

Oral Health Matters - Series 2

Oral health as a fundamental human right

SUMMARY KEYWORDS

Oral health, human rights, global health, right to health, international legal frameworks, non-discrimination, commercial determinants, WHO, public health, equity, universal health coverage, dental services, preventive care, legal obligations, health determinants.

SPEAKERS

Dominique Mollet, Sara Laura Ferrari, Richard Watt

Richard Watt 00:04

Welcome to Oral Health Matters, a podcast that shines a spotlight on oral health and calls for it to be embraced as a key part of the global public health agenda. I'm Richard Watt, Professor of Dental Public Health at University College London. In this second series of our podcast, I'll be in conversation with leading researchers and policymakers from around the world who are working in the fields of global health or public health, and who are interested in issues of equity, Community Action and the politics of health. In this episode, we're focusing on oral health as a fundamental human right. In our discussions, we'll be exploring the potential and relevance of international human rights legal frameworks to global health, and ultimately to oral health. I'm pleased to be joined by two leading researchers working in this space of human rights and health. Sara Laura Ferrari is a Research Fellow in the Department of Biomedical and Clinical Sciences at the University of Milan in Italy, and Dominique Mollet, is a lecturer in the Faculty of Law at the University of Groningen in the Netherlands. Both have published papers on human rights agenda and health and their worth are ideally placed to have a discussion on this important topic. So thank you both for joining us in this conversation, and could I perhaps start, as many of our listeners will not be familiar with legal issues, it would be useful if both of you could perhaps describe in broad terms what International human rights legal agendas exist and their relevance to global health. So Dominique, do you want to start and perhaps just give us a brief overview of what international legal frameworks exist and are most relevant?

Dominique Mollet 02:11

Definitely. Thank you very much. If I think of human rights law in the context of global health or public health, maybe, I immediately think of the right to health, which is stated in multiple international treaties. So we have international treaties at the United Nations level, which include the Convention on the Rights of the Child, but also the International Covenant on Economic, Social and Cultural Rights. And a number of these treaties include a right to health. And this right to health, how I see it, it is not just a right to health care, right? We don't only have a right to health care, but we also have a right to, that is related to the underlying determinants of health, which includes also nutrition or housing, for example, and this what I immediately think of. However, I mean, human rights cannot be seen in a vacuum, right? So we cannot only look at the right to health. I think we should also look at the right to food, the best interest of the child. There are multiple rights that I think are very important, and as such, I think all public health or global health issues can be framed within a human rights law framework.

Richard Watt 03:19

So that's a nice start Dominique, thank you. Sara, do you want to add from your side, at the UN International level, we've got some frameworks. What about also at national level? Do these frameworks exist at a national level?

Sara Laura Ferrari 03:34

Well, yes, in my opinion, we have to start from this point that when we talk about the national and international human rights agenda in relation to global health and public health, we have to be clear, because we are not talking about abstract values or general ethical aspirations, because we are talking about a body of national international law and standards that frame health as a matter of rights. And so, alongside the human rights framework, the one that Dominique mentioned before, I think that it's important to start also from the World Health Organisation stated as what health is, because the WHO constitution adopted in 1946, I think that contains one of the most influential definition of health, describing health as a state of complete physical, mental and social well-being, and not the merely absence of disease or infirmity. Even though this definition is not legally binding in the same way as treaty are has that enormous normative influence, because it reinforces an holistic understands of health. It can influence, and it has influenced the way that national framework has shaped their right to health. I think, from my side to the Italian constitution that says that everyone has the right to health, and we have to pay attention to the terms that, for example, the Italian Constitution use, because a lot of articles in Italian constitutions use the word citizens. But when it comes about health, the Italian Constitution talk about everyone, every individual. And I think that it's very close to the definition of the article 12 of the International Covenant of Economic, Social and Cultural right that was mentioned before from Dominique, because it talks about the highest attainable level of health. And I think that only ensuring health for everyone and, like, with no discrimination at all, you are, like, fully compliant with that mandate I think.

Richard Watt 05:50

Lots of interesting points there, and I'm just very conscious as a as a non-lawyer, I am aware of the importance of language and the absolute necessity to get the terminology correct, because I think it's interesting Sara, for example, you're talking about citizens. So in public health, we tend to think about the population, but it's an interesting concept that we look at citizens, and then that comes on to the issues of rights, which I think we're obviously heading into more detail now, and if we just go back a step, so we're talking about the right to health, sSo that's an important one. We've mentioned the right to health care, so that's interesting. But Sara, you just mentioned also about non-discriminatory so is this also including about equity and the right to be treated fairly, is that also encompassed in these human rights frameworks? Dominique, is that your view?

Dominique Mollet 06:49

Yes, that is definitely at the center of human rights. I think, especially like if we're thinking of human rights, I mean, I think it is really about human dignity. I mean, there are questions, of course, of why these rights exist. So are they just relevant because they are legally binding? What I was just talking about, indeed, these international treaties. But also, don't you just come from our humanity, the protection of our human dignity. And I think my research especially focuses on non communicable diseases and the prevention there of. And in that context, I think the right to health, for example, really proposes a population level approach, it includes a population level approach. I myself don't really look into the principle of non discrimination under human rights, but it is very relevant. And maybe Sarah, if you want to add on that, because I think it is very important,

Sara Laura Ferrari 07:43

Yes, I think that we can start from saying that in general, where in international human rights law and international laws in general, national governments are not just like policy makers or service providers,

because when states commit to international human rights treaties, they are actually accepting the legal responsibility toward people under their jurisdiction, and so including in relation to health and protection and etc. And so to be fully compliant with the several international treaties, those that are state obligation, state must begin from those that are three interconnected duties that are the obligation to respect, to protect and to fulfill the right to help, because these three categories are useful, because are the ones that show that governments can affect health in different ways, through the action or through how they regulate others, because we are, we are speaking about social and those that we can call legal determinants of health, because if we state a non discrimination duty, that the states have the responsibility to respect, non discrimination is the starting point for ensuring the highest level of health for everyone in your territory, nation, or whatever. So in practical terms, this includes avoiding discriminatory rules or exclusionary policies or any kind of measure that can create unjustified barriers to essential care, and also, as clarified in the general comment number 14 of the International Covenant on Social and Economic, Social and Cultural right, non discrimination is an immediate obligation, and governments cannot postpone it or justify the exclusion on the basis of limited resources. So the obligation to protect the right to health is very important in today's global health agenda.

Richard Watt 09:51

That really is crystal clear to me. So thank you both for that. So to me, to my understanding then these three words of respect, protect and fulfill the human rights of the citizens, is really the obligation that national governments have in relation to these legal frameworks. And what would be nice to discuss now with both of you is really what does that look like in relation to global health, one example we often talk about is the progress that has been made in tobacco control at a global level. But Dominique, do you want to give us some examples of national governments, if they are respecting, protecting and fulfilling the human rights of their citizens, what does that look like in terms of their actions? What type of legislation, regulation do they need to advance?

Dominique Mollet 10:48

To start, I would actually first like to say one thing about what these obligations exactly are. I think for a non legal audience, it might be very relevant to think of what an obligation to respect is. So states have an obligation to respect the right to health by not interfering. To my students, I call this a hands off approach, like the state should not actively harm the right to health. The obligation to protect is that states have to protect citizens or individuals within their control from third forces, let's say, to protect them from interferences with their human rights carried out by non state actors, and the obligation to fulfill means that there needs to be a framework there that helps people to fulfill their right to health. So in the context, if we're moving, for example, to sugars, which are harmful to oral health, for example, we can think of an obligation to respect your right to health is that the state, for example, does not produce sugars by itself. I think if you go very, very, very far, and I don't think this is a hard obligation, that maybe you could say it an obligation to under the obligation to respect your right to health, states shouldn't subsidize or something, the production of a certain harmful goods such as tobacco. But I guess that's a bit progressive. In the context of the obligation to protect you could say that states have to protect individuals from harmful influence from industries. For example, I think General Comment number 14 of the Committee on Economic, Social and Cultural Rights states that not addressing the marketing and advertising of unhealthy food products to children is a violation of the obligation to protect the right to health. And in the end, if we're talking about the obligation to fulfill the right to health, we could think of having laws in place that protect the health of individuals or a health care system, for example. So I think these could be concrete obligations for states to adopt. But there's, of course, a lot more to this.

Richard Watt 12:45

Helpful examples and and Sara, do you want to add again, thinking about you in Italian context. But for example, we know the European Union and other national governments, like the UK Government, does subsidize farmers to produce such things as a sugar, sugar beet, rather, so is there a legal framework that could be that could challenge that practice then?

Sara Laura Ferrari 13:10

Well, I think that we have to keep in mind that in general, many health risks do not arise directly from what we can call the government action, but from the activities of third parties, particularly private actors and those that are commercial interests. So I think that international human rights law makes it clear that states and other institutions like the European Union or etc, have the responsibility to regulate them, regulate these factors, because when governments or institutions fail to control practices that can harm people's health, population health, these can be can amount to a breach of their obligation to protect. Those that are called the commercial determinants of health are very relevant in the global health agenda when we talk about protect populations health.

Richard Watt 14:06

This issue of commercial determinants fundamentally important. But just before we go to that topic, let's just step back and discuss the issue and maybe come to conclusion. Do these legal frameworks, do they apply to oral health? Because we talked about global health, but oral health is a specific area. Dominique, from your perspective, do you feel that these legal frameworks are applicable to oral health?

Dominique Mollet 14:38

Absolutely, I think, of course, like the fact that the global oral health action plan of the WHO that has been adopted, I think in 2023 or 2024 it recognizes that every individual has the right to the highest attainable standard of oral health. And Legally speaking, I mean, this is not a treaty provision, but. I do think it reflects what is stated in the treaties that I mentioned before. And of course, that is what my research is mainly focused on. So that's what I know best. And I think it's very important to highlight here that oral health is an integral part of general health, right? And what Sarah said before that these treaties provide for the highest attainable standard of physical and mental health, right? So through physical health, I think we're already there. Oral health is part of general health. So oral health is definitely a component of the right to health. I think also that poor oral health has very strong implications, not only on the right to health, but also unrelated rights. I mean, if we think of children's development and severe untreated dental caries, think this really comes within the scope of the right to development, or, for example, missed school days because of severe, untreated dental caries. I mean, then we even get into the sphere of the right to education, for example. So I definitely think I am convinced by the fact that oral health is definitely part of the right to health in general, but it also affects the fulfillment of other relevant rights.

Richard Watt 16:11

Okay, so that's that's a very clear message from you Dominique, and Sara would would you agree with that statement? Do you see oral health as being an integral part of general health, and therefore of this legal framework,

Sara Laura Ferrari 16:24

Yes, completely. I think that it's it is a fact that oral health is not separate from general health, and we know that oral diseases cause infection, pain and functional limitation, but also social exclusion. And when we talk about health, we are talking about mental, physical and psychosocial health. And oral diseases can affect people's ability to eat, speak and participate in society, so treating oral health as something that is marginal or secondary is therefore not consistent with how health is understood in

international law. We also know that oral diseases can affect the general health of an individual. We know that there are several non communicable diseases that can be originated from oral diseases, such as like diabetes and cardiovascular diseases, and other non communicable diseases. So even though there is not a standalone treaty that explicitly recognize the right to oral health, we know that international human rights law does not work through labels, so we have to look at the substance and the right to health as recognised in international law, as we said before, covers prevention, access to services and prevention from those that are avoidable harm. Yes, we definitely should treat oral health as a part of the general health of individuals and populations.

Richard Watt 17:54

Okay, so I think we seem to have clear consensus on that integration with general health, and therefore the application of these, of these legal frameworks. I suppose one area that is more potentially difficult is in some countries, in fact, many countries around the world, health services may be provided by national governments, through insurance or through taxation, but there's provision of health services. But in many countries, the provision of dentistry may be provided only by private practitioners, independent private practitioners, so that citizens have to pay out of pocket expenditure to access services. So I'd be interested to hear from both of you the right to health care, does that extend to the right to health care in a private system, in a wholly privatized system? Dominique, what's your response to that dilemma?

Dominique Mollet 18:54

Absolutely. I mean, just because a health care system is private does not mean that governments, their obligations are lifted, right? Like think of the obligation to protect for example. I mean also private parties are non state actors, right? They have a massive influence on our right to health, and I think this very clear. And I think also the text of general comment number 14 that we mentioned before, which interprets the content of the right to health is very clear about this. I mean, it states that expensive curative treatment should not be over invested in, and also, there should be no discrimination in that regard. I mean, so everybody should have access to health care services, and not only to people that can afford it, but then also, if this system is private, then there is still an obligation for the government to make sure that everybody has access to such health care system, particularly like, if you look at the at the concrete text of general comment number 14, I think it is actually very clear about this. It doesn't refer, I mean, it is very general. It's a general comment indeed. So it doesn't refer to the context of oral health, but I do think it's very easily applicable to the context of oral health. What I do find more difficult, and I think this is also a question in dental public health, when services are preventive, curative, but then there are also these more esthetic, focused services. And I think what the line between that is, I'm not an expert on that, but I think those are very interesting questions. So which oral healthcare services are essential and which ones are not? I think these are relevant questions that could also be really relevant from a human rights law perspective.

Richard Watt 20:38

Funnily enough, we've got a separate episode of our podcast on that very topic of cosmetic dentistry and its meaning and its relevance, etc. So we'll be coming back to that very important topic. But back to you, Sara in terms of as an example, we know in Italy, dental services are almost exclusively private, but from what Dominique is saying, that doesn't mean that these legal mandates do not apply just because they're provided by private practitioners. There's still a legal framework that these providers need to follow. Is that your agreement?

Sara Laura Ferrari 21:16

Yeah, in Italy that it's particular because we have universal health coverage, which means if you are like a person that has no document or no official right to stay in the Italian territory, if you have an

emergency and you go to the ER, you will receive treatment. You will receive medicine for any kind of problem, you have emergency surgery and whatever. But sadly, this not apply to oral health treatment, because in Italy, all that is regarding to dental health is mainly provide from private actors. So if oral health services exist only for those who can pay privately. Well, I think that these can raise questions of equity and non discrimination, because if you need to be treated for oral health problem or dental problem, the majority of the times you will undergo to catastrophic costs, because it's very expensive, the dental care, also in high income countries that has universal coverage. So I think that the question here is, are we really under universal coverage, if we are treating like a topic, an entire topic, as a thing that can be provided only from private society, and are we maybe not compliant for that we are calling the right to health, because if we don't have, like, all the dental care we need, but also prevention and whatever, well we are maybe excluding the possibility for people to reach the highest sustainable health level.

Richard Watt 23:01

This raises the question, then, can we have universal health coverage if oral health is not included? That would be a way of considering it, and it's that's a really, really important point to raise. I'm just conscious of our time, so I think I want to end this really interesting conversation and think, ask both of you to think about, for people listening to this discussion, who are not lawyers, who are not from a legal background, what can people working in public health or in global health? What can they do in terms of beginning to engage in these legal frameworks? Let's let's say Dominique, what would your recommendations be for people working in communities in different countries around the world? What's the first step in this agenda?

Dominique Mollet 23:50

Well, first of all, I think if you're interested in the topic, then I would definitely recommend reading on the topic, although this is very often scientific literature. What I think is very important, if you're working with communities, is to inform people about their rights, right so we as humans are right holders. I think it's very important to be aware of that, that you know, we have rights, we have a right to health, which is not a right to be healthy, but it is very important. And beyond that, I think if you're working in public health practice. So maybe not with communities, but more well, let's say, at a political level, I think human rights are very important to emphasize exactly what Sara said before, in light of the commercial determinants of health, I think human rights law can be an incredible counterbalance in adequately balancing interests that exist in society. I mean, the big money usually comes from harmful industries, for example, and I think the right to health maybe there's or the right to health human rights law in general, maybe we have less money as compared to those massive industries, but I think we do have a very strong legal framework to emphasise the public's interest,

Richard Watt 25:01

Good and Sara, do you want to add, what would your recommendation be for for those interested and wanting to move forward in this space?

Sara Laura Ferrari 25:10

Well, as Dominique said, the scientific literature is the starting point to learn and to go deeper in the topics we want to become expert in, and also for community leaders to listen those that are issues affecting communities, those that are the most relevant question and problems that population are. Well, I think that we are in a particular moment globally, health, I think, is gaining even more broad conception. And so diseases are often preventable, so health become a question of justice. And so human rights frameworks helped shift the focus from the individual behavior to prevention, equity and accountability. And so I think that these three are the key rules to get more close to these topics.

Richard Watt 26:13

Okay, well, that is a really nice way to end our conversation. I think you know, I've learned a lot by talking to both of you. And I think you know, what you've convinced me of is the relevance of these global legal frameworks in terms of human rights, their application in terms of national agendas and elsewhere. And you know, just as you said no at the end, Sara, this issue is social justice, accountability, they're fundamental parts of public health, so it really is an exciting area of future development. So I'd like to thank our guests, Dominique Mollet and Sara Laura Ferrari, and to you for listening. I hope you found our conversation interesting. Do join us for our next episode, which will be published in two weeks time. You can also follow the dental public health group on LinkedIn, Bluesky and Instagram. Oral Health Matters is produced by the Dental Public Health Group at UCL, with production support from Research Podcasts and funding from the National Institute for Health and Care Research. Thank you very much.