

Engaging with human rights in health technology assessments

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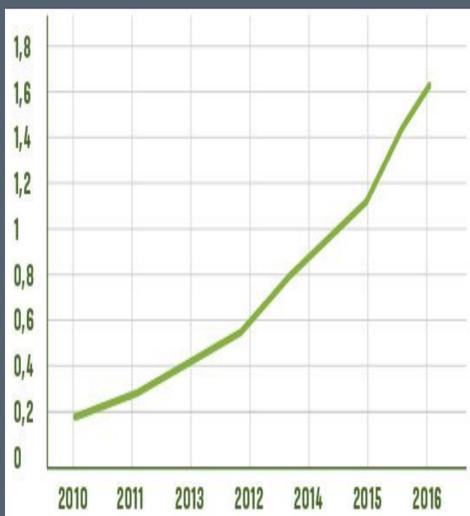
HTA help decision-makers to choose which treatments will be funded, but HR are not a characteristic feature of this process.

Introduction:

This case study is part of a project examining whether **human rights** (HR) should be integrated into the decision-making of **Health Technology Assessments (HTA)**, a **comprehensive technique to select cost-effective treatments** in a health system¹. In jurisdictions where the right to health is highly litigated, HTA came as a **government reaction** to contain these claims as a means to prevent unwise spending on unnecessary medical care². **Socio-economic rights litigation**, however, is understood to have the effect to promote **“the language of rights”** within public institutions, making authorities much more aware of their importance in the public sphere³. Here, I **analyse if this narrative has arised in Brazil**, where health litigation has been difficult to control since the right to health is freely enforced by courts disregarding **costs and medical research**.

1. Context

Lawsuits filed against the government for drugs have increased in Brazil, despite the foundation of an HTA authority in 2011 (Conitec). Below, the government annual outlay on drugs litigation (in billions of R\$)⁴:



2. Methods

240 HTA reports were screened from 2012 to 2017. Content analysis was done to verify whether human rights had been considered, as follows:

1. Data was extracted from the HTA agency website in PDF to Nvivo.
2. A preliminary query looked at terms such as Judicialisation, Rights, Law and Litigation (in Portuguese).
3. Complementary coding was executed manually to identify underlying legal issues.
4. Each passage concerned with a legal topic was counted as one reference.

3. Findings

Legal content falls into 3 categories :

- a) Legal Basis** (explanation of the agency functions as an introduction, legislation and the final decision resolution),
- b) Patient rights** (indirect concept of rights of patients to health care, without indicating whether they constitute any legal right or HR),
- c) Litigation** (the existence of judicial pressure caused by drug demand through litigants).

	Files	Cases
Legal Basis	224	470
Rights	19	27
Litigation	17	35

4. Conclusions

HR are not explicit in the HTA decisions in Brazil, despite the existence of an expressive legal discourse supporting the authority of recommendations, coercing courts to abide them. While the process was established to regulate rights-claims, the documents are not in tune with a judicial HR discourse. Only patients raised “rights” issues broadly in consultations, without asserting them as a legal question. Litigation is the closest to legal rights.



References: 1. Steven Simoens, 'Health Technology Assessment and Economic Evaluation across Jurisdictions' (2010) 13 *Value in Health* 857, 857–858.
2. Borges, Danielle da Costa Leite. "Individual Health Care Litigation in Brazil through a Different Lens: Strengthening Health Technology Assessment and New Models of Health Care Governance." *Health and human rights* 20.1 (2018): 147.
3. See i.e.: Alicia Ely Yamin and Fiona Lander, 'Implementing a Circle of Accountability: A Proposed Framework for Judiciaries and Other Actors in Enforcing Health-Related Rights' (2015) 14 *Journal of Human Rights* 312.
4. Ministry of Health, Brazil.



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