Violations of the ICESCR Right to Health also Violate the ICCPR Right to Health\*

by Carol Castleberry

The right to life and the right to health are indivisible and interdependent. The right to health is implied in the right to life guaranteed in ICCPR article 6(1). U.N. Human Rights Committee General Comment No. 6 notes that the right to life often is interpreted too narrowly.[[1]](#footnote-1) The right to life legally obligates State parties to take positive measures that protect not just life itself, but the quality of life.[[2]](#footnote-2)

An example that illustrates this reality is the problem of air pollution and the human rights it implicates. In Clean Air Foundation v. HKSAR, an environmental NGO sued the Hong Kong Special Administrative Region (HKSAR) in 2007, alleging that HKSAR failed its legal duty to guarantee Hong Kong citizens’ right to life and right to health, violating Hong Kong’s Basic Law, Bill of Rights, and the ICCPR and ICESCR.[[3]](#footnote-3) The claim also alleged that HKSAR failed to pass legislation and policies adequate to mitigate and control air pollution.[[4]](#footnote-4) The opinion accepted the justiciability of a claim that HKSAR had an affirmative duty to protect the rights to life and health by combating air pollution, even if it was not an absolute duty to ensure an immediate end to air pollution.[[5]](#footnote-5) Other countries such as Bangladesh, Greece, Macedonia, Nepal, Nigeria, Peru, and Uganda have legal precedent for the right to life and/or health as the basis for claims of harm from air pollution.[[6]](#footnote-6)

Toxic waste dumping is another good example of the interdependence of the rights to life and health. Adverse effects of toxic waste dumping on the right to health “cuts across civil, political, economic, social, and cultural rights,” implicating rights to life, safe and healthy working conditions, environmental/industrial hygiene, security, privacy, adequate standard of living, housing, food, education and development.[[7]](#footnote-7)

A health issue that readily brings to mind the right to life is the more than six million people who die every year from HIV/AIDS, tuberculosis, and malaria.[[8]](#footnote-8) That number is increasing, especially in developing countries[[9]](#footnote-9) where they lack access to essential medications that can save or prolong their lives.[[10]](#footnote-10) In Botswana, 38.8% of adults were infected with HIV in 2001, 33.7% in Zimbabwe, and 15-year-old Southern Africans’ chance of dying of HIV/AIDS were between 1 in 3 and 1 in 2 in a world where there is effective therapy.[[11]](#footnote-11) About 600 people died every day in South Africa in 1999.[[12]](#footnote-12) Right-to-health issues related to access to HIV/AIDS medicines, with an obvious connection to the right to life, are increasingly ruled justiciable in national courts.[[13]](#footnote-13) This observation comports with two prongs of an instructive test for the justiciability of the right to health services set forth by Colombia’s Constitutional Court, that the health-related issue must implicate other “fundamental” rights such as life, education, or work and the state’s failure to provide health services must present a “grave and imminent threat to human life or health.”[[14]](#footnote-14)

States that fail to take positive measures to ensure access to health care and to address poverty, hunger, and other economic, social and cultural issues that determine health place their peoples' lives at risk. The right to life requires states to put long-term programs into place to address systemic violations of these rights.

1. \* From an article forthcoming in the 2015 St. Thomas University School of Law Intercultural Human Rights Law Review.

   U.N. Human Rights Comm., *General Comment No. 6:Article 6 (The Right to Life)*, ¶¶ 1, 5 U.N. Doc. HII/GEN/1/Rev.9 (Vol. I) (Apr. 30, 1982), *available at* <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed004fae3>?. [↑](#footnote-ref-1)
2. *See* *id.* ¶ 5. [↑](#footnote-ref-2)
3. Clean Air Found. v. HKSAR, 35 H.K.C.F.I. 757, ¶¶ 1, 6. [↑](#footnote-ref-3)
4. *Id.* at ¶ 1. [↑](#footnote-ref-4)
5. *Id.* at ¶¶ 17, 19. The petitioners ultimately lost the case because they focused on the implementing mechanisms to improve air quality rather than the law itself, and the court ruled that was a policy/political matter for HKSAR and not for the judiciary. *Id.* at ¶¶ 41, 43. [↑](#footnote-ref-5)
6. *See Air Pollution*, Global Health & Human Rights Database, <http://www.globalhealthrights.org/tag/air-pollution/> (last visited Apr. 14, 2015). [↑](#footnote-ref-6)
7. *Id.* at 257. [↑](#footnote-ref-7)
8. *HIV/AIDS, Tuberculosis and Malaria*, HTM CLUSTER (WHO), Oct. 2004, at 1, <http://www.who.int/3by5/en/newsletterHTM.pdf>. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. Alicia Ely Yamin, *Not Just a Tragedy: Access to Medications as a Right Under International Law*, 21 B.U. Int’l L.J. 325, 326 (2003). [↑](#footnote-ref-10)
11. *Id.* at 369. [↑](#footnote-ref-11)
12. Stacey B. Lee, *Can Incentives to Generic Manufacturers Save the Doha Declaration’s Paragraph 6*?, 44 Geo. J. Int’l L. 1387, 1388 (2013). [↑](#footnote-ref-12)
13. Yamin, *supra* note 11, at 341. [↑](#footnote-ref-13)
14. *See* Alejandro Moreno Alvarez v. Estado Colombiano, SU.819/99 (Corte Constitucional de Colombia 1999), *available at* <http://bib.minjusticia.gov.co/>. [↑](#footnote-ref-14)