

Constitutional Approaches to the Right to Health



- In recent years, constitutional health rights have had major impacts in many parts of the world:
 - In **South Africa**, a social movement to increase access to anti-retroviral drugs secured a Constitutional Court ruling that enabled mothers nationwide to prevent passing HIV on to their babies, saving hundreds of thousands of lives
 - In **Argentina**, parents leveraged the “right to a healthy environment” to expand access to a critical immunization campaign
 - In countries including **India, Brazil, and Uganda**, health rights are playing an increasingly critical role in preventing maternal deaths
- The right to health is included in numerous international agreements. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), countries have a duty to “progressively realize” the right to health to the maximum of their available resources
- In some countries, the idea of progressive realization is embedded in how health rights are phrased, while others include health rights as a “principle” of the state rather than a “right”
- While not as strong as a guarantee, these protections have also led to significant improvements in health:
 - In **India**, where improving public health is a “directive principle” in the constitution, the Supreme Court ruled in favor of a group of residents claiming that their city’s failure to provide adequate sanitation violated their rights to health
 - In **Bangladesh**, a former member of Parliament brought a successful lawsuit to compel the government to test for arsenic in its wells and improve water safety, citing the constitutional commitment to promote public health
- At the same time, in some countries, courts have become overwhelmed with numerous individual right to health claims. Three ways to



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NUMBERS TO NOTE

74%

of constitutions explicitly protect the right to health for all citizens

29%

of current constitutions adopted before 1970 explicitly protect the right to health for all citizens

100%

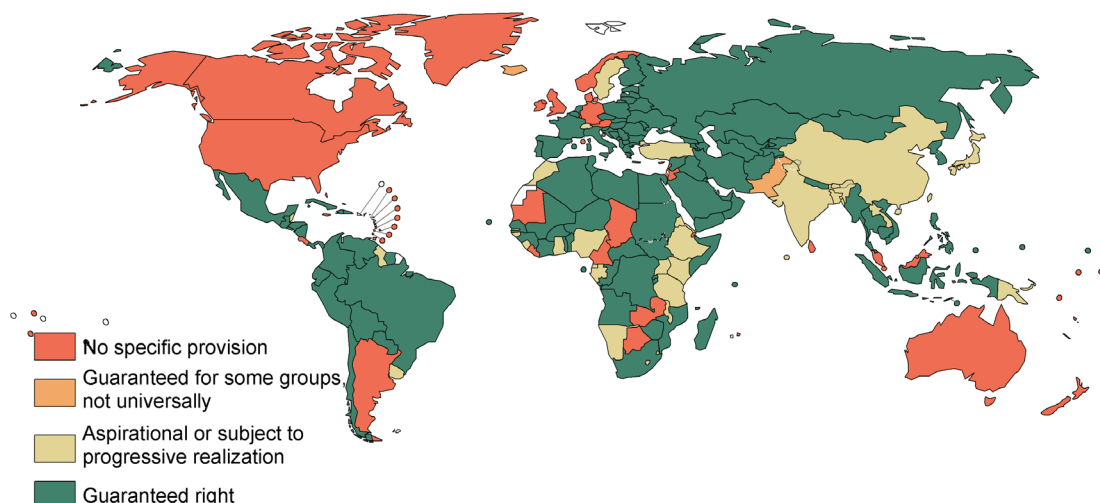
of current constitutions adopted since 2000 explicitly protect the right to health for all citizens

ABOUT ADVANCING EQUALITY

To learn more, please see **Chapter 10** of the open-access book [Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide](#) (Jody Heymann, Aleta Sprague, and Amy Raub; University of California Press, 2020).

Analyzing the constitutions of all 193 United Nations countries, *Advancing Equality* traces 50 years of change in constitution drafting and examines how stronger protections against discrimination, alongside core social and economic rights, can transform lives.

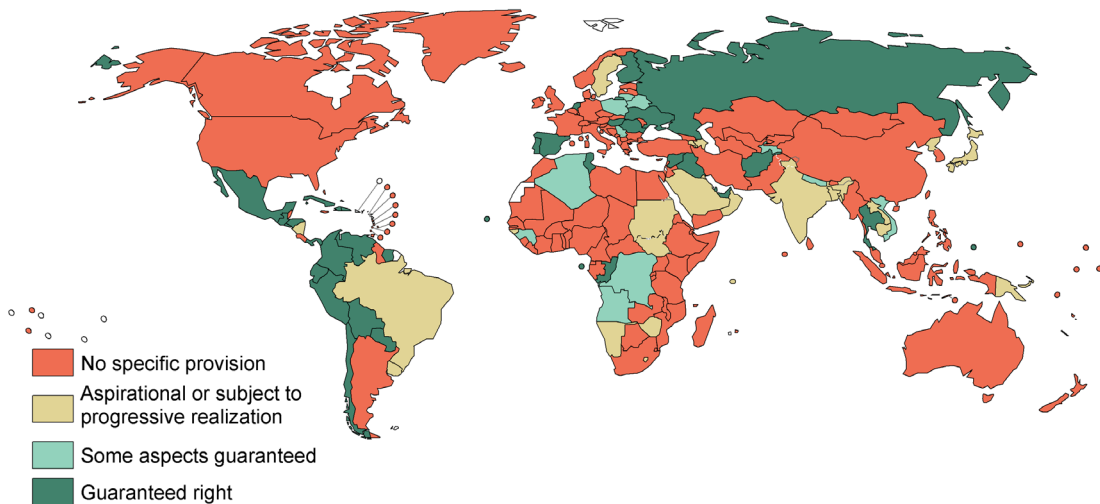
Does the constitution explicitly guarantee an approach to the right to health?



address this are:

- Ensuring individuals can bring collective claims
- Issuing judgments that address structural problems rather than resolving one claim at a time
- Protecting and enforcing the right to public health, rather than medical care alone, which would help prevent diseases and injuries rather than treating them after they occur; the rights to clean water, sanitation, and a healthy environment are all aspects of public health
- Globally, 74% of countries explicitly protect the right to health for all citizens in their constitutions:
 - 58% guarantee health rights
 - 16% specify that health rights are aspirational or subject to progressive realization
 - However, fewer constitutions protect public health for all citizens:
 - 56% address medical care
 - 47% address the right to health generally
 - 36% address public health
 - Health rights have become more common over time:
 - Among current constitutions adopted before 1970, only 29% explicitly protect health for all citizens
 - Of constitutions adopted since 2000, 100% address health rights for all citizens

Does the constitution explicitly guarantee citizens' right to public health?



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The **WORLD Policy Analysis Center (WORLD)** aims to improve the quantity and quality of globally comparative data on policies affecting health, development, well-being, and equity.

With these data, WORLD informs policy debates; facilitates comparative studies of policy progress, feasibility, and effectiveness; and advances efforts to hold decision-makers accountable.

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