5. As a core concern in modern human rights, the right to health is recognized in numerous international instruments. Article 25 (1) of the Universal Declaration of Human Rights affirms that ‘[e]veryone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services’. Under Article 12 of the CESCR, States Parties recognize ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ and enumerates ‘steps to be taken by the States parties [. . .] to achieve the full realization of this right’.

The right to health is also recognized, inter alia, in Article 5 (e)(iv) of the CERD, and in Articles 11 (1)(f) and 12 of the CEDAW. Also several regional human rights instruments recognize the right to health, such as the European Social Charter of 1961 as revised (Article II), the African Charter on Human and Peoples’ Rights of 1981 (Article 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (Article 10).

6. Health is a global, national and individual concern and is the subject of intensive international cooperation, coordinated in particular by the WHO. The preamble of the constitution of the WHO states that ‘[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition’, and adds that ‘[h]ealthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development’.

7. Article 24 generally falls within the category of economic and social rights. Its full implementation depends therefore in part on the resources available to the State, including international assistance to less developed countries. All human rights are interdependent and indivisible, however. The division often made between civil and political rights on the one hand and economic, social and cultural rights is generally unfortunate and
particularly inappropriate in the area of children’s rights, which is why no such separation is made in the CRC.

It has to be recognized, however, that many economic and social rights are not made justiciable in most countries, which means that they cannot be directly used as a basis for litigation through regular court procedures. This is slowly changing – in some countries, such as India and South Africa, courts have to some extent been willing to apply such rights in their decisions. But the importance of legal justiciability should not be exaggerated. There are many ways in which the rights can be asserted outside the legal framework. States are obliged in good faith to implement the treaties they have ratified, and they can be held morally and politically responsible, even if legal sanctions are not always available. Assuming that their ratification is an indication of a clear commitment, what is most important for States to know is the best ways in which they should implement the body and the spirit of the CRC.

8. Taking into account that the right to health is set out also in Article 12 of the CESCR, the practice of the UN Committee on Economic, Social and Cultural Rights in regard to that article is of considerable value for the elucidation of the content also of Article 24 of the CRC. General Comment No. 14 on the right to health, adopted by the CESCR Committee in 2000, is therefore given central attention in the following analysis of the content of Article 24 of the CRC, together with the five general comments adopted by the CRC Committee. More generally, ‘soft law’ – including commitments made by the World Health Assembly or in other relevant contexts – is taken into account in interpreting the provisions of Article 24 in this contribution.

9. The right of the child to the highest attainable standard of health is closely related to and dependent upon the realisation of other human rights. The enjoyment by the child and its parents or guardians of economic and social rights, such as the right to food, housing, work, education, as well as civil and political rights, such as the right to life, to freedom of expression and information, and the application of general human rights principles of equality, non-discrimination and dignity, are preconditions for the effective enjoyment of the right to health.

10. Article 24 must be interpreted and applied in the light of the other rights in the CRC. Its scope of application covers all persons under the age of 18 (Article 1). Consequently, measures for health protection must focus not

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