World Health Organization

UHC Law in Practice

Legal access rights to health care

INTRODUCTION

Legal access rights to health care: introduction

(UHC law in practice)

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Introduction

Acknowledgements

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Introduction

The four country profiles on legal access rights to health care analyse the capacity of the laws of Germany, Japan, Kenya and Thailand to deliver universal access to health care in each jurisdiction. They provide an overview of each country's approach to enshrine access rights in law, including statutory insurance schemes, coverage of different population groups, benefit packages (including legal mechanisms to define benefits and enforce access rights), anti-discrimination provisions (including legal complaint mechanisms), and access barriers to health care.

These country profiles are part of ongoing work by WHO's Department of Health Governance and Financing (Health System Governance, Policy and Aid Effectiveness) to strengthen the recognition of law as an essential tool to achieve universal health coverage. This document provides an overview of the work to date as background to these country profiles and explains the methods used to develop them.

Law and Universal Health Coverage (UHC)

Countries committed to achieving Universal Health Coverage (UHC)[1] in the Sustainable Development Goals (SDGs): SDG 3.8 obliges governments to work towards achieving UHC by ensuring that all people have access to the quality care (essential health services, essential medicines and vaccines) they need without suffering financial hardship.

The law plays a key role in a country's progressive realisation of UHC. The quality of a country's health laws and legal practices significantly contributes to the efficient, effective and equitable use of the available health resources and, consequently, the attainment of a country's health system goals. Therefore, creating an enabling legal environment for UHC is a critical investment to ensure implementation of UHC policies and programmes.

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Governments are not only required to use the law to implement UHC, but also to achieve other related commitments: reduced inequalities (SDG 10), good governance and access to justice (SDG 16), and partnerships (SDG 17).

Law as it relates to UHC encompasses any legal rule existing and applicable within a country that regulates UHC: formal written laws such as statutory laws (enacted by a legislative body such as the parliament), regulatory and administrative laws (passed by administrative bodies of the government), contracts, case law (court rulings), and customary law[2].

Survey tool for national UHC laws

In 2018, WHO's Department of Health Governance and Financing developed a legal survey tool to analyse and better understand a country's use of law to realise UHC. The survey tool consists of a set of indicators across four domains:

1 UHC policy: laws providing the legal capacity to deliver the three aspects of UHC – universal access to health care, financial risk protection and quality of health care

2 Governance, rule of law, human rights and access to justice

3 UHC partnerships

4 Policy process, implementation and enforcement

The first three domains measure how the law is used to implement UHC on paper while the fourth domain focuses on the practice of law, i.e. the enactment, implementation and enforcement of laws.

Each indicator comprises a diagnostic question, a guidance note clarifying the scope of the indicator (including examples) and best practices. The guidance notes and best practices help a user to answer the diagnostic question in a structured way and to write a summary.

While the survey tool is constructed to provide a comprehensive overview of a country's legal environment regarding UHC implementation, indicators can also be used on their own if one domain or a sub-section is of particular interest. Indicators are self-contained as much as possible so that they can be used on their own.

Country profiles on legal access rights to health care: rationale and methodology

The country profiles of Germany, Japan, Kenya and Thailand were developed to test the usefulness of the survey tool in one restricted domain: universal access to health care, as enshrined in the national body of laws of these countries. The development of the country profiles was also used to understand what resources (human, financial, time) would be needed to complete a full survey of all indicators.

The four countries were chosen to represent different WHO regions, health systems and socioeconomic contexts.

The country profiles were drafted using initial input from in-country contacts who provided key laws governing UHC. Desk research on additional laws available in English and publicly accessible background materials complemented the initial sets of laws. The available laws and background materials were analysed using the indicators and guiding questions on universal access to essential healthcare, essential medicines and vaccines of the survey tool (see Annex). For each indicator, the findings were summarised to provide an overview of each of the four countries' legal framework regarding legal access rights to health care.

Where the available material was unclear, the in-country contacts provided valuable clarifications and input.

Limitations

For some indicators, comprehensive material was not readily available in the publicly accessible literature and relevant information could not be extracted from existing laws. Unpublished work or research, or publication in other languages than English and German (particularly in Thai or Japanese), may exist, but it might also be that some indicators would have required formal interviews with in-country legal and medical experts knowledgeable about UHC. While in-country contacts provided valuable input to the profiles, they were gracious enough to do so on a voluntary basis in addition to their regular work load and were not formally tasked to support this project. Consequently, there were certain gaps that could not be addressed as it would have required substantial investment of time, which was not feasible.

Available material was particularly limited on discriminatory access barriers in existing laws, both with respect to health laws as well as other bodies of law such as labour regulation or criminal law. It was also limited with respect to legal complaint mechanisms to report and sanction discrimination as well as to enforce access rights. Lastly, it was not always completely clear what the benefit packages included and excluded. To fully examine and analyse these indicators would have gone beyond the scope of these country profiles.

In addition, customary law could not be considered in the legal analysis as it would have required additional resources to source the relevant information for each country.

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