International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for the UN Human Rights Council 4th Session

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[1]

Mandate Holder

Paul Hunt

Mandate

The mandate was established in 2002, in recognition that the full enjoyment of the right to the highest attainable standard of physical and mental health still remains a distant goal for millions of people throughout the world. The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, a healthy environment, and access to health-related education and information. The Special Rapporteur has been asked to apply a gender perspective and pay special attention to issues relating to non-discrimination and the rights of children.

Activities

- Visit to Sweden in January 2006;[2]
- Joint mission to Lebanon and Israel in conjunction with three other special procedure mandate holders in September 2006;[3]
- Presentation of a report in October 2006 to the General Assembly on maternal mortality and the right to medicine;[4]
- Follow-up visit to Peru in October 2006 following his country visit of June 2004, to further investigate health levels in that country.[5]
- At that time the Special Rapporteur met with the Executive-Directors of the Nordic-Baltic Departments of the World Bank and the International Monetary Fund (IMF) in Washington DC. Reports on these meetings are due to be presented to the Council at one of its sessions in 2007.

[1] Summary prepared by Brigit Morris and Betty Yolanda, Intern, ISHR, supervised and edited by Gareth Sweeney, Information Program, ISHR.
[2] A/HRC/4/28/Add.2.
[3] A/HRC/2/7.
[4] A/61/338.
[5] E/CN.4/2005/51/Add.3.

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Annual Report[6]

Scope

The report deals with ways of enhancing health standards for those living in poverty, as well as for indigenous communities. The report also deals with ways in which trade affects access to medicine.[7] It includes numerous case studies associated with health issues, from a variety of low and middle-income nations.[8]

Summary and Key Conclusions

Recent progress in the understanding of the 'Right to Health'

- The Special Rapporteur notes that the health and human rights movement has made "striking progress" in the last decade. However he is keen to stress that more work is needed to improve the understanding of governments, NGOs, Inter-governmental Organisations (IGOs) and individual actors, of the relationship between health and human rights;
- The 'Right to Health' was first officially recognized in the World Health Organization's (WHO) Constitution of 1946,[9] and later in the 1978 *Declaration of Alma-Ata*. The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) also refers to the 'Right to Health'.[10] The increased awareness of the issue of HIV/AIDS in the 1990s also facilitated understanding of the 'rights-based' approach to health;[11]
- The report's key focus is on the importance of using a 'rights-based' approach to health. Mr. Hunt expresses his satisfaction with the "new maturity" shown by the international community towards the issue of the 'Right to Health'.

The role of civil society

- The Special Rapporteur was "deeply impressed" by the contribution of civil society to the development of the 'Right to Health', particularly in low and middle-income countries. Mr. Hunt highlights the trend over the past decade for NGOs to focus on human rights such as those enshrined in the ICESCR, where in the past their focus was mainly directed at the International Covenant on Civil and political Rights (ICCPR). At a national level the Special Rapporteur highlights the valuable role of NGOs acting in Peru on the issue of health and human rights, as well as the work of Amnesty International at a global level.[12]

The role of medical professionals

- The Special Rapporteur describes the work of medical professionals such policy makers, administrators, and doctors working in the field as "pivotal" to the advancement of health standards for those living in poverty. However he also notes a "major problem" apparent in the lack of understanding of such professionals of the 'Right to Health'. Mr. Hunt stresses that the

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[6] The full-text of the report is available on the website of the Office of the High Commissioner for Human Rights (OHCHR): http://www.ohchr.org/english/bodies/hrcouncil/4session/documentation.htm.

[7] On this issue the Special Rapporteur worked closely with the World Trade Organization (WTO).

[8] Bangladesh, the United Kingdom, Gambia, Brazil, Peru, Hungary, Canada, the United States of America, South Africa and Argentina.

[9] The WHO Constitution states "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".

[10] Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) defines the right to health as “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

[11] In 2003 UNAIDS established an expert Global Reference Group on HIV/AIDS and Human Rights. This was an important step in the need to amalgamate the issue of health with human rights.

[12] The Special Rapporteur also commended the role of Physicians for Human Rights International and the Federation of Health and Human Rights Organizations. He also acknowledged the work of other NGOs who operate a more practical, aid level including Medicines San Frontiers, Medicines du Monde, Partners in Health and Doctors for Global Network.

important message of the inter-relation between human rights and health should be conveyed more clearly to such workers.

The role of States

- The Special Rapporteur outlines the way in which human rights place a **duty on States** to "respect, protect and fulfil" the health of their citizens. He includes several national case studies from situations where these principals had been violated;[13]
- The 'Right to Health' imposes an obligation on States to ensure that health services are "**available**, **accessible** and **acceptable**". In explaining these three principles the Special Rapporteur describes availability as having sufficient quantity for all; accessibility as physically and economically accessible without discrimination; and acceptable as in respect of medical ethics, being culturally appropriate and of good quality, and guaranteeing the requirement of informed consent;
- The Special Rapporteur notes that the 'Right to Health' "requires functioning health facilities, goods and services to be available in sufficient quantity through a state".[14] In this respect, the Special Rapporteur notes the inadequate budgetary support afforded by most States towards their health sectors.[15] He argues that States have a "**legal obligation** to take deliberate, targeted and concrete" steps to realise adequate health standards;
- In outlining these State responsibilities, the report appreciates and supports the goals of 'Progressive Realization and Resource Availability'. These terms refer to the differing rates of development for low and high-income nations in the area of health, whereby States are expected to improve their standards on an annual basis according to their own level of development. The Rapporteur pays particular attention to the Bill of Rights enshrined in the South African Constitution, which references the Government's responsibility to "reasonably" improve health standards;
- In order to ensure that States uphold the principles articulated in the above section, the Special Rapporteur stresses the **"indispensable role" of judicial accountability**. However he goes on to acknowledge that many courts are often reluctant to intervene in such matters, tending to provide governments with a "wide margin of discretion".

Key Recommendations

The Special Rapporteur:

- Urges the integration of the 'Right to Health' in all health-related policies instituted by national governments. To this end Mr. Hunt suggests that the 'Right to Health' be "**consistently and coherently applied** across all relevant national and international policy-making processes";[16]
- Stresses the need to **develop a new system of indicators** to measure the realisation of health goals. He also indicates the need to clarify the scope of the 'Right to Health' for all stakeholders involved in health issues. He lists several dimensions of the 'Right to Health' as examples: access to emergency medical treatment and access to uncontaminated food;
- Underlines the need to develop a **system of human rights education** for medical professionals, so as to institutionalise the 'Right to Health' in their practices;
- Urges the Secretariat of the Council to **develop**, in consultation with members, non-members and other stakeholders, **a strategy setting out the mandate**, role and priority

[13] One particular case study, K.L v Peru, concerns a 17 year old Peruvian who was denied a therapeutic abortion, despite her foetus being diagnosed with a foetal abnormality which risked her own health. Under Peru's Criminal Code such an operation is legal when necessary to protect the life or health of the mother. When this case was taken to the Human Rights Committee, they found that the government was in breach of the ICCPR.

[14] Paragraph 69 of the report.

[15] The Special Rapporteur was particularly vehement in his criticism of the health spending of the government of the United States of America (USA).

[16] 13 February 2003 E/CN.4/2003/58, paragraph 8.

activities of the WHO. He suggests that this strategy then be submitted to and approved by, the WHO. This could act as an institutional framework for the body's national capacity-building operations;
- Calls on all States to allocate sufficient budgetary resources to health-related issues;
- Stresses the need for enhanced judicial accountability at a domestic level, in order to enhance health standards.

Mission to Sweden[17]

Scope

The Special Rapporteur's mission to Sweden took place from 10 to 18 January 2006. The key objectives of the mission were to assess the Government of Sweden's commitments and efforts in implementing the right to the highest attainable standard of health at the national and international levels. During the visit, the Special Rapporteur held meetings with all stakeholders in Sweden, namely government representatives, civil society organisations (non-governmental organisations and national medical associations), and health professionals in Stockholm, Jokkmokk, and Malmö.

Summary and Key Conclusions

- There are some worrying **health trends**, namely mental health problems, obesity, cases of chlamydia, sexual infections (gonorrhoea and syphilis), particularly among youth, and cases of HIV;
- NGOs within the Sweden cannot make **collective complaints** under the *Second Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* (1995). The Government only recognises the right of national and international employers and trade unions, and other international NGOs;
- The Special Rapporteur expresses his appreciation of the Government's intention of **ratifying the ILO *Indigenous and Tribal Peoples Convention* 1989** (No. 169);
- With regard to **domestic legal frameworks**, the Special Rapporteur regrets that Chapter II of the Instrument of Government *(Regeringsformen)*[18], which forms part of Sweden's Constitution, does not enshrine the right to health. However, he notes that there are many other laws that have relevance to the realisation of the right to health at domestic level, such as the *Health and Medical Services Act* and the *Prohibition of Discrimination Act*. Regrettably, the Special Rapporteur notes that there is inadequate coordination between authorities responsible for providing health care and health services;[19]
- The Government established the *Public Health Objectives Bill* as its domestic **public health policy.** The Bill set out 11 objectives for good public health, which considered as the key determinants of the right to the highest attainable standard of health;
- The Special Rapporteur decisively notes that there is **a weak understanding of the right to the highest attainable standard of health at the domestic level**. The existence of the right to health appears to be unknown in some quarters and the explicit reference to the right to health remains absent from Sweden's domestic health policies. He stresses that a failure to integrate, explicitly and consistently, the right to health into Swedish health policymaking, represents inconsistency with Sweden's international obligations;

[17] The full-text of the report is available on the website of the Office of the High Commissioner for Human Rights (OHCHR): http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A.HRC.4.28.Add.2.pdf.
[18] Chapter II is entitled "Fundamental Rights and Freedoms".
[19] Under the Health and Medical Services Act, the county councils and municipalities have the responsibility in providing health care and related support services.

- In March 2006, a new **national human rights action plan** was presented by the Government. The report notes that the plan represents a very considerable improvement because it includes a section on the right to the highest attainable standard of health;
- Despite having a number of ombudsmen undertaking very important work on various aspects of human rights, to the present time, Sweden does not have a **national human rights institution;**
- The Special Rapporteur expresses his concern about the problems faced by a range of **marginalised communities** in accessing health-care services on account of discrimination, including undocumented foreign nationals and the Sami. To deal with these problems, the Government appointed several institutions[20] to undertake studies on the impact of discrimination on health;
- The Special Rapporteur was informed that there is a range of problems regarding **access to, and coordination within, mental health care** and related support services. Reportedly, refugees, and asylum-seekers have difficulty in accessing mental health care. There is a high incidence of psychosocial disabilities among gay, lesbian, bisexual, transgender persons, and homeless persons.[21] These abilities are considered to be the leading cause of ill-health among women in Sweden. A National Coordinator for Psychiatry was appointed by the Government to improve the quality of care for people with psychosocial disabilities;
- The report mentions that the indigenous status of **the Sami[22]** has been recognised in Sweden since 1977. Despite the special status given to the Sami, the Special Rapporteur was startled to find that Sweden does not have a Sami health research centre, operational units focusing on the promotion of Sami health, a national policy for the Sami, or an occupational health policy for the distinctive health hazards of reindeer herders in Sweden. This fact is in accordance with the information received that there is "a shortage of research and knowledge focusing on the health of the Swedish Sami";
- The Special Rapporteur found there is **a harm-reduction programme for intravenous drug users** in Malmö. This programme is proven to be an effective measure in terms of public health objectives. However, the Special Rapporteur was surprised to find that there is only a very small number of similar programmes in Sweden;
- The Special Rapporteur stresses with concern that **health professionals** in Sweden have a lack of understanding of various aspects of the right to health. They sometimes act contrary to their patients' human rights. The Special Rapporteur found that the Government of Sweden does not include human rights education in the curricula for health professional in Sweden. However, in 2006, the Government amended the *Higher Education Ordinance* (1993), requiring students enrolled in professional courses to have knowledge of human rights;
- **Undocumented foreign national and asylum-seekers** represent the most vulnerable group in Swedish society. In this respect, the Special Rapporteur emphasises that Swedish law and practice with regard to asylum-seekers and undocumented foreign nationals in accessing health care is not consistent with international human rights law;
- The report mentions that **asylum-seeker children** appear to have severe withdrawal behaviour. To address this problem, the Government appointed a National Coordinator for children with severe withdrawal behaviour in the asylum process for undertaking an overview and analysing the incidence of the problem;
- The Special Rapporteur welcoms the inclusion of **health considerations in the revised *Alien Act***;[23]
- In *Human Rights in Swedish Foreign Policy*, the Government pledged to integrate human rights into all areas of **foreign policy**.[24] As the member of the World Health Organization (WHO), the

[20] The Ombudsmen on disability, ethnic discrimination and sexual orientation, and the Swedish National Institute of Public Health.
[21] Such disabilities mainly caused by discrimination and stigmatisation.
[22] Indigenous people of northern Scandinavia.
[23] "Particularly distressing circumstances".
[24] Shared Responsibility: Sweden's Policy for Global Development (2002), International Policy on Sexual and Reproductive Health and Rights (2006).

Government also provided support for the WHO on some important health issues, in particular sexual and reproductive health and rights;
- In relation to **health impact assessments**, the Special Rapporteur noted that the *Guide to Health Impact Assessment*, which was published by the Swedish National Institute of Public Health, does not integrate the right to health into its approach.

Key Recommendations

The Government of Sweden should:

- Recognise the competence of NGOs within Sweden to make collective complaints;
- Ratify the ILO *Indigenous and Tribal Peoples Convention* (1989) as soon as possible and consider ratifying the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*;
- Incorporate international and regional treaties on the protection of the right to health into domestic law;
- Improve the coordination between central, county and municipal authorities in implementing the *Health and Medical Services Act*;
- Take measures to integrate the right to health and other human rights into all domestic health-related policymaking process;
- Focus more on human rights training on the right to health in its second national human rights action plan;
- Establish a Swedish national human rights institution;
- Take measures to combat inequalities in health status and access to care for marginalised groups;
- Ensure the full realisation of the rights of persons with psychosocial disabilities and take measures to address the causes of psychosocial disabilities among vulnerable and marginalised groups;
- Ensure that mental health care, including psychiatric care and other therapies, is made more accessible for marginalised groups;
- Support the establishment of a Sami health research centre and consider establishing a body within the Ministry of Health with national responsibility for oversight of Sami health;
- Develop an action plan on health care in Sami language and provide training in Sami culture for health professionals;
- Ensure a comprehensive harm-reduction policy throughout Sweden;
- Introduce in practice human rights education into health professional curricula and ensure that health professionals are offered adequate opportunities to undertake human rights training;
- Consider offering all asylum-seekers and undocumented persons the same health care as Swedish residents;
- Consider the asylum-seeker children health issue as a health and human rights issue, not a political issue and support more research on the causes of severe withdrawal behaviour and appropriate medical treatment;
- Ensure that the exercise of the right of the child to the highest attainable standard of health is done without any discrimination;
- Give the Ombudsman on children a formal role in closely monitoring asylum-seeker children health issue;
- Broaden and deepen its support to other vital areas of the WHO's work;
- Play a leading role in exploring the contours, content, and legal nature of human rights responsibility in international assistance and cooperation;
- Examine and adopt a methodology for a human rights-based approach to health indicators;
- Provide disaggregated health data on various grounds, including sex and age, race and ethnicity;

- Support the work on health impact assessments and ensure that these assessments take due account of the right to the highest attainable standard of health.

Other relevant actors:

- The Migration Court should consider, before expelling foreign nationals with life-threatening conditions, the accessibility of life-saving treatment in their home country;
- The Swedish National Institute of Public Health should integrate the right to health into its assessments.