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The Pandemic World for the Vulnerable vis-a-vis Right to Health

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ABSTRACT

The world was unprepared for a disease of this massive proportion that spread across borders and beyond oceans. The COVID-19 pandemic exposed multifarious pre-existing discrimination against the vulnerable groups. For some of them, it further exacerbated their sufferings which ranged previously from socio-economic, political to cultural in nature. It affected some parts of the population more than the others, this article addresses the impact on a broader range of vulnerable populations, including those who were struck worse than others such as the LGBTQIA+ community, who suffered economic issues like job loss higher than the heterosexual individuals and increased level of violence due to being homebound. In the conflict regions the law and order situation is chaotic and disruptive. There has been a shortage of healthcare facilities and with the rapid influx of patients & insufficient staffing, health care workers in these areas are overburdened. In the heavily packed camps and detention centres, combined with the ongoing problem of lack of hygiene and health resources, catered the spread of COVID-19 virus. Indigenous population have a dreadful pre-existing stigma attached to them which makes it difficult for them to seek the medical assistance required in times like this. The increased border restrictions have had an impact on migrant mobility, with some cases being reported of them being forced to walk to their native places, people living in extreme poverty. The elderly population, children, and adolescents are also one of the groups highly vulnerable to the virus. This article also discusses the universal right to health with special emphasis on these vulnerable groups. Right to health has been discussed through various International Conventions and Legal framework.

Keywords: Vulnerable, COVID-19, Rights, Disparity.

I. INTRODUCTION

Right to life is not only a jus cogens norm but has been regarded as the cornerstone under the international human rights law. The duty to respect and protect the right to life transcends into various facets of law and healthcare being one of them. Human species has always recognized

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the need for optimal health conditions to survive & thrive in their life time regardless of their age, gender, caste, creed or religion. The wellbeing of humans to continue living optimally includes not only physical wellbeing but also mental wellbeing.

Poor health condition continues to be the primary obstacle in earning a livelihood, majorly affecting the vulnerable groups. According to factsheet 31 of the Office of the United Nations High Commissioner for Human Rights which has been published by the World Health Organization, *“The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new.”* This includes the notion of *“Right to health must necessarily include right to mandatory access to all the facilities.”* It is the duty of the concerned government to make the healthcare accessible, available and acceptable for all. Healthcare for all should be designed, to include the entire population starting from the children, women, LGBTQ+, physically disabled, mentally challenged, people in their declining age and other vulnerable groups.

Accessibility to wellbeing must be free from any prohibition or restriction on the basis of any form of discrimination. The General Comment 14 of the International Covenant on the Economic, Social and Cultural Rights (ICESCR) states that *“The right to the Highest Attainable Standard of Health under its Article 12.”*³ ICESCR also states that *“Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”*⁴ This covenant ensures non-discrimination which could be extended to the most vulnerable or marginalized sections of the population in law as well in fact.⁵

COVID-19 pandemic as a global health crisis shook the world in all its forms, but the shock waves of its effects extended not only to the infected by beyond as well. Recession is one of the worst hit during this pandemic since the famous Great depression. A crisis of this massive proportion only served to aggravate the already existing discrimination, pushing the people most vulnerable into wider risk of poverty, increased unemployment and unequal access to healthcare. While the pandemic continues to widen the unequal distribution of wealth, women will be disproportionately affected with 47 million more women are pushed further into extreme poverty, especially women in their reproductive age.⁶

³ International Covenant on Economic, Social and Cultural Rights, 1976; Art 12

⁴ Committee on Economic, Social and Cultural Rights, General Comment No 14, 2000 E/C.12/2000/4; Para 1

⁵ *Id.* at para 12.

⁶ COVID-19 will widen poverty gap between women and men, new UN Women and UNDP data shows, <https://www.undp.org/press-releases/covid-19-will-widen-poverty-gap-between-women-and-men-new-un->

The United Nations Human rights Treaty Bodies states that, *sexual orientation and gender identity are not a ground for discrimination under the International Human rights law.*⁷ This essentially translates that discrimination cannot be done if an individual identifies themselves as lesbian, gay, bisexual or transgender. The COVID-19 global pandemic has been incredibly difficult for this group, exposing the underlying disparities for this group that has existed long before the pandemic came along. It symbolized the stigma that society has palpated among them. They face higher risk of work hour cuts and job loss all the while majority of them working in industries that have higher exposure to the virus like factories and restaurants. Sadly, this pandemic has increasingly shown discrimination in the field of healthcare which is recognized as an absolute fundamental right across the globe. Some forms of further discrimination faced by these communities are violent attacks, curbing of free speech and expression, behavioral misconduct against them and many more. These factors expose the gross violation of their human rights laws, which is guaranteed under various legislations and international treaty bodies.

Transphobic as well as Homophobic agendas are seen at large scale in the society and traces of such discrimination can also be witnessed on the social media platforms. This has been evolved and trickled from the very fundamental structural inequalities, which are prevalent in our society against all the vulnerable groups.

Along with the worldwide lockdown, and digitization of education, “evidence continued to show that children from disadvantaged backgrounds faced challenges in accessing the digital tools needed for distance learning, exacerbating inequalities in access to education.”⁸ Migrants and refugees have been widely impacted by the global health crisis, and tolerating disproportionately from its socio, cultural and economic repercussion. The pandemic has also exacerbated the vulnerable people such as the refugees, migrants and asylum seekers in cramped and congested camps, while inversely affecting the humanitarian assistance. These instances constitute only a few among the wider spectrum of groups of vulnerable individuals, who inordinately got affected by the virus which basically exposed how the structural inequalities plays a bigger role in limiting access to healthcare services while also widening the socio-economic barriers.

women-and-undp-data, 2nd Sept 2020.

⁷ International Human Rights Law and Sexual Orientation & Gender Identity, <https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf>

⁸ Coronavirus Pandemic In The EU – Fundamental Rights Implications: Focus On Social Rights, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-november_en.pdf, 31st Oct 2020.

II. IMPLICATIONS OF PANDEMIC ON THE VULNERABLE GROUPS

The world has been witnessing the largest displacement since the Second World War, “an estimated 1 billion people are on the move with more people than ever migrating or being displaced – about one in seven people worldwide.”⁹ Within a span of three months this coronavirus disease took the shape a pandemic from epidemic. With it intensifying further across borders, State leaders and international organizations recognized that there is a requirement of travel ban both domestically and internationally to contain and eradicate the virus. However, this further worsened the situation for migrants, refugees and internally displaced people. The growing restrictions on travel during this pandemic has affected the mobility of distant workers and labourers at a large scale.

“Between 11 March 2020, when the WHO declared COVID-19 a pandemic, and 22 February 2021, nearly 105,000 movement restrictions were implemented around the world. At the same time, 189 countries, territories or areas have issued 795 exceptions to these restrictions, thus enabling mobility.”¹⁰ Along with millions suffering from the socio-economic impact due to the pandemic, are the migrant labourers whose livelihood were dependent on informal sector. Examples from the Ministries of Health from Saudi Arabia and Singapore, has shown the official data on the differential contraction of the virus among the migrants and refugees. The migrant population remain in a higher impact strata keeping in mind their jobs and living conditions which has been also observed in the higher income states as well.¹¹ Similarly, last year in India, with only a 4 hour notice of lockdown, several thousands of migrants were stranded in the city couldn't return to their native places due to interruption of public transportation left them with no choice and they had to resort to returning by walking for several thousand kilometers, led to an unforeseen migrant crisis last year, with no comprehensive data was provided by the government on the deaths despite several reporting by the media.¹²

As per the World Health Organization, “While empirical studies are needed to understand the extent and nature of stigma in refugees with COVID-19, news media reports from refugee-sending countries, such as Iraq, indicate that stigma is a major barrier to prevention and

⁹ Refugee and Migrant Health, https://www.who.int/health-topics/refugee-and-migrant-health#tab=tab_1

¹⁰ COVID-19 Travel Restrictions Output — 22 February 2021, https://migration.iom.int/reports/covid-19-travel-restrictions-output-%E2%80%94-22-february-2021?close=true_25th Feb 2021.

¹¹ Migration and Its Impact on Cities http://www3.weforum.org/docs/Migration_Impact_Cities_report_2017_1ow.pdf, October 2017

¹² Press Trust of India, Over 8,700 people died on tracks in 2020 lockdown — many of them were migrants <https://indianexpress.com/article/india/over-8700-people-died-on-tracks-in-2020-lockdown-many-of-them-were-migrants-7341473/> 2nd June 2021.

treatment.”¹³ And considering the densely populated camps with the pre-existing problem of lack of sanitation, hygiene and medical resources has facilitated the breeding of a disease like COVID-19 among the refugees who already face the worst brunt of many other socio-economic and political problems often live extremely insecure lives with fear. These vulnerabilities may again exaggerate in the light of social security measures, public health norms and quarantine guidelines.

Armed conflicts and disputed regions have major catastrophic impact on right to health care facilities of many. There has been lack of supply of essential commodities to these conflict regions which includes health care. These places has been a growing ground of the Covid 19 virus as the law and order situation are chaotic and disruptive. The health care workers are ill equipped and overburdened in these areas due to a rapid surge of the patients and inadequate in numbers. People living in these areas are severely ill nourished and would attract the contagion at a very rapid pace.

These regions are vulnerable and susceptible to continuous and prolonged spread of this deadly Coronavirus. Lack of infrastructural medical facilities and scarce regulations in these areas makes it a safe haven for spread of this virus. It is impossible to maintain Covid-19 protocols in migrants and refugee camps where the livelihood are cramped and congested. Therefore, these regions are at higher risk and their mandate of right to health as a universal cornerstone are massively compromised. The unavailability of proper food and medicine also diminishes their immune system and makes it tough to escape the Covid 19 virus. Governments and related agencies should increase supply of essential commodities and help these people overcome the pandemic at large, keeping aside the conflicts and disagreements.

As we know that Coronavirus imposes a much wider risk to people who reside in close proximity with one another. This makes detention centres, prisons and jails very susceptible to contracting this virus. It is the responsibility of the concerned Government to provide access to proper health care facilities to these people at par with the general citizens. Due to lack of hygienic conditions in the prisons and jails, the virus possess a great threat to these people.

These people even under normal circumstances have to face lack of adequate medical and hygienic facilities. This has contributed towards higher mortality rate and enhanced number of infections from these areas. People residing in these facilities may suffer from numerous chronic health conditions, thereby making them vulnerable to infection. The facilities are

¹³ Qais Alemi, Carl Stempel, Hafifa Siddiq & Eunice Kim, Bull World Health Organ, Refugees and COVID-19: achieving a comprehensive public health response <https://www.who.int/bulletin/volumes/98/8/20-271080/en/>, 2020.

overcrowded and congested in maximum number of times leading to serious health consequences during the coronavirus pandemic.

The Geneva Convention of 1951 on the rights of the refugees guarantee that they should receive access to the similar healthcare services as the populations of the host state. Indigenous population are often the ones to be overlooked among the vulnerable groups, they suffer through discrimination and stigma which makes it hard for them to avail basic healthcare, even if there are any local medical assistance they're often understaffed or under-equipped. "Indigenous communities not only experience poor access to healthcare and significantly higher rates of communicable and non-communicable diseases, lack of access to essential services, sanitation, and other key preventive measures, such as clean water, soap, disinfectant, etc."¹⁴ The quantifying research to date of indigenous population has been grossly underestimated for certain regions. "Since data are critical for decision-making for pandemic planning, mitigation, and response, and Indigenous Peoples' participation in data stewardship can increase the benefits of data use and decrease the harms, the involvement of Indigenous Peoples' with COVID-19 data is of paramount importance."¹⁵

The Covid-19 pandemic has posed severe challenge to all aspects including social, economic, cultural as well as environmental in nature. During the early days of the virus outbreak elderly generation were at higher risk due to decreased and compromised immune system as well as multiple number of risks attached with it. These may include diabetes, Blood pressure, Hypertension, Asthma along with other chronic diseases. "Therefore, we need to put great and unprecedented efforts in order to address this global health situation particularly old adults."¹⁶

The policy framework made by various governments have a broad vision of protecting the hospital needs of the general people emphasizing on population with high risk factors which includes the older adults. However, this pandemic is not only about physical well-being rather one of the major aspect is, its psychological impact of various people, especially elderly. This may be a result of the prolonged restrictions imposed in the wake of the COVID-19 virus and lack of physical communications may lead to spread of misinformation. During the first wave of the pandemic across the globe the worst hit were the elderly generations.¹⁷ "A considerable

¹⁴ Anne Nuogam, COVID-19 and Indigenous peoples, <https://www.un.org/development/desa/indigenouspeoples/covid-19.html>.

¹⁵ Stephanie Russo Carroll, Randall Akee, Pyrou Chung, Donna Cormack, Tahu Kukutai, Raymond Lovett, Michele Suina & Robyn K. Rowe, Indigenous Peoples' Data During COVID-19: From External to Internal<<https://www.frontiersin.org/articles/10.3389/fsoc.2021.617895/full>, 29th Mar 2021.

¹⁶ L. Morawska and J. Cao, Airborne transmission of SARS-CoV-2: The world should face the reality. *Environment international*; 2020, 139, p.105730.

¹⁷ Vijayta Lalwani, How is India's second wave of Covid-19 different from the first? <https://scroll.in/article/992165/are-younger-people-at-greater-risk-in-indias-second-wave-of-covid-19>, 15th Apr 2021.

proportion of population accounts for older adults in various countries. Therefore, the rapid spread of the virus has resulted in a huge impact among this older generation. This is also one of the reason for increasing risk of mental health issues.”¹⁸

Some of the major wellbeing issues that is faced by the elderly people during the pandemic includes depression, fear, panic, anxiety, stress, low immune system along with socio-economic impacts. Another major issue which is faced by the elderly are obstacles of food supply and lack of adequate nutritious diets. Malnutrition is one of the major outcome of the lack of proper micro and macro nutrients on regular basis. Reports shows that old age and comorbidities are very well connected to nutritional intake of a person.¹⁹

Young generation are considered to be the backbone of any nation. Children and adolescents may seem to be at a lower risk criteria, however the pandemic wave has majorly affected their lives in various ways. Mental health has been on the major factors which is affecting lives of adolescents and children during the pandemic. These children and early adults have various socio economic and political influence for the development of this world, thereby makes this an important aspect to deal with for Governments and other developmental organisation. Providing health care facilities should include right to health to these adolescents and children which encompasses right to privacy as well as confidentiality. This would cater the best interest and not only improve physical health but mental health as well.

This pandemic has led to increase in unemployment rate around the world. This has also in a way ventured into increase in child labour. The reason being lack of jobs of the parents may force the children and adolescents to work as well. This increases the risk of attracting the virus coming in contact with unhygienic workplace and lack of proper Covid-19 guidelines. These factors as well increases vulnerability of children and adolescent’s right to health and healthy lifestyle. Disrupted learning process, closure of schools and educational institutions have proven to have impacted these children the most. With the world going online, these children and adolescents may lack necessary facilities to attend classes and study. This has proven to be a major concern for mental health of these children and may led to deterioration of physical and mental well-being.

As per the World Bank, “Global extreme poverty is expected to rise in 2020 for the first time

¹⁸ S Galea, RM Merchant, N Lurie, The Mental Health Consequences of COVID-19 and Physical Distancing: The Need for Prevention and Early Intervention. *JAMA Intern Med.* 2020; 180(6):817–818. doi:10.1001/jamainternmed.2020.1562.

¹⁹ Dubé, Bruno-Pierre, and Pierantonio Laveneziana, Effects of aging and comorbidities on nutritional status and muscle dysfunction in patients with COPD, *Journal of thoracic disease* vol. 10, Suppl 12; 2018, S1355-S1366. doi:10.21037/jtd.2018.02.20

in over 20 years as the disruption of the COVID-19 pandemic compounds the forces of conflict and climate change, which were already slowing poverty reduction progress.”²⁰ This pandemic has predicted to stretch a huge surge of poverty across the globe. This may depend on the Governmental responses to lack of jobs and economic tractions. The World Bank further estimates that “this pandemic has triggered a global recession that would cause over 1.4% of the World’s population to fall into extreme poverty.”²¹

In this pandemic situation, the cost of essential medicines and medical facilities have grown to a drastic all-time high. Which in turn makes these commodities unaffordable to the people in poverty and unemployment. All the governmental agencies and organisations should promote steps for reduction of poverty and efforts should be made to make these people afford health care services in this ongoing pandemic. These people fall high on the bar of Covid 19 vulnerability due to lack of appropriate facilities in and around their lives. Member nations bears an obligations to ensure access to health care services to all irrespective of the circumstance in order to contain the spread of this disease.

Another major group of population who are prone to the injection of this deadly virus are those who has pre-existing medical conditions. The price of these medications may be sky rocketing and Covid 19 virus is nothing but an overburdened expense of these people. A person may already suffer from chronic diseases like cancer, asthma, diabetes and blood pressure, which impacts their immune system and the virus may prove to be more harmful to them. Thereby, the governments should work towards making treatments more and more pocket friendly and affordable. They should have access to affordable health services and human support during the crisis situations.

III. LEGALITY OF RIGHT TO HEALTH DURING THE COVID-19 CRISIS

According to the International parameters, “everyone has the right to the highest attainable standard of physical and mental health. Governments are obligated to take effective steps for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.”²² If we look closely at the United Nations High Commissioner for Human rights, Factsheet 21, “The right to health has been related to realization of other human rights to food, housing, work, education, information and participation.”²³ These includes numerous ancillary rights

²⁰ COVID-19 to Add as Many as 150 Million Extreme Poor by 2021, <https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021>, 7th Oct 2020.

²¹ Id.

²² International Conference on Primary Health Care, Alma-Ata, 1978, p VIII

²³ Human Rights and health, <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>, 29th Dec 2017.

like right to work, education, food, dignity, equality, protection against discriminations, torture, access to proper facilities, freedom of association and movement. This encompasses the right to health in brief at its jurisprudential level.

As stated in the General comment on “Article 12 of the CESCR, right to health would emanate various other rights such as:

- Available in sufficient quantity,
- Accessible to everyone without discrimination and affordable for all, even marginalized groups,
- Acceptable meaning, respectful of medical ethics and culturally appropriate and
- Scientifically and medically appropriate and of good quality”²⁴

This pandemic needs to curb human interaction with the virus as a preventable mechanism. However, these emergency steps based on this Covid 19 pandemic should not be a medium to target particular people like children youth and adolescents, Women, minorities, older people, people in conflict zones, people with pre existing medical conditions, people in detention, prison and jails, poverty, migrants and refugees. The idea is to concentrate on vulnerable groups at the basic core level thereby protecting the right to health of many people. The Siracusa principles on derogation of rights guarantees that firm provisions of human protection which envisages the protection to these vulnerable groups from internal as well as external ill motives.²⁵

One of the essential point that the governments should ensure is that any measure taken during the pandemic must be in accordance with the law. The obligations which the states have towards the protection of human rights cannot get compromised even during the global pandemic. The protection of human rights should be coupled with necessary action to break the chain of infection during this crisis situation. The measures taken by the governments should be necessary to the given situation and must be fairly proportional with the circumstances.

Another thing that must be taken into consideration is that the measures taken should not be arbitrary in nature. As discussed above, this pandemic involves a lot of people who holds a higher risk towards the virus contraction. Neglecting these people would lead to more and more influence of the virus in not only healthcare sector but also social, economic and cultural sector.

²⁴ CESCR General comment 14 The right to the highest attainable standard of Health, Art 12 <https://www.refworld.org/pdfid/4538838d0.pdf>

²⁵ Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ [1984] UN Doc E/CN4/1984/4 Principle 8, at page 6.

The World Health Organization encompasses “the highest attainable standard of health as a fundamental right of every human being.”²⁶ As stated by Van Boven, “Three aspects of the right to health have been enshrined in the international instruments on human rights: the declaration of the right to health as a basic human right; the prescription of standards aimed at meeting the health needs of specific groups of persons; and the prescription of ways and means for implementing the right to health.”²⁷

Further the preamble of the World health Organization prescribes for “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social conditions.”²⁸ Article 12 of the International Covenant on Economic, social and cultural right mentions the same term “highest attainable”. This term would represent the parallel right joined along with the right to health and would ensure protection of everyone irrespective of any kind of discrimination on the basis of caste, creed, religion, sex, place of birth or any other condition as mentioned above. This refers to a rational standard given the circumstances and not an absolute benchmark.

The non discrimination factor of right to health has been iterated by various other treaties and convention on the International ground. For instance Article 5 of the Convention on the Elimination of All forms of Racial discrimination indicates that “States Parties undertake to prohibit and eliminate racial discrimination in the enjoyment of the right to public health, medical care, social security and social services.”²⁹ Further Article 11 of the Convention on the Elimination of All forms of Discrimination against Women states that “the States Parties shall take all appropriate measures to eliminate discrimination against women in the enjoyment of the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”³⁰ These are few of the many provisions enumerated as the cornerstone of human rights around the world.

As Tom Campbell rightly pointed out that working out the specific implications of general statements of human rights is a necessary move if the rhetoric of human rights is to have a major impact on the resolution of social problems.³¹ There has been three pillars of State’s

²⁶ *Supra* note 23.

²⁷ Presentations at the Workshop were subsequently published: Rene-Jean Dupuy, ed. *The Right to Health as a Human Right*, Workshop, The Hague Academy of International Law and the United Nations University (Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands), 1979; 54-72 at 54-55.

²⁸ Constitution of the World Health Organisation, Preamble at pg 1.

²⁹ International Convention on the Elimination of All forms of Racial discrimination, Art 5(e)(iv).

³⁰ Convention on the Elimination of All Forms of Discrimination against Women, 1979, Art 11(1)(f).

³¹ Tom Campbell, Introduction: Realizing Human Rights, in Campbell, Goldberg, McLean and Mullen, (eds.), *Human Rights from Rhetoric to Reality*; 1986, p 3

responsibilities to safeguard and promote the economic and social rights. “They are;

- The responsibility to respect
- The responsibility to protect
- And the responsibility to fulfil”³²

These pillars would help the States differentiate between arbitrary and rational actions.

Due to the Covid 19 Pandemic health care sector has recently gained traction on the national and international turfs. This is the responsibility of states to ensure that human rights are not violated in their territory. Special emphasis must be given to people who are prone and vulnerable to this Coronavirus pandemic, like the older populations, children, adolescents, youths, women, LGBTQ community, indigenous people, Poor and slum dwellers, people having pre existing medical conditions, people residing in conflict zones, migrants, refugees and marginalized among others.

IV. CONCLUDING REMARKS

In order to tackle a situation like this requires solidarity and strong cooperation between countries and stakeholders who are crucial to reduce Covid-19 virus impacts on the inequities in the public health care systems and economies across the globe. For the starters by addressing the systematic inequities and injustices in the way people live. This requires building infrastructures in support of the universal health care sector irrespective of poverty, deriving resources not for profit and setting up crisis bed care facilities with a huge capacity, in particularly vulnerable areas where it is most needed. The governments also should establish firm communication portals and should maintain transparency in ensuring all its policies framework. The idea must be to bridge the information gap between the policy framers and the citizens to reduce the spread of misinformation and mismanagement.

Along with that states need to divide their population according to respective recognized factors of vulnerability for the vaccination, so that there’s vaccination without any form of discrimination. There needs to be an introduction of gender sensitive policies and initiatives in the light of Principle 5 of the United Nations Sustainable Development Goal which envisages women empowerment. The states must have common interpretation of the Article 43 and 44 of the International Health Regulations according to the authoritative interpretations in the form of consensus statements decided by the Global Health Law Consortium since member states

³² Eide Asbjorn, "Realization of Social and Economic Rights and the Minimum Threshold Approach," *Human Rights Law Journal*, 1989, vol. 10, 35, 37.

have varied misunderstood interpretations.
