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# THE TRANSFORMATION OF THE RIGHT TO HEALTH'S CONTENT BY MULTINATIONAL CORPORATIONS

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## ABSTRACT

The right to health is often classified as a second-generation right despite its complex nature in which civil, political, and social imperatives overlap, as the right to health is a true embodiment of the saying of the interdependence and indivisibility of rights.

Despite the multiplicity and diversity of texts that guarantee the right to health at the global and regional levels, directly and indirectly, the effective enjoyment of this right at the actual level has not lived up to the aspirations that these texts establish, given the activity of the pharmaceutical multinationals that have transformed the right to health into a purely capitalist activity.

**Keywords:** rights, health, multinational corporations.

## INTRODUCTION

Human rights have been categorized in various ways, with some distinguishing between individual and collective rights, others between core rights and non-basic rights, and still others between traditional and new rights. Additionally, some assert that rights can be classified as positive or negative, thus underscoring the multifaceted nature of the discussion. The notion of "generations of human rights" has commonly been employed to characterize the transformative and contentious process driven by ideological discourses representing differing official perspectives on human rights during the Cold War, particularly between the East, the West, and southern nations.

It is essential to recognize that the term "generations" does not establish a balanced hierarchy among rights, as human rights are not a static concept and are heavily influenced by their environment, varying in response to economic, social, cultural, and political factors. This variability has led to the emergence of a fourth generation that encompasses new rights intricately linked to scientific and technological advancements, such as the right to access the Internet. Furthermore, the fourth generation has prompted the reinterpretation of existing rights from the previous three generations, notably the right to health, which has been impacted by scientific developments presenting unprecedented challenges like cloning, assisted suicide, vaccine trials, and their associated intellectual property concerns.

The advent of the Corona pandemic has further spurred the recalibration of international dynamics. This has been marked by the rise of actors transcending national boundaries, particularly multinational corporations assuming an institutional stature, endeavoring to reshape established international principles governing the role of states in safeguarding the health of their citizens. Research on the Corona vaccine has also influenced the dynamics between countries, multinational corporations, and health protection organizations such as the World Health Organization. Moreover, beyond their commercial and production dimensions, major pharmaceutical companies have assumed a normative role, seeking to shape the value system as it pertains to the right to health in accordance with the demands of the economic market.

Although the right to health is a right that is difficult to classify in the four generations as it is a true embodiment of the principle of interdependence between rights, as the right to health cannot be isolated from the right to life and work, the right to food, and even the right to a clean environment. Also, the concept of health is constantly changing. In connection with social developments and the emergence of individualism and modern technological developments that introduced new concepts to the right to health, such as the right to

refuse treatment, the right to change sex, cloning, and giving up the right to life for treatment.

However, the real transformations that occurred in the right to health were caused by the activity of multinational companies, especially pharmaceutical companies, which made the health services sector a commercial activity whose goal was to achieve profits, which led to the capitalization of health to become a commodity subject to the law of supply and demand and not a basic human right. Therefore, our study will attempt to answer the following central problem: How did multinational companies contribute to modifying the contents of the right to health?

To answer the posed problem, the study has been divided into three parts. In the first part, we discuss the conceptual and legal foundation of the right to health. The second part is dedicated to addressing the new roles of multinational corporations. The third part is allocated to studying the impact of multinational corporations on the actual enjoyment of the right to health.

#### 1. the international legal foundation of the right to health:

“Health is a state of complete physical, mental and social well-being, and not merely the absence of disease and infirmity.” This was the definition of the World Health Organization’s constitution for health in its preamble, where the organization affirmed that the enjoyment of the highest attainable degrees of health is one of the basic individual and collective human rights that creates an obligation on states to deploy all legislative, executive, political and economic measures, whether preventive or remedial to protect it.

The right to health is different from the right to be healthy. Health is affected by factors beyond the control of the state, such as the biological makeup of the individual. This is why we refer to this right as “the highest attainable standard of physical and mental health”, rather than the unconditional right to good health. The right to health is a goal that can only be achieved gradually in the long term, and the right to health is based on five basic aspects: accessibility, availability, Accountability, good quality, participation, responsibility, entitlements and freedom.<sup>i</sup>

The concept of this right has evolved from mere treatment to treatment, prevention, and achieving complete well-being for individuals. The right to health has received due attention, whether at the international, regional or national level, as it has been stipulated in many internal and international texts, The United Nations, through the World Health Organization (WHO), has also contributed to the realization of the right to health, becoming one of the most important obligations of States concerned with the application of human rights that require States to join relevant international health organizations.<sup>ii</sup>

The complex nature of the right to health and its close association with the right to life has been legally rooted since the Universal Declaration of Human Rights under article 25, paragraph 1, so that the Declaration affirms the right to health by satisfying the necessary needs (Food, clothing, housing) to be emphasized in the operative part of article 12 of the International Covenant on Economic and Social Rights, which gave individuals the right to the highest attainable standard of physical and mental health.<sup>iii</sup>

The Constitution of the World Health Organization, adopted two years before the Universal Declaration of Human Rights, stipulates that: “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every person without distinction as to race, political belief, or social and political status,” as adopted by the United Nations General Assembly in 1981 The Global Strategy for Health for All, and the Principles of Medical Ethics were adopted in 1982.<sup>iv</sup>

To clarify and give effect to the above provisions, in 2000 the United Nations Committee on Economic, Social and Cultural Rights, which monitors compliance with the International Covenant on Economic, Social and Cultural Rights, adopted a General Comment on the fundamentals of the right to health .Which is not limited only to the timely provision of health care services, but also involves the underlying determinants of health, such as the provision of clean and potable water, adequate sanitation, adequate supplies of food, safe nutritious foods, safe housing, healthy occupational and environmental conditions, and the provision of health education and appropriate health information. , including in the field of sexual and reproductive health.<sup>v</sup>

The right to health is a complex right that includes: the right to a health protection system that affords everyone equal opportunities to enjoy the highest attainable standard of health; The right to prevention, treatment and control of diseases; Access to essential medicines; Maternal, childhood and reproductive health; Equal and timely access to basic health services; Providing education and information regarding health, and population participation in health-related decision-making at the national and community levels. The right to health also requires the provision of health services, goods and facilities to all without any discrimination, with the possibility of accessible, acceptable and of good quality<sup>vi</sup>

Because of its intimate relationship to human existence, the right to health has been the subject of numerous

legal and declaratory enshrinements, demonstrating its importance. The 1979 Convention on the Elimination of All Forms of Racial Discrimination against Women, the 1971 Declaration on the Rights of the Mentally Retarded, and the 1979 Declaration on Progress and Development all guarantee it, the year 1969 and the 1975 Declaration on the Rights of the Disabled.<sup>vii,viii</sup>

## 2. The increasing impact of multinational enterprises

The term multinational company is one of the new terms in legal literature, and although this term is common, it is not the only one, as legal scholars use other terms that refer to the same phenomenon, such as international companies, for example, and transnational companies, as the United Nations called them in 1974. However, we will adopt the term multinational companies as it is the most widely used.<sup>ix</sup>

Without going into the conceptual debate, multinational corporations can be defined as economic entities that trade and produce on several continents and hold large capital concentrated through one State, while their activity goes beyond other States through their branches spread around the globe.<sup>x</sup>

These giant companies and their branches are distributed among nine countries, the most important of which are Japan (62 companies), the United States of America (53 companies), and Germany (23 companies). 200 companies achieved the equivalent of 30 percent of global output until the year 1995. In other words, the concept of economic globalization is based on capitalist companies. Transnationalism is completely different from the concept of an international economy based on economic relations between independent sovereign states, given that these companies establish a monopolistic character and confirm the individualism by which these companies dominate 1/3 of global trade.<sup>xi</sup>

The World Trade Organization agreements are considered a fertile field for the activity of multinational companies, as major multinational companies contributed to drafting the agreement related to intellectual property, especially those related to chemistry, automated information, and investment (*bristol meyers general electric, cbs, general motors, pfizer, tbm*) These agreements have contributed to transforming living organisms into patents, as multinational companies have seized the global natural and genetic heritage and turned them into commodities. Although 90% of the world's genetic and biological heritage is located in developing countries. We find that 90% of patents are held by multinational companies, so the lobbies of these companies are strongly active in the corridors of the World Trade Organization.<sup>xii</sup>

It is important to understand the role of multinational corporations in driving economic globalization, particularly in the areas of trade, investment, and technology. These corporations have grown to be powerful players in international affairs, with their direct investments in numerous nations now having the power to restrict the sovereignty of those nations due to their unique characteristics. Corporations manage the modern world as a connected entity and progressively remove the nation-state because of their organizational, material, technical, and ideological abilities.<sup>xiii</sup>

A fundamental objective that guides the strategies and actions of multinational firms is to maximize profits in the shortest amount of time. This fundamental objective ignores any obstacles in its path, and multinational companies—especially the big ones—do not consider any other option. Examples of their activities include promoting aggressive wars and interethnic conflicts in order to control the planet's natural resources and to advance the growth of the military industry and its benefits; violating workers' rights and human rights generally; appropriating technically and scientifically knowledge that is intrinsically social; corrupting public sector workers in order to seize essential public services through deceptive privatizations, violating users' rights, etc.<sup>xiv</sup>

It should be noted that these companies have pursued a merger policy to monopolize the handling of a lot of goods and control their prices. 6 companies control 85% of the grain business, and eight companies that control 61% of the cocoa business. and three companies that control 81% of the world's banana trade, This has made them control the production and trade of many goods, and so multinational corporations can be said to form huge economic blocs, It enables it to monopolize the goods it displays, so small and regionalized businesses disappear because of their inability to compete, And these companies have a lot of power, they control about a third of global output and two-thirds of world trade.<sup>xv</sup>

Multinational corporations intervene in the internal affairs of developing and host countries, to preserve their interests and objectives. Multinational corporations often contravene the legislation of the States in which they operate in contravention of foreign investment laws, labor tax trade policy, and price policy. Companies are also hampering the State's underdeveloped efforts to exploit its wealth to exercise full control over its natural resources.<sup>xvi</sup>

The activities of multinational corporations in violating human rights are at multiple levels: they are not limited

to one right but encompass almost all human rights, which led the United Nations Sub-Commission on the Promotion and Protection of Human Rights to develop several rules on the responsibility of multinational corporations in the field of human rights, Multinational corporations were prevented from using forced or compulsory labor and stressed the need to provide a healthy and safe environment as well as wages to ensure an adequate standard of living.<sup>xvii</sup>

To impose respect for these rules on multinational corporations and other business enterprises, it was emphasized in the United Nations Document on Rules on the Responsibility of Transnational Corporations and Other Business Enterprises in the Field of Human Rights that such companies should be subject to permanent monitoring and periodic investigation by the United Nations and other international and national mechanisms, whether already in place or to be established concerning their application.

NGOs, some governments, and some United Nations leaders and staff were more critical of the Global Compact despite pressure from Annan's Executive Director, Carol Bellamy, who emphasized that it was dangerous to assume good faith in multinational corporations. And that there are similarities between the goals of the United Nations and those of these companies. Despite all these criticisms, the United Nations has continued to engage with private companies very quickly, making concessions to neoliberalism.<sup>xviii</sup>

### 3. The impact of multinational companies on the right to health

One of the most important repercussions of Corona virus is the sweeping of health care systems and the demolition of basic mechanisms for the realization of the right to health. The high mortality rate among healthcare workers from medical doctors and nurses has affected access to specialized healthcare in some countries. and the pandemic has had devastating effects in all spheres of life, such as the economy, social security, education, and food production, Thousands of jobs have been lost as a result of restrictions to contain the virus, and repeated closures have affected a range of rights such as the right to movement, the right to assembly and the right to work.<sup>xix</sup>

Despite the legal dedication to the right to health, complex healthcare problems remain unresolved in light of the widening public health crises in low-income countries, the challenges of regulations for the activities of members of the health profession, and the effects of multinational corporate policies on health care systems such as reforms "Apply Market Laws" to Social Health Security System, Mixed with Growing Patient Need for Medicare with Scarce Resources "Finance, which posed a real challenge to the effective realization of the right to health.<sup>xx</sup>

The activity of multinational corporations leads to a social response targeting health services, where a large part of these services has been largely abandoned and the health system has lost its democratic, free, and socially inclusive character. The health budget has also been curtailed, with the basic health strategy being introduced in all countries. "Non-specialist and non-surgical" as an alternative to the universal health insurance in force, companies are also working to limit the State's assumption as a primary obligation to enforce the right to health, opening the way for the private sector, which has been heavily activated to serve the interests of multinational pharmaceutical companies.<sup>xxi</sup>

One of the most serious manifestations of multinational activity on the right to health is the transformation of health care into a commercial capital activity subject to the law of supply and demand. The absence of effective health insurance and the spread of pockets of poverty are acute factors that prevent people from enjoying the potential of modern medicine, The economic dependence of Western concentration States is a major cause of the problem s right to health, This is in addition to the West's monopoly on medical and therapeutic knowledge, preventing its delivery to the poor countries of the South.<sup>xxii</sup>

In the context of globalization, which has widened the gap between the rich North and the impoverished South and increased the South's dependence on the North and its significant health implications, nearly one-third of the third world's population does not find drinking water, one in five children does not find enough calories and protein, and one billion people suffer from malnutrition. Half of the world's population is unable to collect medicines; third world countries have the lowest rates of life, the highest rates of child mortality, and the most immune deficiencies in people. The global health profile is not served by the policies of international institutions that control public health expenditures and open the health market to competition.<sup>xxiii</sup>

Multinational corporations have also reformulated the contents of the right to health, through excessive protection of intellectual property rights of innovative pharmaceutical companies where the World Trade Organization through the TRIPS Agreement has established high protection provisions and standards that give the patent holder exceptional rights of ownership. States that would become members of the World Trade Organization (WTO), especially developing countries, must adopt the standards of TRIPS by adopting legislation that would lead to higher prices of medicines and thereby negatively affect their obligations to protect the right to health of their citizens, granting exclusive exclusionary rights leading to the monopoly of

medicines and the exploitation of this right to raise the price of the drug unit sold.<sup>xxiv</sup>

The policy of States to protect the right to health of their citizens had previously been not to grant patents on pharmaceutical products and to confer only on the manufacturing process in order not to block access to products that might otherwise be less expensive. and not to grant exclusionary rights to drug testing data provided for marketing purposes and to allow national companies to rely on them to facilitate the entry of cheap products into the local market, But under the TRIPS Convention, States cannot exclude pharmaceutical inventions from the scope of protection, and they cannot dispense with product patent protection and simply protect the method of manufacture. Data on efficacy testing should be protected against unfair commercial exploitation and national companies should not be allowed to rely on them to market generic medicines.<sup>xxv</sup>

## CONCLUSION:

Based on the problem raised and the contents addressed in the body of the article, the following conclusions can be drawn:

- The difficulty of elaborating a comprehensive definition of the right to health and the need to protect it has been demonstrated by international documents that provide for health-related rights without incurring any effort to define them, to avoid ideological differences and the ambition of obtaining the largest number of ratifications, as some have called them. "Conceptual flexibility" or "constructive ambiguity," provides an opportunity for States to drop their vision of the right to protection, which has led to an inflation of texts guaranteeing the right to health, directly or indirectly.
- The right to health is one of the rights that have resisted its classification, despite its traditional classification as a right of the second generation in terms of its legal rooting. However, reality has proven that it is a complex right in which the idea of interdependence between rights is embodied. The right to health is linked to the right to life, food, and clothing, just as the right to Health is closely linked to technological development, which has undergone modifications that make it a right of the fourth generation.
- The most important feature of the current international environment is the transformation of the world into a system of interwoven economic relations based on diminishing the economic role of the state in favor of international multinational companies whose main goal is to achieve profit for the benefit of multinational companies, which has made the prevailing economic globalization take on the character of imperial capitalism.
- The right to health has been sacrificed within the framework of the policies of multinational companies as "collateral damage" in order to expand the liberal capitalist model that limits the effectiveness of the state as much as possible, which has led to a weakening of the state's ability to fulfill its obligations to achieve the right to health, which requires it to take positive measures and activities.
- In their influence on the right to health, multinational companies relied on the trilogy of global international financial institutions (the International Monetary Fund, the World Trade Organization, and the World Bank), which confiscated the roles of the state and limited its function to serving the interests of capitalist countries through "recipes" for restructuring and economic reform programs. Structural correction loans, which do not recognize the concept of the welfare state or the welfare state, are replaced by the state as an instrument for implementing the expansionist neoliberal policy at the expense of the right to health.
- Although multinational corporations have not directly violated the right to health, neoliberal policies based on capital liberalization, national deregulation, privatization, and caps on public spending have created unfair conditions that make it difficult to enjoy health rights, highlighting the contradiction between the stated goals. Multinational companies call for respect for human rights without providing appropriate conditions for their implementation .

## REFERENCES

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- i- OHCHR, The Right to Health, Basic Aspects and Common Misconceptions, article available at the link: <https://www.ohchr.org/ar/health/right-health-key-aspects-and-common-misconceptions>.
- ii- Wathiq Abdul Karim Hamoud, "The Human Right to Health in International Law," Tikrit University Journal of Legal Sciences, Tikrit University, No. 26, 2015, p. 263.
- iii- Qandali Ramadan, "The Right to Health in Algerian Law (A Comparative Analytical Study)," Notebooks of Politics and Law, Faculty of Law, University of Ouargla, Issue 06, 2012, p. 220.



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Political Thought, Arab Writers Union, Damascus, No. 4-5, 1999, p. 337.

xxiv- Farhad Saeed Saadi, "The right to health and protection of intellectual property rights, a study on the right of access to medicine in accordance with the human rights rules of the International Covenant on Economic, Social and Cultural Rights and the rules of intellectual property rights in TRIPS," Tikrit University Journal of Legal and Political Sciences, Tikrit University, Vol. 05, Issue 18, 2013, pp. 158-159.

xxv- Farhad Saeed Saadi, "Parallel Importation and International Exhaustion of Intellectual Rights in Trade, A Study in the Trade of Patented Pharmaceutical Products," Journal of the College of Law for Legal and Political Sciences, Kirkuk University, Volume 03, Issue 10, 2014, p. 103.