

Physical Activity as a Human Right?

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Abstract

Public awareness of the importance of physical activity has increased due to the many lockdowns imposed during the COVID-19 pandemic. This has brought more widespread attention to a question previously confined primarily to parts of the physical activity promotion community: Do humans have a right to be active? While the public health benefits of physical activity are undisputed, up to now no clear understanding has emerged as to whether physical activity represents a human right. Even though the right to physical activity is not explicitly recognized in international human rights treaties, it seems possible to derive it from well-established human rights such as the right to health, the right to rest and leisure, the right to education, and the principle of nondiscrimination. This paper shows how a right to physical activity could be derived from international human rights treaties, how the attributes of such a right could be defined, and which state obligations would be associated with it. Given that the current human rights discourse in this field focuses mainly on the interconnections between sport and human rights, we would like to argue that there is added value in a debate about physical activity as a human right.

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Introduction

The quarantines, curfews, and other political restrictions imposed by governments around the world to counteract the COVID-19 pandemic have severely restricted the mobility of people in many countries. During the initial lockdowns in many countries in the spring of 2020, some governments allowed people to play individual sports or to go for walks, while others did not recognize physical activity as a sufficiently relevant reason for going outside.¹ As a result, public awareness of the importance of physical activity has increased, at least in many European countries.² This has brought more widespread attention to a question previously confined primarily to parts of the physical activity promotion community: Do humans have a right to be active?

From a public health perspective, sufficient health-enhancing physical activity is highly relevant due to its numerous health benefits. As a concept, health-enhancing physical activity includes any physical activity that benefits health and functional capacity without undue harm or risk.³ This includes sport in a narrow sense, but also activities such as hiking, biking to work, cleaning the house, gardening, and taking the stairs at the office. Systematic reviews have shown that there is a dose-response relationship between physical activity on the one hand and premature mortality and the prevention of chronic diseases (such as type II diabetes, certain types of cancer, and many cardiovascular diseases) on the other.⁴ Additionally, studies have shown that physical inactivity is responsible for premature mortality and causes several million deaths per year worldwide.⁵

Consequently, the low prevalence of physical activity is a global problem that affects both highly industrialized countries and a growing number of developing nations.⁶ In response, international organizations have developed evidence-based recommendations on the amount and intensity of physical activity for different age groups, accompanied by documents providing policy guidance to national governments.⁷ At the country level, many governments have developed their own physical activity promotion policies in accordance with such

public health recommendations.⁸

While the public health benefits of physical activity are undisputed, up to now no clear understanding has emerged as to whether physical activity represents a human right. Arguably the most specific document on this issue is the International Charter of Physical Education, Physical Activity and Sport adopted in 2015 by UNESCO's General Conference.⁹ Based on an earlier UNESCO document from 1978, the charter declares that every human being has a fundamental right of access to physical education, physical activity, and sport.¹⁰ The World Health Organization's Global Action Plan on Physical Activity refers to this charter and states that a human rights-based approach should be a guiding principle for countries during the implementation of the action plan.¹¹ In addition, the Special Rapporteur on the right to health has emphasized the obligation of states "to reduce the extent to which individuals adopt unhealthy or risky lifestyles," including physical inactivity, a position that has also been supported by the United Nations General Assembly.¹² Besides these documents, however, the idea of physical activity as a fundamental right has, to our knowledge, not been reflected on in other major international human rights documents or in the academic literature on human rights so far.

By contrast, other health-related behaviors (such as nutrition, smoking, and alcohol consumption) have already been investigated from a human rights perspective. In the field of nutrition, numerous studies have been conducted in recent years, especially in the context of the human right to adequate food.¹³ Similarly, the human rights literature has investigated tobacco production and smoking, as well as certain aspects of alcohol consumption.¹⁴

This paper aims to shed light on the question whether there is a human right to physical activity, how such a right could be defined in concrete terms, and which state obligations would be associated with a right to physical activity. The paper focuses only on the interface of human rights and the promotion of health-enhancing physical activity. It is beyond the scope of this paper to discuss human rights violations in the sport sector.

Is physical activity a human right?

The UNESCO charter postulates that the practice of physical education, physical activity, and sport is a fundamental right for all.¹⁵ However, because the right to physical activity is not explicitly recognized in international human rights documents, it needs to be derived from well-established human rights. In this section, we demonstrate how a right to physical activity can be linked to the Universal Declaration of Human Rights (UDHR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and Convention on the Rights of Persons with Disabilities (CRPD).¹⁶

The right to health is of particular relevance for deriving a right to physical activity. The right to health is established in article 25 of the UDHR, which states that everyone has the “right to a standard of living adequate for the health and well-being of himself and of his family.”¹⁷ Similarly, article 12 of the ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁸ Similar wording is used in article 24 of the CRC and article 25 of the CRPD.¹⁹ It is generally acknowledged in the scientific literature that physical activity can contribute to achieving the highest attainable standard of health since it has many proven health-promoting effects.²⁰

Additionally, the right to physical activity is related to the right to rest and leisure, which is enshrined in article 24 of the UDHR and article 7 of the ICESCR.²¹ The right includes periodic holidays with pay and a reasonable limitation of working hours. Scientific evidence suggests that there is a relationship between hours worked and leisure-time physical activity.²² The right to rest and leisure is also part of other conventions: article 31 of the CRC, for instance, creates a link to the right “to engage in play and recreational activities appropriate to the age of the child.”²³ In its general comment on this right, the Committee on the Rights of the Child highlights the importance of play and recreation for children and notes, for example, that

play involves physical activity and that recreation includes participation in sports.²⁴ Furthermore, the committee draws attention to children who require particular attention to realize this right, such as girls (who generally have a higher prevalence of insufficient physical activity), children living in poverty, children with disabilities, children in institutions, children from indigenous and minority communities, and children in situations of conflict and humanitarian and natural disasters.²⁵ In this context, the Committee on the Rights of the Child recommended in its concluding observations on a periodic report of Denmark that the state party increases the availability of sports activities for children in Greenland.²⁶ Also, article 13 of CEDAW and article 30(5) of the CRPD mention a right to participate in recreational activities.²⁷

Another aspect of the right to physical activity is related to the right to education, which is widely recognized internationally and enshrined in article 26 of the UDHR and article 13 of the ICESCR.²⁸ The right requires, among other things, that education be directed to the full development of the human personality. Article 29(1)(a) of the CRC highlights that the child’s personality, talents, and mental and physical abilities should be developed to their fullest potential.²⁹ In its concluding observations on the Irish state report, for instance, the Committee on the Rights of the Child criticized insufficient physical activities in school that can be enjoyed by all students.³⁰ The scientific evidence shows that engagement in physical activity is positively associated with the psychological and emotional development of young people and that policies and interventions targeting physical education lessons are effective in increasing children’s physical activity.³¹ From a human rights perspective, the right to education is not limited to children and includes the equality of men and women in the field of education, as well as the right of persons with disabilities to education.³²

Lastly, nondiscrimination is a basic principle of human rights. The UDHR and the abovementioned human rights treaties all include the prohibition of discrimination in conjunction with the rights set out in these documents. For example, article 2 of the UDHR states that everyone is entitled to all the

rights and freedoms set forth in the declaration, without distinction of any kind.³³ This principle is of particular relevance and requires a special focus on vulnerable and marginalized groups. Potential sources of inequalities related to physical activity include age, gender, cultural background, disability, and financial resources. This is in line with efforts in the field of physical activity promotion to promote health equity by focusing on these target groups.³⁴

Attributes of physical activity as a human right

If a right to physical activity is derived from well-established human rights, its attributes need to be defined appropriately to express the right in concrete terms. In this context, the Committee on Economic, Social and Cultural Rights has defined four attributes that conceptualize the measures required to ensure the effective enjoyment of the right to health: availability, accessibility, acceptability, and quality.³⁵ The committee explicitly states that these attributes are interrelated and essential but that their precise application depends on the conditions prevailing in each state.³⁶ This section explains all four attributes and links them to the field of physical activity promotion.

Availability

Availability refers to “functioning public health and health-care facilities, goods and services, as well as programmes” that need to be “available in sufficient quantity.”³⁷ For physical activity, this could include the provision of purpose-built indoor and outdoor facilities, as well as the provision of public and green open spaces.³⁸ Furthermore, the availability of the right to physical activity could be improved by developing and implementing exercise programs in different settings.³⁹ Additionally, the availability of respective facilities, public spaces, and exercise programs seems to be important to support health-enhancing physical activity.

Accessibility

Accessibility has four overlapping dimensions:

nondiscrimination, physical accessibility, economic accessibility, and information accessibility.⁴⁰ Nondiscrimination means that physical activity-promoting “facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population.”⁴¹ Physical accessibility refers to the fact that the respective “facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable and marginalized groups.”⁴² Economic accessibility means affordability, and information accessibility includes “the right to seek, receive and impart information and ideas concerning health issues.”⁴³ In summary, physical activity-promoting facilities, goods, and services need to be accessible to everyone without discrimination, within safe physical reach, and affordable. This could include the provision of specific exercise programs that are adapted to the needs of vulnerable groups, which are highly relevant from a human rights and public health perspective.⁴⁴ The right to seek, receive, and impart information could include recommendations on the amount and intensity of physical activity needed to achieve certain health benefits; these recommendations should be available in the official language(s) of each state (since the World Health Organization recommendations are published only in selected languages).⁴⁵ Alternatively, states could develop such recommendations at the national level, as is already done in many countries.⁴⁶

Acceptability

Acceptability means that “all health facilities, goods and services must be respectful of medical ethics and culturally appropriate.”⁴⁷ This can include physical activity programs that respect the culture of participating individuals and are sensitive to gender and life-cycle requirements (for example, tailored programs for the least active groups, girls, women, older adults, rural and indigenous communities, or vulnerable groups).⁴⁸ Program planners and decision-makers need to be aware of the specific barriers to physical activity for different target groups and develop strategies to overcome them.⁴⁹ For example, in some cultural

contexts, women might perceive it as inappropriate to use a public bath at the same time as men, and introducing bathing times only for women could be a strategy to overcome this barrier. Additionally, the use of a participatory approach that involves all relevant stakeholders and the target group in decision-making processes seems to be an appropriate method to overcome political barriers that might occur when implementing a culturally appropriate physical activity program.⁵⁰

Quality

Finally, quality means that “health facilities, goods and services must ... be scientifically and medically appropriate and of good quality.”⁵¹ This requires, among other things, skilled medical personnel. In this context, it would be important to strengthen the pre- and in-service training of professionals within and outside the health sector.⁵² In order to ensure a high quality of interventions promoting physical activity, it is also important to be aware of evidence-based quality criteria for the conception, implementation, and evaluation of such interventions.⁵³ States could also define appropriate standards in policy documents on safety and quality in health care: the Australian NSQHS Standards, for example, include a standard on preventing falls and harm from falls.⁵⁴

State obligations

If physical activity is considered a human right, this entails a number of obligations for states imposed by international human rights treaties and customary law. In particular, states are obliged to respect, protect, and fulfill this right.⁵⁵

Obligation to respect

The obligation to respect refers to the fact that human rights oblige states to refrain from interfering in the enjoyment of rights by individuals and groups.⁵⁶ An example of a required measure in the context of the right to health is that states must refrain from denying or limiting access to health care services on the basis of an individual’s status, such as age, gender, or citizenship.⁵⁷ The Special Rappor-

teur on the right to health has explicitly stated that the obligation to respect extends to physical activity promotion, which means that all people should be permitted to access state-run sporting facilities on an equal basis.⁵⁸ Another important aspect is that physical activity should be taken into account in all governmental policies in accordance with the Helsinki Statement on Health in All Policies.⁵⁹ This includes the requirement that states ensure that discriminatory laws, policies, and programs in non-health sectors are not adopted or are amended or rescinded.⁶⁰

Additionally, the obligation to respect seems to be of particular relevance for vulnerable population groups, especially when they live in an environment of liberty deprivation and under the total authority of the state, as is the case with prisoners. In this case, the United Nations Standard Minimum Rules for the Treatment of Prisoners include assistance to prisoners of a sports-based nature, as well as one hour of daily exercise in the open air or employment in outdoor work.⁶¹ Those rules would have to be transposed into binding international and national legislation, based, for example, on the checklist for internal inspection mechanisms of the United Nations Office on Drugs and Crime.⁶² However, the obligation to respect the right to physical activity is also relevant for other population groups: historically, there are numerous examples of discrimination against women both in recreative and in competitive sports, such as the ban on women’s participation in national competitive sports in Saudi Arabia and, in the last century, the ban on women’s soccer in Germany between 1955 and 1970.⁶³

In the context of the obligation to respect the right to physical activity, the lockdowns during the COVID-19 pandemic are another pertinent example. In Spain, exercising outdoors was not allowed for 48 days, while in the German state of Bavaria, doing sports and being physically active were explicitly considered relevant reasons for being outside during the lockdown.⁶⁴ One could discuss whether political measures that banned outdoor physical activity alone or with persons living in the same household can be considered unjustified

restrictions on the right to physical activity or whether they were reasonable due to the exceptional circumstances of the COVID-19 pandemic. In this context, in April 2020, the Committee on the Rights of the Child called on states to explore “alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities” that “include supervised outdoor activities at least once a day which respect physical distance protocols and other hygiene standards.”⁶⁵

Obligation to protect

Second, the obligation to protect describes the need to protect individuals against abuses by nonstate actors, foreign state agents, and state agents acting outside of their official capacity.⁶⁶ With regard to the right to health, the literature urges states to ensure that third parties do not deny access to health care services; similarly, in order to protect the right to physical activity (for example, to ensure freedom from discrimination), states need to ensure that third parties do not deny access to physical activity facilities or programs.⁶⁷ In particular, the Special Rapporteur on the right to health urges states to ensure full compatibility between sport policies, rules, programs, and practices and human rights law and to intensify efforts to prevent systemic and ad hoc rights violations perpetrated by third parties.⁶⁸

The workplace is another relevant setting for potential violations of the right to physical activity. It is highly important that employees have the possibility to be active in a work context (such as through active breaks or, for office workers, by being able to work at height-adjustable standing desks), as there is evidence of the effectiveness of such policies and interventions.⁶⁹ States could ensure this, for example, by amending their labor laws or by conducting information campaigns that encourage companies to create a work environment that promotes the physical activity of all employees.

Obligation to fulfill

Finally, the obligation to fulfill requires that states take positive action to ensure that human rights can be realized.⁷⁰ Similar to the current debate

on the right to health, this obligation could be implemented by giving recognition to the right to physical activity in national political, budgetary, and legal systems and by adopting a national physical activity policy for realizing this right.⁷¹ The Special Rapporteur on the right to health urges states to take three primary steps to ensure “that sufficient resources and infrastructure are devoted to enabling people to access and participate in sport and physical activity, as part of a broader strategy to encourage the adoption of healthy lifestyles”: (1) include the facilitation and promotion of physical activity and healthy lifestyles in national planning, (2) establish quality physical education programs, including in school and health-care settings, in accordance with human rights standards, and (3) progressively implement, expand, or improve goods, facilities, services, and information provision relevant to sport and physical activity.⁷² Physical activity-promoting policies have already been adopted in many countries worldwide; however, their comprehensiveness leaves room for improvement.⁷³ Additionally, there is a paucity of national physical activity guidelines in low- and middle-income countries.⁷⁴

Another aspect of the obligation to fulfill is that governments should create an environment that enables humans to do sports.⁷⁵ Similarly, from the right to health, one could derive an obligation to create an environment that enables humans to be physically active. Examples include, among others, the promotion of active transport and the promotion of physical activity in the education sector. In both sectors, states can use policy documents of the World Health Organization Regional Office for Europe that showcase success stories and examples from European countries as guidance.⁷⁶

Discussion

This paper has attempted to show that a right to physical activity can be derived from well-established human rights such as the right to health, the right to rest and leisure, the right to education, and the principle of nondiscrimination. Each of these rights is related to an important aspect of physical

activity, such as its health-promoting effects, the relationship between hours worked and leisure-time physical activity, and the importance of physical activity for the psychological and emotional development of young people. Therefore, we believe that compared to recognizing physical activity only as an element of the right to health, conceptualizing it as a standalone right would better recognize its multidimensional nature and sharpen its profile. A good precedent for this is the right to water, which was originally derived from the right to health and the right to an adequate standard of living but has received significantly greater attention since having been defined as a standalone right.⁷⁷ However, even if physical activity were not recognized as a standalone right, a debate about the importance of physical activity for other human rights would be beneficial.

In any case, a right to physical activity is founded in human dignity, as are other (aspects of) human rights. This becomes particularly obvious in situations when this right is strongly restricted or even denied (such as in prisons and psychiatric institutions). In these contexts, the right to physical activity overlaps with (or can even be partially derived from) the right to humane treatment of persons deprived of their liberty.⁷⁸ Furthermore, the CRPD has been especially important in highlighting human dignity as a basis of human rights. In that context, the participation of people with disabilities in recreation and sport is required to ensure their full development of human potential and sense of dignity and self-worth.⁷⁹

If physical activity is considered a human right, the attributes of this right can be defined based on its availability, accessibility, acceptability, and quality. Furthermore, this implies that states have the obligation to respect, protect, and fulfill the right to physical activity. In particular with regard to the obligation to fulfill, the principle of progressive realization that is described in article 2 of the ICESCR is highly relevant: states are obliged to “take steps ... to the maximum of [their] available resources, with a view to achieving progressively the full realization” of a human right, “including particularly the adoption of leg-

islative measures.”⁸⁰ The ICESCR also highlights that states can meet this requirement “individually and through international assistance and co-operation.”⁸¹ Consequently, three aspects seem to be important: First, states need to take initial steps toward achieving the realization of a human right even if they have only limited resources. Second, states need to increase their efforts over time to realize a human right progressively. And third, the question arises whether minimum core obligations of physical activity as a human right can be defined, for example, with regard to the lockdowns during the COVID-19 pandemic.

This paper has several limitations. First, we included only global human rights declarations and conventions in our analysis. Regional human rights documents might include additional aspects that are relevant at the interface of physical activity and human rights. Second, due to the intersectoral aspect of physical activity promotion, we could provide only illustrative examples instead of an in-depth analysis for each relevant sector (for example, the sport sector). Sport is an important “subset of ‘physical activity,’” and the International Olympic Committee as a sport organization has even claimed that “the practice of sport is a human right.”⁸² Future research could compare sport and other physical activities from a human rights perspective in order to identify similarities and differences. Additionally, this paper focuses on health-enhancing physical activity and its promotion. The harmful effects of physical activity—such as on construction sites or production lines—are not covered by our research. Another example is the rights of young athletes that are endangered by child labor, violence, doping, early specialization, overtraining, and exploitative forms of commercialization.⁸³ These aspects are highly important for drawing a complete picture of physical activity and human rights but are not covered by our paper.

Considering physical activity as a human right could broaden the perspective of the current human rights discourse that focuses mainly on the interconnections between sport and human rights.⁸⁴ Recent policy documents in this field provide important points of reference: a progress report

of the Human Rights Council Advisory Committee states that sport not only includes (physical) exercise but is also “a tool to improve lifestyle, provide employment opportunities, and promote peace, development, respect and anti-racism.”⁸⁵ It also argues that sport can strengthen respect for human rights and promote human rights for all.⁸⁶ Similar to our line of argument, the Human Right Council Advisory Committee states that the right “is rooted in different other rights and concepts,” such as the rights to health, participation in cultural life, and development.⁸⁷ For children, participation in sports and games is officially recognized as being covered by article 31 of the CRC, which is also highlighted by organizations advocating for children’s rights.⁸⁸ In 2020, the Centre for Sport and Human Rights analyzed the sport-related impacts of the COVID-19 pandemic on children in detail from a human rights perspective, covering different aspects such as their physical and mental health, social inequalities, and physical education at school.⁸⁹ While all of these aspects are important, they do not cover physical activity at work, at home, or during travel, or other forms of leisure-time physical activity besides sports. For this reason, we argue that there is added value in a debate about physical activity as a human right.

In public health, the increasing global prevalence of chronic diseases has resulted in more attention being paid to their underlying behavioral risk factors and their intersections with human rights. In contrast to other fields of noncommunicable disease prevention (such as nutrition, tobacco, and alcohol), physical activity has so far not been part of the human rights discourse. This manuscript might provide a starting point for such a discussion.

Such a discussion would need to recognize that some of the central human rights documents were developed in the middle of the 20th century, whereas the concept of health-enhancing physical activity evolved only in the 1990s.⁹⁰ Consequently, a debate about health-enhancing physical activity as a human right might need to consider that evidence for the benefits of regular physical activity for public health have emerged quite recently.

As the COVID-19 pandemic has shown, contrasting obligations can be derived from the same human right, such as the right to health: while physical activity is generally highly relevant for the prevention of noncommunicable diseases, the acute need to contain COVID-19 has required governments to limit the mobility of people. In such cases, all rights need to be weighed in a way that does justice to each of them.

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