



# UNAIDS Global Reference Group on HIV/AIDS and Human Rights

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## Issue Paper

*Status: final*

### **The Work of the Special Rapporteur on the Right to Health: Potential Linkages with the Reference Group**

#### **The Mandate**

In 2002, the Commission on Human Rights decided to appoint, for a period of three years, a Special Rapporteur whose mandate will focus on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Special Rapporteur is requested to:

- (a) gather, request, receive and exchange right to health information from all relevant sources;
- (b) 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 (WHO) and the Joint United Nations Programme on HIV/AIDS, as well as non-governmental organizations (NGOs) and international financial institutions;
- (c) report on the status, throughout the world, of the right to health, including laws, policies, good practices and obstacles; and
- (d) make recommendations on appropriate measures that promote and protect the right to health.

The Special Rapporteur is further asked to apply a gender perspective and to pay special attention to the needs of children in the realization of the right to health, to take into account the relevant provisions, inter alia, of the Durban Declaration and Programme of Action, and to bear in mind in particular General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) and General Recommendation No. 24 of the Committee on the Elimination of Discrimination against Women.

#### **My Preliminary Report**

Appointed Special Rapporteur in September 2002, I consulted extensively, including with UNAIDS and WHO, before submitting my preliminary report in early 2003 for consideration by CHR in April 2003.

In my preliminary report, I set out my three primary objectives:

- (a) to promote - and encourage others to promote - the right to health as a fundamental human right;
- (b) to clarify the contours and content of the right to health; and
- (c) to identify good practices for the operationalization of the right to health at the community, national and international levels.

The preliminary report also explains that I propose to explore these three objectives by way of two interrelated themes:

- (a) poverty and the right to health and poverty (in this context the report briefly considers the health-related Millennium Declaration Goals); and
- (b) discrimination, stigma and the right to health.

I prioritized these twin themes for a number of reasons -- one being that both bear closely upon HIV/AIDS.

The report also outlines six illustrative issues that, resources permitting, I would like to examine through the prism of the right to health: (a) poverty reduction strategies; (b) "neglected diseases"; (c) impact assessments; (d) relevant World Trade Organization Agreements; (e) mental health; (f) the role of health professionals. Plainly, some of these issues also bear closely upon HIV/AIDS.

The report specifically addresses HIV/AIDS at a number of places, most notably paragraph 68.

### **Linkages**

Clearly, the linkages between the Special Rapporteur's mandate (and my interpretation of it) and the work of the Reference Group are legion. Here I will mention just two of them: indicators and accountability.

As signaled in my preliminary report, I find myself compelled to try to formulate some sensible right to health indicators. Without indicators, how else can states measure the progressive realization of their obligations in relation to the right to health? This is going to be a long, difficult and contested project -- but one that appears to resonate with the concerns of the Reference Group.

Accountability is an elemental human rights concept. At root, human rights are about holding duty-bearers to account for their acts and omissions in relation to globally legitimized norms or standards. It seems to me that one of the functions of Special Rapporteurs -- a function that does not always sit easily with their other responsibilities -- is to hold duty-bearers to account, in a constructive, measured and strategic manner. As the mandate matures, I expect that accountability will become a more prominent feature of the Special Rapporteur's work. My point here, however, is that (as I understand it) the issue of accountability is also a significant preoccupation of the Reference Group, consistent with the GA Declaration of Commitment on HIV/AIDS.

### **Identifying Distinctive Roles**

I am very conscious that there are many specialist actors working in the field of HIV/AIDS. Many have immeasurably greater resources (financial, personnel, networks, information, data) than me. Many focus specifically on HIV/AIDS, whereas my brief extends across the full spectrum of the right to health. In these circumstances, what is the distinctive contribution of the Special Rapporteur? Given its rich experience, I would very much welcome the comments and advice of the Global Reference Group on this question.

Presently, I propose the following:

- (a) in each of my general reports to both the CHR and GA, I will devote a page (or so) to a pressing, topical HIV/AIDS issue;

(b) in each country mission, I will devote particular attention to HIV/AIDS, and this will be reflected in my subsequent country report to the CHR; to date, I have conducted one mission - not to a country but to the WTO, the report for which will enable me to address some issues bearing upon HIV/AIDS (the mission took place in July 2003 and the report will be submitted to the CHR of March/April 2004);

(c) in appropriate cases, I am prepared to write to governments about alleged egregious violations of human rights relating to HIV/AIDS-- indeed, I have already written one such letter jointly with another Special Rapporteur; I am prepared to take this step although (unlike a number of other Rapporteurs) it is not explicitly provided for in the relevant CHR resolution.

Finally, I look forward to cooperating with the Reference Group as it fulfils its important responsibilities.

*This Issue Paper was prepared by Paul Hunt, UN Special Rapporteur on the Right to Health to facilitate discussion at the Reference Group's August 2003 meeting.*

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