



in collaboration with



MONITORING THE RIGHT TO HEALTH IN ASIA: TOWARDS A (SUB-)REGIONAL NETWORK

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INTERNATIONAL FEDERATION OF HEALTH AND HUMAN RIGHTS ORGANISATIONS

Member Organisations:

Physicians for Human Rights (USA)
Doctors for Human Rights (UK)
Physicians for Human Rights (Denmark)
Johannes Wier Foundation for Health and Human Rights (Netherlands)
Physicians for Human Rights (Israel)
Palestinian Physicians for Human Rights
Centre for Enquiry into Health and Allied Themes (India)
Health and Human Rights Foundation (Bangladesh)
Zimbabwean Association of Doctors for Human Rights
Edhucasalud (Peru)
Commonwealth Medical Trust
Action Group for Health, Human Rights and HIV/Aids; AGHA (Uganda)
Harvard Program on International Health and Human Rights (USA)
UNSW Initiative for Health and Human Rights (Australia)

Observers:

Amnesty International
British Medical Association
International Committee of the Red Cross
International Council of Nurses
Turkish Medical Association
World Medical Association
International Federation of Medical Students' Associations

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Mission

IFHHRO is a non-governmental organization working to advance international cooperation in the protection and promotion of health related human rights. IFHHRO focuses on promoting and enhancing the roles and responsibilities of health professionals in the realisation of human rights, including the right to health. Health professionals are understood to be persons working in either their personal capacity or as members of institutions or organizations with the primary task of improving health. IFHHRO promotes monitoring violations of human rights by mobilizing the expertise of health professionals worldwide, using both rights based strategies and responding to reports of violations.

Goals

- Broadening and strengthening the network of organizations of health professionals and human rights organizations working on health related human rights issues;
- Promoting the participation of organizations in less developed countries;
- Involving health professionals in human rights work;
- Supporting health professionals in undertaking human rights activities and protecting health professionals at risk due to their human rights activities.

Activities

In order to achieve its mission and goals IFHHRO undertakes the following activities, through its member organizations, or by its own agenda:

- Training
- Raising awareness / advocacy
- Networking
- Monitoring violations / fact-finding missions



CEHAT is the research centre of the Anusandhan Trust. CEHAT's work is directed at demanding access to health and health care as a right, and investigating and combating violence. CEHAT conducts academically rigorous and socially relevant health research concerning the well-being of the disadvantaged masses in order to strengthen people's health movements and realise the right to health and health care. CEHAT has pioneered work on violence as a health issue since 1991 through participating in the investigation of violence, and educating health professionals, and other members of the health care system, regarding their role in responding to survivors of violence. CEHAT's work on violence has addressed issues of violence against women (domestic violence, sex determination and sex selection, and sexual assault); violence against children (investigation into conditions of juvenile homes), violence by state agencies (investigation of torture, police custody deaths and atrocities by police) and caste and communal violence. It also conducts courses on health and human rights in collaboration with the University of Mumbai, and a para-legal course with the India Centre for Human Rights and Law. CEHAT launched an intensive two week residential International Course in Health and Human Rights for health workers and human rights activists in July 2005. Three groups of participants have completed the course.

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INTRODUCTION

“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”¹

Although the right to health is a ‘fundamental human right,’ it has yet to receive the same attention and recognition as other human rights such as the right to a fair trial or the right to freedom of religion.² IFHHRO believes that the interaction of health and human rights organisations, associations of health professionals and national human rights institutions is essential to the promotion and widespread recognition of the right to health throughout the world. IFHHRO also believes that one method of enhancing the profile and effective implementation of the right to health is the creation of regional networks that monitor the right to health at different levels, with particular emphasis on the role of health professionals in implementing and monitoring the right to health.

With a view to facilitating the creation of a network to monitor the right to health in Asia, this background paper provides participants at IFHHRO’s meeting in Mumbai from 1-3 December 2006 with an overview of the right to health; what it means for an organisation to adopt a rights-based approach to health; and how organisations and individuals may become involved in monitoring the right to health.³

HEALTH AS A HUMAN RIGHT

“The right to health can be understood as a right to an effective an integrated health system, encompassing health care and the underlying determinants of health, which is responsive to national and local priorities, and accessible to all”

- Special Rapporteur on the right to health, Paul Hunt⁴

The right to health has two basic components: *the right to health care* and *the right to the underlying determinants of health* (ie the right to healthy conditions).⁵ The right to health care includes the right to the enjoyment of a variety of facilities and conditions that are necessary for the attainment and maintenance of good health; while the right to the underlying determinants of health includes access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information. The underlying determinants of health also include socially related events that are damaging to health, such as violence and armed conflict, and the social determinants of health such as poverty and unemployment.⁶

The right to health therefore contains both *freedoms* and *entitlements*. The freedoms include the right to have control over one’s own health and body as well as the right to be free from non-consensual medical treatment and experimentation. The entitlements, on the other hand, include the right of access to an equitable system of health protection.

However, the right to health does not constitute a right to be *healthy*. The state cannot be expected to provide people with protection against every possible cause of ill health or disability such as the adverse consequences of genetic diseases, individual susceptibility and the exercise of free will by individuals who voluntarily take unnecessary risks. Rather, the right to health creates an *immediate obligation* on the state

¹ Preamble to the Constitution of the World Health Organisation.

² Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereafter ‘the Special Rapporteur on the right to health’), E/CN.4/2003/58 para. 38

³ This background paper is largely based on the invaluable resource manual produced by Judith Asher (2004) *The Right to Health: A Resource Manual for NGOs* (Commonwealth Medical Trust, London) available online at <http://www.huridocs.org/poprthea.htm>.

⁴ Report of the Special Rapporteur on the right to health, E/CN.4/2006/48 para. 4.

⁵ General Comment No. 14, Committee on Economic, Social and Cultural Rights.

⁶ Report of the Special Rapporteur on the right to health, E/CN.4/2006/48 para. 9

to guarantee non-discrimination and equal treatment, as well as the obligation to take *deliberate, concrete and targeted steps* towards the full realisation of the right to health.⁷

In recent years, committees within the United Nations (UN) treaty body system and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereafter the Special Rapporteur on the right to health) have provided increasing guidance on the content of the right to health. Similarly, regional human rights mechanisms such as the African Commission on Human and Peoples' Rights and the European Court of Human Rights are increasingly adjudicating cases concerning the right to health and other health-related human rights. Thus, although the exact content of the right to health in each country continues to vary according to social and economic differences, treaty body commentary and jurisprudence, as well as regional and national case law is leading to a greater understanding of its exact nature.

Relevant United Nations Instruments and Documents

The right to the highest attainable standard of mental and physical health is reflected in numerous human rights instruments at the international level including:

- **Article 25(1)** of the **Universal Declaration of Human Rights (UDHR)**,
- **Article 12** of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**;
- **Article 24** of the **Convention on the Rights of the Child (CRC)**; and
- **Article 12** of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**.

The right to health has also been elaborated in General Comment No. 14 of the Committee on Economic, Social and Cultural Rights and General Recommendation No. 24 of the Committee on the Elimination of Discrimination Against Women as well as in resolutions of the Human Rights Commission and various Outcome Documents of United Nations (UN) world conferences.⁸

CESCR General Comment 14, outlines the basic components of government obligations arising from the right to health including:

- **obligations regarding health care**, including health facilities, and those goods and services that are necessary for the treatment of illness and rehabilitation. This means ensuring timely and appropriate health care together with essential elements such as hospitals; clinics and other health-related facilities; and essential medicines.
- **obligations regarding the underlying determinants of health**, including safe and potable water; adequate sanitation; an adequate supply of safe food; adequate nutrition; adequate housing; healthy occupational and environmental conditions; and education and information about health, including sexual and reproductive health.

Relationship between the right to health and other human rights

The right to health is closely related to, and interdependent with, a number of other human rights such as those to food, housing, education, and safe working conditions. Moreover, the right to health is essential to the exercise of other rights.

Key health-related human rights

Freedom from: discrimination; torture; inhuman or degrading treatment and harmful traditional practices; and freedom of association, assembly and movement.

Rights to: life; education; food and nutrition; privacy; participation; individual autonomy and physical integrity; to benefit from scientific progress (and its application); and to receive and to impart information.

⁷ Report of the Special Rapporteur on the right to health, E/CN.4/2003/58 para. 27

⁸ Report of the Special Rapporteur on the right to health E/CN.4/2003/58 paras 10-14.

All health-related rights are informed by two key principles outlined in General Comment No. 14 of the Committee on Economic Social and Cultural Rights:

- *the principle of non-discrimination* in access to health care and to the underlying determinants of health, as well as to the means and entitlements for their procurement; and
- *the right to participation in decision making* — ensuring that people can participate in decision-making processes, including the design and implementation of policies that affect their health, at community, national and international levels.

The principle of non-discrimination is essential for protecting the health status of the poor and otherwise vulnerable and disadvantaged groups in any society. Discrimination, which can manifest itself in a complex variety of ways, is often a direct or indirect cause of vulnerability to poverty and ill-health. Hence, the ICESCR emphasises that States parties must:

... undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR art 2.2

The Special Rapporteur has noted that '[i]nclusive, informed and active community participation is a vital element of the right to health.'⁹ In this respect, the International Covenant on Civil and Political Rights (ICCPR) states:

Every citizen shall have the right and the opportunity, without ... [discrimination] ... and without unreasonable restriction: ... to take part in the conduct of public affairs, directly or through freely chosen representatives

ICCPR art 25(a)

Participation by individuals, organisations, and the community at large, in setting priorities, and in designing, implementing and evaluating government programmes, policies, budgets and legislation is key to achieving the empowerment that is essential to understanding and claiming the right to health. It has also been shown to increase the likelihood that the needs of the community will be met more effectively.

⁹ Report of the Special Rapporteur on the right to health, E/CN.4/2006/48 para. 7.

“a human rights-based approach requires that special attention be given to disadvantaged individuals and communities; it requires the active and informed participation of individuals and communities in policy decisions that affect them; and it requires effective, transparent and accessible monitoring and accountability mechanisms”

- Special Rapporteur on the right to health, Paul Hunt¹⁰

What is a human rights-based approach?

A human rights-based approach to health uses international human rights treaties and norms to hold governments accountable for their obligations under international law. A human rights-based approach can be integrated into any number of advocacy strategies and tools including monitoring, community education and mobilization, litigation, and policy formulation.

The foundation of a human rights-based approach to health is the recognition that every human being is endowed with human rights, that such rights are inalienable, and that governments are under an obligation to respect, protect and promote human rights in accordance with their international commitments. A human rights-based approach to health therefore re-frames basic health needs as human rights. Using this approach, becoming healthy and remaining so is seen to be a question of social justice and concrete governmental obligations rather than merely a medical, technical or economic problem.

Using a human rights-based approach to health mandates that human rights, including the rights to non-discrimination and participation, be considered whenever health programmes, policies and indicators are being developed. Consequently, a human rights-based approach establishes priorities for the allocation of resources in all circumstances, ensuring that resources are allocated to those with the greatest needs.

Holding states accountable and claiming the right to health

A human rights-based approach to health recognises the accountability of governments for their obligations under international law, regional law, and domestic law. States parties to an international human rights treaty are required to adopt *legislative measures* and to employ all *appropriate means*, including effective judicial or other appropriate remedies, to ensure that the population can enjoy the rights conferred by the treaty. Thus, by ratifying international human rights treaties that affirm the right to health, a state agrees to be accountable to the international community, as well as to the people living within its jurisdiction, for the fulfilment of its obligations.

The role of health professionals in a human rights-based approach

Health professionals have the potential to play a crucial role as witnesses to human rights abuses, advocates of human rights protection and providers of services in accordance with the right to health. Health professionals have previously been active in campaigns regarding human rights issues including torture prevention, campaigns against the death penalty, and illegal organ transplantation. Increasingly, health professionals and health-related NGOs are engaging in advocacy that explicitly refers to the right to health. However, in some countries health professionals have been, and continue to be, ‘victims of discrimination, arbitrary detention, arbitrary killings and torture’ and subjected to curtailments of their ‘freedoms of opinion, speech and movement’ due to the nature of their work.¹¹

In addition to campaigning for the right to health, it is important that health professionals comply with ethical and human rights requirements at both the individual and institutional levels. These include respecting the dignity and confidence of patients; non-discrimination; obtaining fully informed consent; and ensuring that health care and information is available, accessible, acceptable, and of adequate quality,

¹⁰ Report of the Special Rapporteur on the right to health, E/CN.4/2006/48 para. 25

¹¹ Report of the Special Rapporteur on the right to health, E/CN.4/2003/58 para. 97

particularly in the case of those who are poor or otherwise vulnerable and disadvantaged. Health professionals and their representative associations should be vigilant in ensuring that none of the health practices, policies, procedures or programmes in which they, or their members, participate involve violations of the right to health.

However, '[w]hile the vast majority of health professionals have made valuable contributions towards human rights, some have, wittingly or unwittingly, been complicit in human rights violations.'¹² Such non-compliance with human rights standards is often the result of a combination of interrelated circumstances, including 'political pressures and societal influences.'¹³ For example, some health professionals have been 'subject to pressures to participate in human rights violations including torture, forced sterilisations, and female genital cutting/mutilation.'¹⁴ However, such violations are also frequently symptomatic of a need for training of health professionals in human rights. As the Special Rapporteur has noted:

'Human rights education is an essential starting point for equipping health professionals with the knowledge and tools to empower them to promote and protect human rights.'¹⁵

Fortunately, this need is increasingly being addressed through the development of human rights training manuals both on specific, and general, health-related human rights issues.¹⁶

Finally, the issue of the migration of health professionals requires attention. The Special Rapporteur has noted with concern that the overall movement of health professionals has been:

'away from rural to urban areas, from the public to the private sector, from poorer to wealthier developing countries, from fragile to more stable States, from developing to developed countries, and from developed countries with poorer health sector terms and conditions to developed countries with better health sector terms and conditions.'¹⁷

The Special Rapporteur has suggested a number of ways in which this issue should be combated including:

- demanding that governments integrate human rights into all skills drain policies;
- strengthening health systems in health professionals' countries of origin;
- requiring that destination countries exercise ethical recruitment;
- paying compensation, restitution or reparation to those developing countries of origin where the skills drain reduces their capacity to fulfil the right to health;
- having each developed country establish an independent national office to monitor the impact of the Government's policies on the enjoyment of the right to health in developing countries; and
- creating a multidimensional response to the skills drain.¹⁸

Correlation between a human rights-based approach to health and public health principles

A human rights-based approach to health emphasises: 1) that the effective and sustainable provision of health-related services can only be achieved if individuals, organisations and the general community participate in the design of policies, programmes and strategies that are meant for their protection and benefit; and 2) that the right to the underlying determinants of health is an integral element of the right to health. In each of these ways, the human rights approach to health reflects public health principles. Thus,

¹² Report of the Special Rapporteur on the right to health to the General Assembly, A/60/38 para. 9

¹³ Report of the Special Rapporteur on the right to health to the General Assembly, A/60/38 para. 11

¹⁴ Report of the Special Rapporteur on the right to health to the General Assembly, A/60/38 para. 9

¹⁵ Report of the Special Rapporteur on the right to health to the General Assembly, A/60/38 para. 11

¹⁶ See for example, Johannes Wier Foundation (1996) *Health and Human Rights: A Course for Physicians, Nurses and Paramedics* details online at: <http://www.johannes-wier.nl>; Norwegian Medical Association *Doctors working in prisons: Human Rights and Ethical Dilemmas, A Course for Prison Doctors* further information available online at: <http://lupin-nma.net/index.cfm?m=2&s=1&kursid=50&file=kurs/K050/intro.cfm>; Physicians for Human Rights-UK *Medicine and Human Rights Study Module* available online at <http://www.dundee.ac.uk/med&humanrights/SSM/home.html>; Harvard School of Social Medicine *The Uses of Medical Skills in Documenting Abuses and Treating the Victims* available online at <http://www.hri.ca/hredu/syllabi/34.shtml>; The British Medical Association is also currently in the process of drafting a comprehensive 'Right to Health' toolkit which will be available in 2007.

¹⁷ Report of the Special Rapporteur on the right to health to the General Assembly, A/60/38 para. 19

¹⁸ See Report of the Special Rapporteur on the right to health to the General Assembly, A/60/38 paras. 75-89

although the principles of public health and human rights are often expressed in different language, there is significant convergence in their goals and priorities.

From the public health perspective, the right to the highest attainable standard of health includes the right to:

- comprehensive primary health care;
- adequate, accessible, acceptable, affordable, appropriate and equitable health care services;
- basic immunizations;
- adequate nutrition;
- adequate housing;
- freedom from violence;
- sexual and reproductive health information and services, including family planning;
- underlying preconditions to health, for example the right to safe water and adequate sanitation; and, in general, the right to a clean and safe environment; and
- information about health.

A human rights-based approach to health deems the right to a standard of living adequate for basic health as imperative to the right to health. This correlates with the public health principle that health status is influenced by a number of socio-economic factors falling outside the confines of clinical curative medicine. Public health also deals with the concepts of equity, justice and the indivisibility of rights: ‘public health strategies can only succeed when they are inclusive, comprehensive and designed to preempt, as well as treat, disease and disability.’¹⁹ Thus, public health strategies are concerned with the key human rights principles of non-discrimination and the right to participation. Consequently, international human rights agencies have increasingly translated public health theories of entitlement into practical standards that can be implemented by public health organizations.

A human-rights based approach to health indicators

Under international law, all economic, social and cultural rights, including the right to health, are subject to ‘progressive realisation.’ The Special Rapporteur identifies a combination of benchmarks and indicators as the best way ‘to measure and monitor the progressive realisation of the right to the highest attainable standard of health.’²⁰ The Special Rapporteur identifies as consistent with a human rights-based approach to health, indicators that: a) correspond, with some precision, to a right to health norm; b) are disaggregated by at least sex, race, ethnicity, rural/urban and socio-economic status; and c) are supplemented by additional indicators that monitor five essential and interrelated features of the right to health: (i) a national strategy and plan of action that includes the right to health; (ii) participation of individuals and groups, especially the most vulnerable and disadvantaged, in the formation of health policies and programmes; (iii) access to health information and confidentiality of personal health data; (iv) international assistance and cooperation of donors in relation to the enjoyment of the right to health in developing countries; and (v) accessible and effective monitoring and accountability mechanisms.²¹

¹⁹ Ann Somerville, British Medical Association as cited in Judith Asher (2004) supra note 3, p. 20

²⁰ Report of the Special Rapporteur on the right to health, E/CN.4/2006/48 para. 29.

²¹ Report of the Special Rapporteur on the right to health, E/CN.4/2006/48 para. 49; for an example of a human rights-based approach to indicators see the annex to this report.

What does 'monitoring the right to health' mean?

Monitoring the right to health is the process by which NGOs and other individuals and groups systematically collect information regarding action (or inaction) by governmental bodies, institutions and other relevant authorities in order to identify whether the government is meeting its obligations to respect, protect, promote and fulfil the right to health. It is important that monitoring include an assessment of domestic legislation and policies as well as an evaluation of health-related administrative practices. Many abuses of the right to health occur at the level of administration or at 'unofficial' state-level, and are often the result of institutional policies. Consequently, monitoring the right to health involves an appraisal of:

- the extent to which the right to health is being implemented;
- barriers and obstacles that exist to its implementation; and
- actual or potential violations.

Systematic monitoring involves three basic processes:

1. identifying which data is relevant and how to find it;
2. collecting reliable and valid data; and
3. analysing and interpreting data.

Why is it important to monitor the right to health?

Monitoring the right to health enables the community, health professional associations, and other health-concerned NGOs to evaluate their country's progress in effectively realising the right to health. While governments are increasingly committing to international human rights standards, they often fail to translate such standards into practice. Without effective monitoring, governments cannot be held accountable for implementing the right to health, nor can they be made liable for violating it. Accountability is a key element of a human rights-based approach to health

Monitoring a state's obligations to realize the right to health progressively

It is important that organisations and individuals involved in monitoring the right to health monitor issues consistent with their own expertise and strengths. However, two general factors to be monitored are:

- *compliance with core obligations*: monitoring whether the government is meeting minimum standards and legal obligations to respect, protect and fulfil the right to health, including a review of health-related legislation, public policies and implementation mechanisms;
- *treatment of the poor, vulnerable, or otherwise disadvantaged groups*: monitoring whether patterns of ill-health among certain population groups are associated with systematic discrimination by analysing vital statistics and health indicators, including targets and benchmarks.

Monitoring may focus on obligations of conduct (the *content* of government policies affecting health) and/or obligations of result (the *outcomes/results* of such policies). Monitoring obligations of conduct requires an evaluation of what the government is doing to ensure that the right to health can be enjoyed. Monitoring obligations of result, on the other hand, requires the measurement of outcomes and progress in meeting pre-determined targets by means of health indicators and benchmarks. This requires assessment of any relevant advances, setbacks, or stagnation in ensuring enjoyment of the right to health, including the extent to which the state is fulfilling this *obligation to the maximum of its available resources*. Statistical data, health-related budgets, health indicators and benchmarks are essential for this purpose.

The role of health professional associations

National Medical Associations (NMAs), and other health professional associations, play an extremely significant role in monitoring the right to health. Important activities that may be undertaken by such associations include:

- curriculum development, training and awareness raising;
- witnessing and reporting abuses;
- lobbying and influencing policies and budgetary priorities;
- helping to define and monitor compliance with national indicators and benchmarks; and
- the implementation of service delivery.²²

It is therefore important that the codes of conduct and guidance issued by national and international health professional associations conform to international standards and principles governing the right to health. It is also integral that health professional associations collaborate with health and human rights NGOs to play an important role in promoting the progressive realisation of the right to health through cooperation with public authorities and contributing to the design and implementation of public policies.

²² Judith Asher (2004) *supra* note 19 at p. 115.

The following section outlines possible strategies that may be used in monitoring the right to health. Due to the limited resources of non-governmental organizations and health professional associations involved in monitoring the right to health, particularly in developing countries, it is essential that such organizations and associations network in order to achieve the most constructive and extensive monitoring possible. While the following list of possible activities is instructive, it is not exhaustive, and it is critical that each organization monitor the right to health according to its own expertise and capacity.

Promoting and monitoring the right to health

1) Networking and forming coalitions with other health professional associations and civil society organizations in order to monitor, protect and promote the right to health

- Advocate action at the national level on key issues, including improved implementation of a government's immediate obligations and promotion of research needed to support necessary changes in policy or legislation;
- Create a media strategy for maintaining public interest in the right to health, including publicising the results of research, and issuing position statements and press releases on health-related matters.

2) Contributing to national policies on health

- Seek involvement in the formulation of national health-related legislation and policies and emphasise the need for health priorities to reflect fully the most pressing health concerns of the population. For example, establish a national consortium for this purpose or contribute to one that has already been set up;
- Collaborate with the government's health and development programmes to ensure that a human rights-based approach to the provision of health information and services is adopted and implemented;
- Advocate government regulation of multinational corporations whose activities are suspected of impacting adversely on health, including by:
 - calling attention to any adverse effects on the right to health that may result from the imposition of GATS and TRIPS agreements;
 - advocating that health sector reforms guarantee free access of the poor, vulnerable, or otherwise disadvantaged to the health information and services that they need;
- Counter the introduction of obstacles and reforms in the health sector that inhibit free access of the poor, vulnerable, or otherwise disadvantaged to health information and services; and
- Contribute to the establishment of national indicators and benchmarks to monitor the progressive realization of the right to health and, in particular, the extent to which the government is complying with its health-related human rights obligations.

3) Instructing interested members of medical and other health professional associations in advocacy skills, including techniques for dealing with the media, with a view to educating the public and policy makers about right to health issues.

4) Identifying key health issues, particularly those affecting the health of the poor, vulnerable, or otherwise disadvantaged and advocate for research to be carried out, including:

- keeping records of cases where there is reason to believe that violations of human rights or ethical abuses may have occurred, with a view to their use as case studies for training purposes as well as for advocacy;
- noting vital health statistical trends that have been caused by persistent violations of human rights; and

- advocating disaggregation of data, such as that applicable to adolescent health and development, and the use of indicators relevant.

Reviewing existing legislation, policies and practices

1) Analyse legislation, practices and policies of the government that affect the right to health, and determine the extent to which they conform with its human rights treaty obligations, relevant international commitments (eg UN World Conferences), constitutional guarantees and other domestic legislation.

- Review the adequacy of national constitutional measures, legislation and policies that affect the right to health, particularly those that prohibit discrimination in the provision of health information and services or of health determinants;
- Assess whether the government is implementing such laws and policies effectively and identify any obstacles to their enforcement;
- Publicise the findings of research showing the need for changes in laws and policies, and advocate for necessary changes to be introduced by the government;
- Assess whether the health priorities adopted by the government address any pressing health concerns or needs exposed by national health statistics; and
- Identify and assess any adverse effects that existing laws and policies of the government are having on the right to health, including problems in their implementation.

2) Review the quality, accessibility, affordability and acceptability of health information and services available to the poor, vulnerable, or otherwise disadvantaged.

- Identify any unmet health needs, particularly those resulting from adverse discrimination, and network with other organizations and professionals to examine and assess the special health care needs of those who are most adversely affected by ill health; and
- Assess the relevance of public health messages and determine whether they are accessible and meaningful.

Promoting an ethical and human rights-based approach to health

- Ensure that full account is taken of relevant health-related human rights principles in the national code or guidance on medical ethics and that priority is given to the respectful treatment of poor, vulnerable, or otherwise disadvantaged groups including:
 - ensuring preservation of their dignity;
 - providing them with the health information and services they need;
 - allowing them free choice of treatment;
 - obtaining their full, free and informed consent to medical interventions; and
 - observing strict confidentiality.
- Review national codes and guidelines on medical ethics and ascertain whether they conform with a human rights approach to the provision of health care services and information, for example by offering the poor, vulnerable, or otherwise disadvantaged groups a free choice of services, and by taking into account relevant social and cultural values.
- Examine the curricula of medical and other health professional training schools, together with the educational requirements of licensing bodies for granting a licence to practice, in order to ascertain whether they include adequate and appropriate instruction in medical ethics and the health-related components of human rights;
- Advocate that evidence of satisfactory completion of such instruction should be made a condition of the award of a licence to practice and be included in continuing professional development requirements for the periodic renewal of the licence;
- Advocate, in co-operation with medical and other health professional associations and licensing bodies, the adoption of an ethical and human rights approach to health care in the training of medical and other health professionals at all levels.

- Appoint a small advisory group to recommend ways in which medical and other health professionals can be sensitised and helped to adopt an ethical and human rights approach to health care, for example by organizing training programmes and supplying them with examples of good practice and promotional materials;
- Contact civil society representatives including opinion leaders; parliamentarians; faith and community leaders; women's groups; and youth organizations. Discuss with them the adoption of an ethical and human rights approach to issues affecting key health and developmental issues in the community, especially those affecting the poor, vulnerable, or otherwise disadvantaged groups;
- Seek representation on the National Human Rights Institution (NHRI), or equivalent institution, and advocate its introduction in countries where it does not exist;
 - Ensure that steps are taken independently of government, and wherever possible in collaboration between health professional associations and human rights NGOs, to monitor both actual and suspected ethical abuses and human rights violations in the health sector, and report them to the responsible government department or authority (such as an ombudsman);

Participating in the treaty monitoring process

1) Participating in the preparation of country reports to treaty monitoring bodies

- Try to get involved in drafting the health-related sections of country reports to treaty-monitoring bodies. Raise with the relevant government department any inadequacies in the report such as failure to implement core obligations or the inclusion of inaccurate data; and
- Ensure that obligations concerned with the elimination of discriminatory practices in providing health care are dealt with in the report.
- Check the final version of the report prior to its submission to the treaty monitoring bodies.

2) Consider preparing and submitting a 'shadow', or parallel, report. This can be done through a comprehensive joint report submitted by a national consortium of human rights organizations and health professional associations, by a smaller group of organizations and associations focusing on the right to health, or by a single health professional association.

3) Participating in the work of treaty monitoring bodies

- Consider participating in pre-sessional working groups of relevant committees, in collaboration with any national NGO coalition that has been set up for the purpose;
- Consider attending plenary sessions of the relevant treaty monitoring committees and lobbying its members to ensure that important health issues that are contained in, or left out of, country reports, are adequately addressed;
- Note carefully any concluding comments or observations by treaty monitoring bodies on the country report and monitor the extent to which the government responds to them. Publicise any failure by the government to take the recommended action; and
- Advocate for the inclusion of at least one member with expertise in health issues on each treaty monitoring committee and suggest the names of suitable candidates for nomination.



UN Special Rapporteur

on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

In 2002, the Commission on Human Rights appointed a Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ('the right to health') for a period of three years. In 2005, the Commission extended the mandate for a further three years and, in 2006, with the abolition of the Commission on Human Rights and concomitant creation of the Human Rights Council in 2006, the Special Rapporteur's mandate was reaffirmed.

A Special Rapporteur is an independent expert appointed to monitor, examine and report on either a particular human rights issue or the human rights situation in a particular country or territory. Paul Hunt, a New Zealand national, was appointed as the Special Rapporteur on the right to health in August 2002 for a period of three years. In 2005, his term was extended by a further three years. Mr Hunt is a Professor of Law and a Member of the Human Rights Centre at the University of Essex, England, and an Adjunct Professor of Law at the University of Waikato, New Zealand.

What is the Special Rapporteur's mandate?

The mandate of the Special Rapporteur was established in the Commission of Human Rights resolution 2002/31. This resolution requests that the Special Rapporteur:

- a) gather, request, receive and exchange information related to the right to health from all relevant sources, including Governments, intergovernmental organizations and non-governmental organizations;
- b) develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, in particular the World Health Organization and the Joint United Nations Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, as well as non-governmental organizations and international financial institutions;
- c) report on the status, throughout the world, of the right to health, including on laws, policies, good practices and obstacles; and
- d) make recommendations on appropriate measures to promote and protect the realization of the right to health, with a view to supporting States' efforts to enhance public health.

It also requests that the Special Rapporteur apply a gender perspective in his work, pay particular attention to the needs of children in the realization of the right to health and take into account the Durban Declaration and Programme of Action, adopted by the World Conference against Racism in 2001.

In his first report, the Special Rapporteur identified three key objectives for his mandate:

1. *To promote - and to encourage others to promote - the right to health as a fundamental human right, as set out in international and regional human rights instruments, resolutions of the Commission on Human Rights, and the Constitution of the World Health Organization.*
2. *To clarify the contours and content of the right to health. In jurisprudential terms, what does the right to health mean? What obligations does it give rise to? And*

3. *To identify good practices for the operationalization of the right to health at the community, national and international levels.*²³

The Special Rapporteur has explored these objectives with reference to two main themes:

- a) poverty and the right to health; and
- b) the right to health, discrimination and stigma.

What issues does the Special Rapporteur address?

To date, the Special Rapporteur has addressed a vast array of issues under his mandate including, but not limited to:

- health-related Millennium Development Goals;
- the skills drain of health professionals;
- access to medicines;
- neglected diseases;
- the right to health and violence prevention
- maternal mortality;
- sexual and reproductive health rights;
- indigenous peoples and the right to health;
- the right to mental health; and
- the role of health professionals and human rights education.
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What are the Special Rapporteur's working methods?

The Special Rapporteur is required to annually submit a report to the Human Rights Council and an interim report to the General Assembly, detailing the activities performed under his mandate. These reports also include information on particular issues relevant to the right to health, such as poverty, discrimination and stigma, international trade, mental health, neglected diseases, indicators, and sexual and reproductive health.

The Special Rapporteur undertakes country and other missions as a central part of his work. In July 2003 he conducted his first mission, to the World Trade Organization. In 2003 he visited Mozambique, in 2004 he visited Peru and Romania, and in 2005 he visited Uganda. Reports on the missions of the Special Rapporteur were previously submitted to the Commission and are now submitted to the Human Rights Council.

The Special Rapporteur works in close co-operation with Governments, inter-governmental organizations and civil society. This work includes participating in relevant workshops or other meetings, writing reports and articles, making inquiries and responding to queries about the right to health.

In accordance with his mandate, the Special Rapporteur regularly receives information and communications related to the right to health. This information sometimes includes credible allegations of serious violations of the right to health. In some cases, the Special Rapporteur will write to the Government urging it to take appropriate action.

Contacting the Special Rapporteur on the right to health

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²³ Report of the Special Rapporteur on the right to health, E/CN.4/2003/58 para.37-40.

FURTHER READING

- Amnesty International (2000) *Ethical Codes and Declarations Relevant to Health Professions* AI Index 75/05/00, available online at: <http://web.amnesty.org/pages/health-ethicsindex-eng>
- Asher, Judith (2004) *The Right to Health: A Resource Manual for NGOs* (Commonwealth Medical Trust, London) <http://www.huridocs.org/poprthea.htm>
- British Medical Association (2001) *The Medical Profession and Human Rights* (Zed Books, London and New York).
- British Medical Association (various) Human Rights Publications. Available online at: <http://www.bma.org.uk/ap.nsf/Content/HRpublications>
- Committee on Economic, Social and Cultural Rights, *General Comment No.14 on the Right to Health* available online at: <http://www.ohchr.org/english/bodies/cescr/comments.htm>
- Humanist Committee on Human Rights (2006) *Health Rights of Women Assessment Instrument* available online at: <http://www.hom.nl/publicaties/HeRWAI%20def05%20totaal.pdf>
- Mann, Jonathan and Gruskin, Sofia et. al. (eds.) (1999) *Health and Human Rights: A Reader* (Routledge, New York)
- Office of the United Nations High Commissioner for Human Rights (2004) *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* available online at: <http://www.ohchr.org/english/about/publications/docs/8rev1.pdf>
- Physicians for Human Rights and University of Cape Town (2002) *Dual Loyalty and Human Rights in Health Professional Practice: Proposed Guidelines & Institutional Mechanisms* available online at: http://www.phrusa.org/healthrights/dual_loyalty.html
- United Nations Special Rapporteur on the Right to Health, Paul Hunt; for general information see <http://www.ohchr.org/english/issues/health/right/index.htm> and http://www2.essex.ac.uk/human_rights_centre/rth/rapporteur.shtm

OTHER WEBSITES OF INTEREST

- Amnesty International *Health Professional Network*: <http://web.amnesty.org/pages/health-index-eng>
- Harvard Program on International Health and Human Rights: <http://www.hsph.harvard.edu/pihhr/index.html>
- Office of the High Commissioner of Human Rights homepage: <http://www.ohchr.org/english/>
- United Nations Human Rights Council homepage: <http://www.ohchr.org/english/bodies/hrcouncil/>
- University of New South Wales Initiative for Health and Human Rights: <http://www.ihhr.unsw.edu.au/>
- University of Cape Town, School of Public Health, Health and Human Rights Division: <http://www.hhr.uct.ac.za/>
- World Health Organisation, Human Rights webpage: http://www.who.int/topics/human_rights/en/