oversight mechanisms to assess compliance. Although the ICESCR was endowed with reporting procedures, through which states were to submit reports on treaty implementation, these international reporting efforts remained constrained by the continuing political, ideological, and economic

<sup>1</sup> The ombudsperson, for example, is a quasi-judicial oversight institution that was created by the Swedish Parliament over two hundred years ago, with a long-standing role to watch over government officials, consider public complaints on issues of administrative injustice, and make recommendations for reform (Ayeni 2014).

divides of the Cold War, which limited the ability of treaty bodies to influence human rights implementation (Bayefsky 1996).

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### **Case Study: Monitoring and Review through the UN Committee on Economic, Social and Cultural Rights**

The UN Committee on Economic, Social and Cultural Rights (CESCR) is unique in that it is the only international human rights treaty body that was not created under the terms of its underlying treaty. With Cold War tensions hampering the initial establishment of an independent oversight body for economic, social, and cultural rights, states parties to the ICESCR were originally required to submit periodic reports to the UN Secretary General, with ECOSOC member states monitoring the implementation of the ICESCR. To assist in the consideration of reports submitted by states parties, ECOSOC in 1978 established a Sessional Working Group on the Implementation of the ICESCR; yet this Working Group was seen as ineffective due to its inability to meaningfully review state reports and provide ECOSOC with recommendations. Given this limited effectiveness, ECOSOC established the CESCR in 1986—not only to assist in the consideration of reports submitted by states parties but also to “make suggestions and recommendations of a general nature.” Composed of independent experts, members of the CESCR are elected by ICESCR states parties in their individual capacity (rather than as representatives of their states) and serve on the treaty body for fixed, renewable terms of four years. In addition to their role in developing general comments, recommendations, and statements to clarify the ICESCR (and now adjudicating individual complaints against states parties), members of the CESCR gather several times each year to review ICESCR implementation by member states—monitoring state reports, meeting with state representatives for a constructive dialogue, and issuing concluding observations to recommend measures to assure the realization of economic, social, and cultural rights. Where states participate fully in this process of monitoring and review, the CESCR has proven to be an influential mechanism in facilitating accountability for state implementation of health-related human rights.

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As oversight through the international human rights system increased at the end of the twentieth century—following political changes accompanying the end of the Cold War, global advocacy surrounding human rights, and leadership changes within the UN—the number and role of monitoring and review mechanisms to oversee human rights implementation expanded across all levels of governance. The UN sought to reinforce national human rights monitoring in 1991 at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, which resulted in the 1993 “Paris Principles,” providing guidance on how national human rights institutions (NHRIs) should oversee government actions (UN General Assembly 1993a). Bridging efforts across levels of governance, the 1993 World Conference on Human Rights reaffirmed the ways in which oversight mechanisms assure human rights accountability, with the resulting Vienna Declaration and Programme of Action

recognizing the importance of monitoring and review in the promotion and protection of human rights (UN General Assembly 1993b). As these monitoring and review mechanisms have elaborated health-related human rights under international law, with Chapter 3 examining the CESCR elaboration of the right to health under General Comment 14, a rising set of national, regional, and international oversight bodies have been able to undertake an expanding role to promote public health across the contemporary ecosystem of human rights monitoring and review.

## II. An Ecosystem of Human Rights Monitoring and Review

Where there is no centralized body or system for human rights monitoring and review, oversight for health-related human rights implementation is reinforced through interconnected mechanisms across multiple levels of governance—forming an “ecosystem” of monitoring and review. Each level of this ecosystem employs complementary structures and methods of monitoring and review, reinforcing oversight of health-related human rights where other levels fall short. This complementarity across levels of governance facilitates human rights accountability for health across national, regional, and international contexts.

### A. National

Facilitating a vital relationship between the rights of individuals and the duties of the state under international human rights law, independent national monitoring and review mechanisms are essential to ensuring the realization of health-related human rights obligations. NHRIs, official state bodies with an explicit constitutional or legislative mandate to protect and promote human rights, have authority under national law to monitor and review government efforts to implement human rights (Carver 2010). These NHRI authorities have found support under international law through the 1993 Paris Principles, which structure the accreditation of NHRIs and delineate their responsibilities to examine whether national regulations and administrative practices meet state human rights obligations (UN General Assembly 1993a). While the structure of NHRIs varies across national contexts, they often take the form of human rights commissions (a group of human rights experts) and human rights ombudspersons (singular individuals), who have the authority to review government actions and make specific recommendations to assure that governments meet their health-related human rights obligations through public health policies.

NHRIs do not usually have the power to make legally binding decisions, yet these institutions may advise the government on policy, investigate individual or collective complaints of human rights violations, and make recommendations to the government at the conclusion of an investigation. In this advisory role, human rights commissioners and ombudspersons are appointed by the government, but their effectiveness requires that they hold a large degree of independence in their work, allowing them to be key interlocutors on the national implementation of health-related human rights (Reif 2000). While NHRIs have traditionally promoted civil and political rights, they have

increasingly come to address economic and social rights, including the right to health (Kumar 2006).<sup>2</sup> Beyond their national practice, these NHRIs often collaborate with similar groups from other nations, participate in international dialogues, and join together to engage in monitoring mechanisms at the regional and international levels.

However, where the structures, mandates, and powers of NHRIs continue to vary across nations, diversity in national human rights monitoring and review institutions can lead to global inequity in accountability for health-related human rights. Supporting these NHRIs, other state institutions without an explicit human rights mandate—such as anticorruption commissions, attorneys general, or auditors general—have sought to improve transparent and accountable governance, monitor rights-related issues, and thereby facilitate independent oversight of human rights implementation—even if not through the lens of human rights. Outside of governmental institutions, nongovernmental organizations (NGOs), as addressed in Chapter 6, provide complementary monitoring and review functions at the national level and facilitate governmental accountability through rights-based advocacy. These NGOs, along with trade unions and civil society groups, are critical sources of information to monitor the implementation of health-related human rights. In reviewing government actions, these nonstate actors can create bottom-up pressures that facilitate accountability for health-related human rights and support other monitoring and review mechanisms (Potts 2008).

## B. Regional

Extending beyond individual states, regional human rights monitoring and review mechanisms, alongside their respective governing bodies and regional courts, reinforce domestic efforts to assess human rights progress, supporting regional governance and acting where domestic monitoring and review is inadequate. The UN initially expressed hesitancy toward regional human rights arrangements, fearing that emerging regional systems would detract from the universality of rights; however, states within different geopolitical regions have pressed ahead to develop regional human rights systems to reflect their distinct social, historical, and political realities (Shelton and Carozza 2013). As a result, each regional human rights system now independently monitors and reviews its own region-specific treaties that enshrine human rights and corresponding state obligations.

With each regional monitoring and review system established under the auspices of its respective intergovernmental organizations, the three most developed regional human rights monitoring and review systems are found in Africa (through the African Union), Europe (Council of Europe), and the Americas (Organization of American States). Providing a basis to assess the realization of health-related human rights at the regional level, regional human rights systems have established oversight bodies, including independent human rights commissions and committees. These regional

<sup>2</sup> For example, the National Human Rights Commission of South Africa has a constitutional mandate to monitor a wide range of health-related human rights. Under this rights-based mandate, the Commission has published investigative reports on national rights to a clean environment and healthcare services, as well as organized hearings to review topics such as the right to water and sanitation and the status of mental health care in South Africa (SAHRC 2019).

human rights mechanisms complement regional human rights courts, addressed in detail in Chapter 8, in monitoring and reviewing rights implementation and shaping efforts to promote health through the development of regional human rights standards.

While regional treaties contextualize health-related human rights in different ways, regional human rights systems seek to monitor and review regional human rights issues and concerns through largely similar procedures, even as differing operational contexts can lead to accountability disparities across regions. Each regional system provides for a procedure to receive and review periodic reports from states, considering the extent to which states parties have taken efforts to realize their obligations under the respective regional treaty. The African Commission on Human and Peoples' Rights, for example, has addressed the health-related human rights of people living with HIV through its concluding observations on state reports, highlighting gaps in national efforts to uphold human rights in the context of the HIV/AIDS response (Durojaye 2017). Some regional institutions may additionally conduct on-site visits and missions to monitor the health and human rights situation of a particular state or undertake thematic reports on health-related human rights issues. To this end, the Inter-American Commission on Human Rights, which has a well-established practice of on-site visits, has produced several thematic reports addressing issues such as sexual violence, reproductive health education, and access to maternal health services (IACHR 2010).

### C. International

International monitoring and review under the UN human rights system seeks to hold state duty-bearers to account for the implementation of health-related human rights through:

- Treaty-based bodies—derived from specific human rights treaties as a basis to monitor and advise member states, as seen through the CESCR process of reviewing state reports on the ICESCR; and
- Charter-based bodies—derived from the UN Charter as a basis to oversee the condition of rights worldwide, as seen through the UN appointment of special procedures mandate holders (including over forty special rapporteurs) and the Universal Periodic Review (UPR) (Acharya and Meier 2016).

With states parties accepting specific obligations to report on their treaty implementation efforts, these treaty- and charter-based mechanisms assess state health obligations and offer international recommendations for national health practice.

#### 1. Human Rights Treaty Bodies

Human rights treaty bodies were established as the principal mechanism of international treaty monitoring and review, and have assumed central importance in ensuring human rights accountability for public health. Operating under a specific international legal mandate, treaty bodies assess the national implementation of international human rights treaties, advising states in realizing human rights obligations. With the human rights system shifting from the international development of human rights treaties to



the national implementation of human rights obligations, the UN has looked to human rights treaty bodies to review state reports and thereby facilitate human rights accountability for state implementation of health-related human rights (Meier and Brás Gomes 2018).

Each core human rights treaty has its own corresponding treaty body, with each treaty body composed of independent experts who review state implementation of treaty obligations. As treaty bodies have international legal authority to assess whether states parties are implementing the obligations of a specific treaty (Egan 2011), health-related human rights have been interpreted by multiple international human rights treaty bodies, as detailed in Table 7.1, which monitor a wide range of determinants of health.

In addition to clarifying treaty provisions (through general comments, recommendations, or statements) and adjudicating individual complaints (where domestic adjudication is not available), these international institutions undertake monitoring and review, as illustrated in Figure 7.1, through their formal review of state reports, constructive dialogue with state delegations, and concluding observations on state obligations. Providing a means to monitor treaty implementation over time, state reporting to treaty bodies constitutes a continuing obligation under international law.<sup>3</sup> In reviewing state reports, treaty bodies may also receive and consider information on health-related human rights implementation from sources independent of the state, including NHRIs, UN agencies, and NGOs. The purpose of these “shadow reports” is to present the treaty body with alternative views on state efforts to implement human rights for public health (Gaer 2003).

In reviewing this comprehensive set of reports—from both state and nonstate actors—treaty bodies then engage in “constructive dialogue” with the reporting state. Constructive dialogue allows treaty body members to speak directly to government representatives about human rights implementation, allowing states to be questioned about their implementation efforts. Following from the constructive dialogue, the treaty body issues concluding observations, offering specific recommendations for states parties to implement treaty obligations. While the treaty body’s adoption of concluding observations brings the formal review of a state report to a close, each treaty body employs distinct follow-up procedures to assess state compliance with recommendations and to monitor continuing state implementation until the next periodic reporting cycle begins (Ploton 2017).<sup>4</sup>

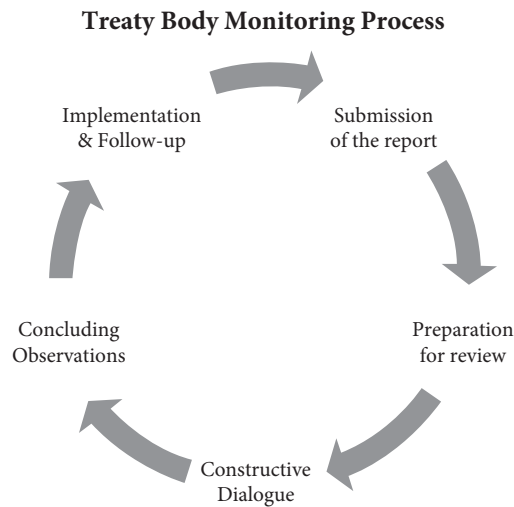
Assessing the translation of international law into national practice, these treaty body authorities can influence states and galvanize advocates to take action to realize human rights for public health. The adoption of concluding observations by treaty bodies, for example, has been seen to influence state efforts to implement health-related human rights. When treaty bodies have addressed the right to health in their concluding

<sup>3</sup> States are required to submit both a “common core document” (containing general information about a state party relating to the implementation of human rights) and a treaty body-specific document (containing information relating to the implementation of the specific underlying treaty).

<sup>4</sup> To coordinate state reporting and follow-up with regional and international monitoring and review bodies, states have developed National Mechanisms for Implementation, Reporting and Follow-Up (NMIRFs) to gather and track human rights data, discuss draft state human rights reports, and facilitate the fulfillment of recommendations for improved human rights implementation (OHCHR 2016).

Table 7.1 Health-Related General Comments and Recommendations

| CERD   | Human Rights Committee  | CEDAW  | CESCR  | CRIC  | CMW   | CRPD   |
|--|---|--|--|---|---|--|
| <ul style="list-style-type: none"> <li>• #25 (2000) Gender-Related Dimensions of Racial Discrimination</li> <li>• #27 (2000)-<del>CR</del></li> <li>• #30 (2005)-<del>CR</del></li> <li>• #34 (2011) Non-Citizens</li> <li>• <del>CR</del>Racial Discrimination Against People of African Descent</li> </ul> | <ul style="list-style-type: none"> <li>• #6 (1982) Right to Life</li> <li>• #20 (1992) Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment</li> <li>• #28 (2000) Equality of Rights Between Men and Women</li> <li>• #35 (2014) <del>CR</del>-Liberty and Security of Person</li> <li>• #36 (2019) Right to Life</li> </ul> | <ul style="list-style-type: none"> <li>• #14 (1990) Female Circumcision</li> <li>• #15 (1990) Avoidance of Discrimination Against Women in National Strategies for the Prevention and Control of AIDS</li> <li>• #18 (1991) <del>CR</del> Disabled Women</li> <li>• #19 (1992) <del>CR</del>-Violence Against Women</li> <li>• #21 (1994) Equality in Marriage and Family Relations</li> <li>• #24 (1999) Women and Health</li> <li>• #26 (2008) <del>CR</del>-Women Migrant Workers</li> <li>• #27 (2010) <del>CR</del> Older Women</li> <li>• #30 (2013) <del>CR</del>-Women in Conflict and Post-Conflict Situations</li> <li>• #31 (2014) <del>CR</del>-Harmful Practices (Joint with CRC)</li> <li>• #34 (2016) on the Rights of Rural Women</li> <li>• #35 (2017) <del>CR</del>-Gender-Based Violence Against Women</li> <li>• #36 (2017) Right of Girls and Women to Education</li> <li>• #37 (2018) Gender-Related Dimensions of Climate Change</li> </ul> | <ul style="list-style-type: none"> <li>• #4 (1991) Right to Adequate Housing</li> <li>• #5 (1994) Persons with Disabilities</li> <li>• #6 (1995) Economic, Social, and Cultural Rights of Older Persons</li> <li>• #8 (1997) <del>CR</del>-the Relationship between Economic Sanctions and Economic, Social, and Cultural Rights</li> <li>• #12 (1999) Right to Adequate Food</li> <li>• #13 (1999) <del>CR</del>-Right to Education</li> <li>• #14 (2000) Right to the Highest Attainable Standard of Physical and Mental Health</li> <li>• #15 (2002) Right to Water</li> <li>• #16 (2005) Equal Right of Men and Women to Enjoy Economic, Social, and Cultural Rights</li> <li>• #19 (2007) Right to Social Security</li> <li>• #22 (2016) Right to Sexual and Reproductive Health</li> <li>• #23 (2017) <del>CR</del>-State Obligations in the Context of Business Activities</li> </ul> | <ul style="list-style-type: none"> <li>• #1 (2001) <del>CR</del> the Aims of Education</li> <li>• #3 (2003) HIV/AIDS and the Rights of the Child</li> <li>• #4 (2003) Adolescent Health and Development</li> <li>• #6 (2005) Treatment of Unaccompanied and Separated Children Outside Country of Origin</li> <li>• #7 (2006) Implementing Rights in Early Childhood</li> <li>• #8 (2006) Protection from Corporal Punishment</li> <li>• #9 (2006) The Rights of Children with Disabilities</li> <li>• #10 (2007) Children's Rights in Juvenile Justice</li> <li>• #13 (2011) Freedom from All Forms of Violence</li> <li>• #15 (2013) Enjoyment of the Highest Attainable Standard of Health</li> <li>• #18 (2014) <del>CR</del>-Harmful Practices (Joint with CEDAW)</li> <li>• #20 (2016) Implementation of Rights During Adolescence</li> <li>• #21 (2017) <del>CR</del>-Children in Street Situations</li> <li>• #22 (2017) General Principles on Rights of Children in the Context of International Migration (Joint with CMW)</li> <li>• #23 (2017) <del>CR</del>-State Obligations Regarding Rights of Children in the Context of International Migration (Joint with CRC)</li> </ul> | <ul style="list-style-type: none"> <li>• #1 (2014) <del>CR</del>-Migrant Domestic Workers</li> <li>• #2 (2014) Rights of Migrant Workers in an Irregular Situation and Members of their Families</li> <li>• #3 (2017) General Principles on Rights of Children in the Context of International Migration (Joint with CRC)</li> <li>• #4 (2017) <del>CR</del>-State Obligations Regarding Rights of Children in the Context of International Migration (Joint with CRC)</li> </ul> | <ul style="list-style-type: none"> <li>• #1 (2014) Equal Recognition Before the Law</li> <li>• #2 (2014) <del>CR</del> Accessibility</li> <li>• #3 (2016) <del>CR</del> Women and Girls with Disabilities</li> <li>• #4 (2016) Right to Inclusive Education</li> <li>• #5 (2017) Right to Independent Living</li> <li>• #6 (2018) <del>CR</del> Equality and Non-discrimination</li> </ul> |



**Figure 7.1.** Treaty Body Monitoring and Review Process.

observations, subsequent state reports have often increased their focus on health, with the content of reports corresponding with the specific issues raised in the treaty body's previous concluding observations (Meier et al. 2017).

## 2. Special Procedures

The establishment of special procedures is one of the main charter-based mechanisms to monitor and review human rights, operating under the auspices of the UN Human Rights Council (HRC)<sup>5</sup> to assess practices for rights realization at local, national, and international levels. Special procedures mandate holders are either individuals—titled “special rapporteurs” or “independent experts”—or working groups that examine a human rights issue from a thematic or country-specific perspective. While these mandate holders are appointed by the HRC, special procedures serve in their personal capacity and enjoy a significant degree of independence in assessing human rights.

Special procedures mandate holders review human rights implementation by undertaking fact-finding missions—chiefly to specific countries but sometimes to international organizations or nonstate actors—during which time they meet with national and local authorities, including government officials, NHRI members, NGOs and civil society organizations, marginalized communities, victims of human rights violations, and representatives of international organizations. Following the completion of a mission, the mandate holder publishes findings about the realization of human rights, conclusions on human rights implementation, and recommendations for reform. In immediate cases of alleged human rights violations, as well as concerns of a more structural nature, special procedures mandate holders also have the ability to communicate directly with the government by sending a letter that outlines the facts of an allegation, relevant human rights norms and standards, questions and concerns of the mandate

<sup>5</sup> In 2006, the HRC replaced ECOSOC's Commission on Human Rights.

holder, and request for state follow-up (Winkler and de Albuquerque 2017). Through their missions, reports, and ancillary communications, the mandate holder reinforces existing monitoring, advocacy, and implementation efforts, including by civil society organizations, which become key stakeholders in follow-up monitoring and review (Golay, Mahon, and Cismas 2011).

Monitoring and review by special procedures—on issues ranging from water and sanitation to violence against women—has significantly influenced the elaboration, interpretation, and implementation of health-related human rights through national policy. The Commission on Human Rights established the first mandate of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in 2002, and—as detailed in Chapter 3—those who have held this mandate have contributed to the domestic operationalization of the right to health. Beyond the right to health, the HRC has appointed many independent experts and special rapporteurs to address the vast range of human rights that underlie public health, with these [special rapporteurs](#) serving complementary roles in reviewing health-related human rights and coordinating with other parts of the human rights system (Murphy and Müller 2018).<sup>6</sup> Building on annual thematic reports to the HRC and the General Assembly, which clarify the normative content of specific rights in the context of particular themes or groups, official missions of the special procedures mandate holders have provided opportunities to review critical public health issues for countries or institutions (both barriers and good practices) and make recommendations for health-related human rights implementation.

### 3. Universal Periodic Review

The HRC launched the UPR in 2008 as a basis to assess the human rights situation in member states throughout the world, seeking a holistic, equitable, and balanced approach to reviewing the situation of all human rights in all countries. More encompassing than the state party reporting processes overseen by treaty bodies, the UPR monitors the human rights record of every UN member state, not just those that have ratified specific treaties (Gaer 2007).

The UPR reviews each country every five years. This review is based upon three reports on the human rights situation in the state under review: a national report, submitted by the national government; a compilation of UN information prepared by the Office of the UN High Commissioner for Human Rights (OHCHR), drawing on materials received from UN agencies and other UN human rights mechanisms; and a stakeholder summary, prepared by OHCHR based upon information received from NHRIs and civil society organizations. In contrast to UN treaty body reviews, which are overseen by bodies of independent experts, the UPR is a peer-review process—a review of states by other UN member states—and thus is intended to be more cooperative. The process revolves around an interactive dialogue between the state under review and other states and culminates in an outcome report, which includes a set of

<sup>6</sup> Where efforts of the special procedures system to collaborate with other monitoring and review institutions have not always been consistent, raising a clear need for greater cooperation, additional steps are underway to harmonize the working practices and streamline methods across special procedures mandate holders (Nolan, Freedman, and Murphy 2017).

specific recommendations that the state under review can either “accept” (signaling a commitment to implement) or “note.”

Although it has not always lived up to its promise, the UPR procedure is intended to be non-politicized, providing a constructive opportunity to identify areas of concern while building the capacity of states to promote and protect human rights through the cooperative sharing of best practices and technical assistance. Constituting a key pillar of the UN’s contemporary human rights machinery, the UPR also provides an opportunity to enhance accountability for other global commitments. Supplementing the Sustainable Development Goal (SDG) review processes at the international and national levels, the UPR provides an opportunity to review how the SDGs are contributing to health-related human rights realization as well as how human rights contribute to the health-related SDGs (Bueno de Mesquita, Fuchs, and Evans 2018). Even as the UPR has been criticized for the low level of implementation of recommendations, the procedure has shown potential in its first two review cycles for monitoring and reviewing health and human rights realization.

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### **Case Study: Monitoring the Right to Health in the UPR Recommendations**

Health was a prominent issue in state recommendations developed during the first two cycles of the UPR. Comparable attention was given to health across both cycles, with health addressed in at least 22 percent of first cycle recommendations and 25 percent of second cycle recommendations. While some health-related issues were particularly prominent in recommendations, such as gender-based violence and maternal and child health, attention to other important components of the right to health were rare, including water and sanitation, HIV, mental health, essential medicines, communicable and non-communicable diseases, and nutrition. The UPR recommendations on health are often framed in general terms. This tendency has been criticized because it can be unclear what actions the state should take, making it difficult to track follow-up and implementation. Enhancing attention to neglected but important health-related issues, as well as greater precision in recommendations under the right to health, could enhance the value of the UPR as a review procedure for health and human rights. Even so, the UPR procedure has helped identify public health gaps and generate attention to important health-related human rights issues in many countries. Where health stakeholders once had limited engagement with the UPR, UN agencies are now encouraged to deepen their engagement in the process, and the World Health Organization (WHO) has begun to assess opportunities for enhanced engagement. States have also expanded their involvement, with an increasing number of countries establishing national mechanisms for reporting and follow-up to engage a wider range of stakeholders, including ministries of health, which can support engagement across the whole of government in follow-up on UPR recommendations.

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### III. Public Health Data as a Basis for Human Rights Monitoring and Review

For human rights monitoring and review to continue to serve its role in facilitating rights-based accountability, assessments must examine indicators that accurately reflect human rights implementation. Oversight institutions are able to generate better connections between public health realities and human rights realization when they examine public health data that align with human rights norms and principles. Through such indicators, human rights monitoring and review procedures can achieve improved:

- Efficiency—as states contend with multiple monitoring obligations for multiple rights, the simplification of reporting requirements through the identification of specific health and human rights data would make state reporting obligations more manageable.
- Effectiveness—with consistent health data allowing for more systematic monitoring of human rights implementation over time, universal indicators would give monitoring and review mechanisms the ability to assess states on the basis of comparable information.

In standardizing the monitoring and review process, human rights implementation could be better assessed through the development of universal human rights indicators, using SDG and other public health data to support the assessment of health-related rights and engaging global health governance institutions in human rights monitoring.

#### A. Developing Human Rights Indicator

Human rights indicators identify specific quantitative and qualitative data (or combinations of data) reflective of human rights norms and principles, with stakeholders developing and implementing these indicators to monitor state obligations. In monitoring consistent information as a basis for human rights accountability, the use of indicators is seen as a way to enhance the objectivity and credibility of human rights reviews, offering ways to transition human rights from abstract principles to measurable realities (De Beco 2008). Although efforts to measure human rights can be traced back to before the initial human rights covenants, the use of human rights indicators to monitor implementation reached a “turning point” in the mid-1980s, as scholars began to examine the necessity of human rights measurement, debating how human rights indicators might be best operationalized (Farris and Dancy 2017). This movement toward standardized, universal indicators has provided the human rights practice community with widely accepted tools to hold national governments accountable for realizing a wide range of civil, cultural, economic, political, and social rights (Rosga and Satterthwaite 2009). While not identical to public health indicators—which broadly reflect health outcomes, determinants, and systems performance—human rights indicators can draw on public health data where such data reveal the realization of health-related human rights.

With human rights indicators allowing for more transparent assessments of the progressive realization of health-related human rights, these measures have shown great promise in facilitating accountability for the implementation of human rights for public health. Human rights indicators permit the monitoring of health improvements over time (Heymann et al. 2015), allowing for consistent reviews of the progressive fulfillment of rights and ensuring that the principle of progressive realization is not used as an “escape hatch” to avoid state responsibility (Felner 2009). While cautious of the moral reductionism inherent in describing individual human rights experiences through population-level measurements,<sup>7</sup> stakeholders have worked across disciplines to create methodologically rigorous bases for developing human rights indicators, delineating indicators that would be uniform in application, less subjective than narrative-based reporting, and comparable over time and across countries.

The OHCHR has now developed a conceptual and methodological framework for translating human rights standards into universal indicators, putting forward guidance for monitoring a wide range of health-related human rights. This approach assesses the links between policy cause and health effect by examining how health outcomes are correlated with underlying changes in structure and process, with:

- Structural indicators assessing key legal institutions that promote the realization of health-related human rights, such as the domestic adoption of rights-based health policy;
- Process indicators assessing “state effort” through national health programs, activities, and practices; and
- Outcome indicators assessing domestic public health impacts, such as HIV prevalence, infant mortality, and tobacco use (OHCHR 2012).

By framing, identifying, and reviewing indicators to facilitate accountability for human rights realization, stakeholders have created a process to assess human rights implementation through public health data. While there remains no standard set of human rights indicators to measure health-related human rights realization at the national, regional, and international levels, scholars are developing, proposing, and testing various measurement frameworks to monitor and review human rights in a range of global health contexts (Gruskin et al. 2017).

## B. Supporting Human Rights Monitoring under the SDGs

Monitoring for the SDGs operates on a different path from the principal mechanisms of human rights monitoring and review, yet there are areas of complementarity currently under exploration, allowing for the use of public health data collected under SDG targets to monitor human rights indicators. While the 2030 Agenda for Sustainable

<sup>7</sup> The utilization of population-level data for human rights measurement presents a number of conceptual, methodological, and practical limitations, wherein indicators might fail to capture the nuance needed to fully understand human rights realities, particularly for marginalized or vulnerable communities who might be lost in aggregated data (Merry 2011).

Development did not go as far toward integrating human rights as hoped by the human rights community, as discussed in Chapter 4, the SDGs nevertheless provide explicit grounding in international human rights law, commitment to equality and non-discrimination, and emphasis on participation as well as monitoring and review of progress. However, as the SDGs are not explicitly framed as human rights entitlements, and by definition are selective, the select health-related targets of SDG 3 (and other goals that address underlying determinants of health) are less encompassing than the right to health and other health-related human rights (Chapman 2017).<sup>8</sup> While the failure to adopt a fully rights-based approach necessitates a greater attention to right to health norms (Hunt 2015), the imperfect overlap between the SDGs and the right to health nevertheless provides opportunities for enhanced monitoring of health-related human rights through the public health inequality data now collected under SDG targets.

With the pledge to leave no one behind at the heart of the SDGs, the 2030 Agenda confirmed the importance of disaggregating data—by income, sex, age, race, ethnicity, migratory status, disability, geographic location, or other characteristics—as a means to better understand, monitor, and address health inequalities. A set of indicators to monitor progress toward the SDG targets has been developed, supplementing indicators that are already used in public health monitoring with new indicators, with increased emphasis on data disaggregation on specific grounds. The SDG indicators and data disaggregation under them can therefore support monitoring of some aspects of inequality, both in the context of SDG monitoring and in the context of international human rights monitoring and review.

Monitoring and review mechanisms—both human rights treaty bodies and the UPR at the international level, and NHRIs and civil society at the national level—provide an opportunity to better understand how the SDGs are contributing to human rights in public health. Yet the constellation of indicators selected to review progress toward SDG targets only partially captures human rights (Williams and Hunt 2017). Through better understanding of the promise and perils of SDG indicators, the ecosystem of human rights monitoring and review can enhance the assessments carried out by the designated oversight body for the SDGs, the High-Level Political Forum, as well as national accountability processes.

### C. Institutionalizing Human Rights Monitoring through Global Health Governance

Beyond the provision of public health data, global health governance institutions can become key actors in efforts to monitor health-related human rights. WHO, in mainstreaming human rights in its work with national governments, is uniquely situated to support states by monitoring health-related human rights as part of its assessment of public health commitments (Thomas and Magar 2018). Where WHO seeks

<sup>8</sup> This is seen clearly in SDG Target 3.8 (achieving universal health coverage), which—as discussed in Chapter 4—has neglected human rights where it has become closely aligned with a right to health care. By failing to provide explicit attention to poor and marginalized groups, SDG Target 3.8 risks entrenching inequalities in moving toward universal health coverage.



to create “soft” global health standards, supported by the collection of global, regional, and national health data (Boerma, Mathers, and Abou-Zahr 2010), these efforts to monitor public health indicators can support human rights monitoring and review insofar as the public health indicators are consistent with human rights and are used to support human rights review processes.

Supporting states’ capacity to monitor health inequalities, WHO has overseen the standardization of public health data collection at national, regional, and global levels, as well as the development of health inequality monitoring tools and guidance. These efforts are essential for the assessment of health policies, programs, and practices, looking at the ways in which vulnerable or disadvantaged groups are impacted (Hosseinpour, Bergen, and Schlotheuber 2015).<sup>9</sup> In addition to its monitoring and review of public health data, WHO has begun to engage in the evaluation of public health laws and policies, developing tools to support legal and policy assessments in public health (WHO 2011). Expanded as part of its human rights mainstreaming strategy, WHO has developed an eight-step national review process to facilitate country integration of equity, gender, and human rights, assessing existing health inequalities and providing recommendations to guide policymakers (WHO 2016).

Through inter-organization partnerships with the UN Children’s Fund (UNICEF) and OHCHR, WHO has additionally provided technical support and guidance for global governance efforts to examine a wider set of health-related human rights—as seen in the case of water and sanitation and gender-based health inequity. Beyond supporting states and international monitoring bodies in assessing public health obligations, WHO has proposed its own global monitoring system for action on social determinants of health, and the UN has used its monitoring of women’s and children’s health to promote human rights (Yamin and Mason 2019).

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### **Case Study: UN Monitoring and Review of Women’s and Children’s Health**

In 2010, the UN Global Strategy for Women’s and Children’s Health (Every Woman Every Child) called upon WHO to oversee the development of effective institutional arrangements for reporting, oversight, and accountability for women’s and children’s health. In response, WHO convened a Commission on Information and Accountability (CoIA) for Women’s and Children’s Health. In its 2011 concluding report, the CoIA outlined a rights-based framework for achieving accountability for women’s and children’s health, based around a tripartite approach encompassing monitoring, review, and remedial action; and called for an independent Expert Review Group (iERG), hosted by WHO, to monitor and report progress on the Commission’s recommendations. Following the iERG’s concluding report in 2015, the UN Secretary General launched the 2016–2030 Global Strategy for Women’s, Children’s and Adolescents’ Health, which provided for the establishment of an

<sup>9</sup> In monitoring health inequalities, WHO has published reports on the state of inequalities in low- and middle-income countries across different health areas, including maternal and child health, childhood immunization, and universal health coverage (WHO 2017).

Independent Accountability Panel (IAP) to review progress on implementing this new Global Strategy and make recommendations to improve accountability for health outcomes—locally, nationally, and globally. The CoIA, iERG, and IAP have reinforced the relationship between health and human rights through their grounding of accountability in a human rights-based approach. Through a parallel technical review and consultative process, the Partnership for Maternal, Newborn, and Child Health (PMNCH), hosted by WHO, established an Indicator and Monitoring Framework to facilitate the assessment of global progress toward the Global Strategy's rights-based targets and objectives. Although the fragmentation of review processes risks diluting their impact, the IAP and PMNCH both publish annual reports that provide a framework for stakeholders to align their strategic priorities and facilitate accountability for the realization of health-related human rights.

Where challenges remain across the human rights monitoring and review ecosystem, global health monitoring procedures can complement human rights monitoring, bridging efforts across human rights and public health review mechanisms to facilitate accountability for realizing the highest attainable standard of health.

### Conclusion

The legitimacy and relevance of health-related human rights depend on the extent to which they are meaningfully respected, protected, and fulfilled in national policies, programs, and practices. While international treaties have established the international legal architecture for the promotion and protection of health-related human rights, that structure requires meaningful national implementation. Accountability for the implementation of health-related human rights requires monitoring and review procedures to assess human rights realization and identify reforms.

Monitoring and review will remain essential components of accountability, ensuring that government actions move beyond treaty ratification and that human rights norms and principles are transformed into lived public health realities. The establishment of monitoring and review institutions across multiple levels of governance structures an ecosystem through which oversight for human rights implementation can be assured. Facilitating this process, public health data can provide a measurable basis for assessing human rights implementation over time through human rights indicators. This measurement will be imperative to protecting the human rights of those who are most vulnerable and fulfilling the SDG promise of leaving no one behind.

While monitoring and review mechanisms have come a long way in facilitating accountability for human rights in global health, practical challenges persist amid a rapidly changing health and human rights landscape. There remain procedural inefficiencies among oversight bodies, geographic inequities in human rights monitoring and review procedures, and data inadequacies through human rights indicators to monitor health-related human rights. Grappling with these challenges provides a space to consider where existing monitoring and review mechanisms fall short in facilitating human rights accountability and where they can be improved through institutional reforms,

new mechanisms, and health data. Ongoing efforts to strengthen these procedures hold great promise for the realization of health-related human rights in the lives of individuals and communities throughout the world. In an era marked by an increasingly uncertain commitment to human rights—where human rights norms and principles are increasingly flouted in national efforts—monitoring and review are more important now than ever to assure accountability for the realization of human rights in global health.

### Questions for Consideration

1. How does monitoring and review facilitate state accountability for human rights implementation?
2. Why is monitoring and review especially crucial for the implementation of human rights subject to the principle of progressive realization?
3. How did Cold War debates impact efforts to monitoring human rights? Why were states initially reluctant to develop a human rights treaty body to oversee implementation of the ICESCR?
4. How do overlapping monitoring and review mechanisms across levels of governance (national, regional, and international) complement each other in assessing the implementation of health-related human rights?
5. Why are NHRIs crucial to providing necessary oversight of government practices? How do NHRIs maintain their independence despite their appointment by the government?
6. How can human rights treaty bodies better assess health-related human rights obligations under a wide array of diverse human rights treaties? What role can shadow letters play in drawing attention to neglected health issues?
7. Why was the UPR necessary on top of the existing international mechanisms for the monitoring and review of human rights? How can the UPR better address health-related human rights?
8. What does the development of human rights indicators bring to the monitoring and review of health-related human rights? How do indicators support assessments of the progressive realization of rights?
9. How can public health data under the SDGs be employed in monitoring health-related human rights? Why is SDG monitoring insufficient to review human rights implementation?
10. How can public health monitoring efforts through global health governance institutions facilitate accountability for the implementation of health-related human rights?

### Acknowledgments

The authors are grateful to Camille Mittendorf and Lenore Hango for their editorial assistance in preparing this chapter for publication.

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