Legal access rights to health care
Acknowledgements

The country profiles are based on a conceptual framework on UHC law developed by David Clarke, Team Leader UHC and Health Systems Law, Department of Health System Governance, Policy and Aid Effectiveness, World Health Organization, Geneva.

The country profiles were prepared by Simone Bösch, an independent health policy consultant and lawyer based in London (UK), under the technical supervision of David Clarke.

The development of the country profiles was supported by the following experts:
Regina Munyiva Mbindyo, World Health Organization, Kenya Country Office;
Andre Verani, US Centres for Disease Control and Prevention, Center for Global Health;
Haruka Sakamoto, Department of Global Health Policy, Graduate School of Medicine, The University of Tokyo;
Dr Anond Kulthanmanusorn, Ministry of Public Health of Thailand;
Waraporn Suwanwela, National Health Security Office (NHSO) of Thailand;
Nora Gottlieb, Technical University of Berlin; and Dr Wilm Quentin, Technical University of Berlin.
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.

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.

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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 law².
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.
Annex: Indicators to survey universal access to essential health care

The below listed indicators and questions were used to guide the development of the four country profiles on legal access rights to health care.

1. Legal recognition of access rights to essential health services, essential medicines and vaccines

**Diagnostic question**
Do all people in the country have formal legal access rights to essential health services, essential medicines and vaccines?

**Guiding questions**
- Is a right to universal health coverage and/or to a defined package of essential health services enshrined in law?
- Who is entitled to the right to access a defined package of essential health services, vaccines and medicines (benefit package)?
- Does a legal mechanism exist to define the package of essential health services to which people are entitled to?
- Do legal mechanisms exist to enforce access rights to health care?

2. Anti-discrimination provisions applicable to health care

**Diagnostic question**
Have anti-discrimination provisions been implemented to protect individuals from discrimination when accessing essential health services, essential medicines and vaccines?

**Guiding questions**
- Has the country ratified international human rights instruments that prohibit discrimination?
- Has the country enacted anti-discrimination provisions?
- What kind of individual characteristics are protected by existing anti-discrimination provisions?
- Do other discriminatory barriers to access health care exist?
- Has any work been carried out to ensure existing laws do not create access barriers?
- Do legal complaint mechanisms, including complaint bodies, exist to report and sanction discrimination?

3. Limited set of essential health services, essential medicines and vaccines accessible to all including groups without health coverage

**Diagnostic question**
Is a formal right to access a limited range of defined essential health services, essential medicines and vaccines granted to all people independent of their right to health care?

**Guiding questions**
- Do legal means exist to grant access to a limited range of essential health services, essential medicines and vaccines to anyone in the country, independent of whether they are included in health coverage schemes?
- If such provisions exist, which essential health services, essential medicines and vaccines are accessible to all?

References

1 Universal Health Coverage is defined as “all people receiving the health services they need, including public health services designed to promote better health (such as anti-tobacco information campaigns and taxes), prevent illness (such as vaccinations), and to provide treatment, rehabilitation and palliative care (such as end-of-life care) of sufficient quality to be effective, while at the same time ensuring that the use of these services does not expose the user to financial hardship.” Tracking universal health coverage: 2017 global monitoring report. World Health Organization and International Bank for Reconstruction and Development / The World Bank; 2017. Available from: https://www.who.int/healthinfo/universal_health_coverage/report/2017/en/.

2 Customary law (also called unofficial law) encompasses established legal practices within a community (or country) that are not written down but which all relevant actors consider to be law (opinio iuris). Customary law creates rights and obligations through long-standing, consistent practice and custom that can be objectively verified. Sometimes, customary law is supported by case law as a result of judicial review of cases by courts that are based on customary law.