

***Roles and Responsibilities in Realizing Health and Human Rights in the
Prevention and Control of Non Communicable Diseases
May 30, 2013 – June 1, 2013***

**Background Paper: Attention to Non Communicable Diseases By the
United Nations Human Rights Treaty Bodies**

Overview

Key Messages:

- None of the human rights treaties mention NCDs explicitly, but “other diseases” as noted in the ICESCR can be understood to include NCDs.
- General Comments on the right to health and other rights draw attention to obligations to address NCDs and their risk factors.
- Treaty bodies are increasingly asking countries to report on NCD prevention and control activities, providing an avenue for accountability which remains to be further explored.
- Other human rights mechanisms lag behind the treaty bodies in according attention to NCDs.

In order to determine what useful linkages could be made between non communicable diseases (NCDs) and human rights, a brief assessment was made of relevant work within the formal human rights system. This system comprises a range of UN human rights mechanisms including the human rights treaty bodies, reports by the Special Rapporteur on the Right to Health and the Universal Periodic Review.

Cognizant that this work is still in its early stages and that its impact at country level is yet to be fully understood, the analysis was restricted to the treaty bodies as this is where the most relevant information was found to exist. The scope of the review was then further limited to the two treaties where, at this time, there appears to have been the most activity around NCDs: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). These treaties were reviewed, along with any relevant General Comments, reporting guidelines, and Concluding Observations issued by the treaty body, for content explicitly addressing NCDs or relevant risk factors. Restricted to the four NCDs that constitute the focus of this conference, this analysis addressed how NCDs have been mentioned generically and individually as well as how their main risk factors have been discussed.

NCDs are not explicitly mentioned in any human rights treaty. The right to health as it appears in the ICESCR refers to “[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases”, which has been understood to encompass NCDs. The first explicit mention of NCDs by any human rights mechanism came in 2000 in General Comment 14 on the right to the highest attainable standard of health issued by the Committee on Economic, Social and Cultural Rights. More recently other bodies have

further extrapolated on States' obligations in relation to NCDs, with particular focus on prevention by addressing the main NCD risk factors. General Comment 15 on the child's right to health in the CRC (2013) includes the most extensive reference to NCDs and their risk factors, encompassing attention to obesity, physical activity, education on healthy lifestyles and regulation of the advertising and sale of tobacco, alcohol and "fast" foods.

Both the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child require States parties to report on some aspects of NCD prevention and control in their periodic reports, which is an important step towards accountability. If States parties fail to report on these issues, or report issues which raise concerns, the treaty body can highlight these shortcomings and make recommendations for State action for which the State can be held accountable in the subsequent reporting round.

In recent years, the Committees have paid increasing, if unsystematic, attention to harmful use of alcohol, tobacco use, nutrition, physical exercise and access to medications for NCDs.

Glossary of Terminology¹:

Treaty body: A committee of independent experts appointed to monitor the implementation by States parties of the core international human rights treaties.

General Comment: A treaty body's interpretation of the content of human rights provisions, including thematic issues.

Reporting Guidelines: Each treaty body produces written guidelines for States parties giving advice on the form and content of the reports which States are obliged to submit under the relevant treaty.

Concluding Observations: The observations and recommendations issued by a treaty body after consideration of a State party's report refer both to positive aspects of a State's implementation of the treaty and areas where further action is recommended. The treaty bodies are committed to ensuring effective follow-up to their concluding observations.

In the pages that follow, further details are provided with regard to how NCDs have been addressed by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. The section on each of these treaties includes: brief commentaries, relevant language from the treaty itself, relevant extracts from General Comments, relevant guidelines for reporting under the treaty, and relevant concluding observations on country reports from the treaty body.

¹ <http://www2.ohchr.org/english/bodies/treaty/glossary.htm>

ICESCR: The Right to the Highest Attainable Standard of Health (Article 12)

Overview

The ICESCR contains the most explicit and comprehensive article on the right to health. 160 countries have ratified the ICESCR. It adopts a broad conception of the right to health that includes freedoms (such as the right to control one's health and body) and entitlements (e.g. to equality of access to health care), and consists of two basic components: healthy living conditions and health care.

Relevant text

Article 12:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include the necessary for:
a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
b. The improvement of all aspects of environmental and industrial hygiene;
c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

General Comment No. 14, 22nd Session Committee on Economic, Social and Cultural Rights, August 2000

Overview

In 2000, General Comment 14 on the right to the highest attainable standard of health explicitly noted that responsibility for this right encompasses attention to NCDs highlighting, in particular, the increasing burden of cancer.

Relevant text

Paragraph 10: [Since its adoption in 1966, the world health situation has significantly changed] “... formerly unknown diseases such as HIV/AIDS and cancer, as well as the rapid growth of the world population, have created new obstacles for the realization of the right to health which need to be taken into account when interpreting article 12.”

Paragraph 11: “The Committee interprets the right to health, as defined in article 12.1, an inclusive right extending not only to timely and appropriate health care but also the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”

Paragraph 15: “The improvement of all aspects of environmental and industrial hygiene” (art. 12.2 (b)) comprises, *inter alia*, ... the prevention and reduction of the population's

exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health... Article 12.2 (b) also embraces adequate housing and safe and hygienic working conditions, an adequate supply of food and proper nutrition, and discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances.”

Paragraph 25: “... reaffirms the importance of an integrated approach, combining elements of preventive, curative, and rehabilitative health treatment. Such measures should be based on... attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.”

Paragraph 36: “[States parties’] obligations include ... information campaigns, in particular with respect to HIV/AIDS, sexual and reproductive health, traditional practices, domestic violence, the abuse of alcohol and the use of cigarettes, drugs and other harmful substances.”

Paragraph 37: “[States’] obligations include... the dissemination of appropriate information relating to healthy lifestyles and nutrition, harmful traditional practices, and the availability of services”.

Paragraph 51: “Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as... the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances...”

Guidelines for Country Reporting

Overview

The Committee on Economic, Social and Cultural Rights issues reporting guidelines for States to ensure that topics of relevance are addressed in countries’ periodic reports on their steps towards implementation of the Covenant.

Relevant text

Paragraphs 44 & 45: Under the right to adequate food, States are requested to: “Provide information on the measures taken to ensure the availability of affordable food in quantity and quality sufficient to satisfy the dietary needs of everyone, free from adverse substances, and culturally acceptable... [and to] indicate the measures taken to disseminate knowledge of the principles of nutrition, including of healthy diets.

Paragraph 56: Under the right to health, States are requested to “Provide information on the measures taken to ensure... that drugs and medical equipment are scientifically approved and have not expired or become ineffective”.

Paragraph 57: Also under the right to health, States are requested to “Provide information on the measures taken... to prevent the abuse of alcohol and tobacco, and the use of illicit

drugs and other harmful substances, in particular among children and adolescents, ensure adequate treatment and rehabilitation of drug users, and support their families... [and] to ensure affordable access to essential drugs, as defined by the WHO, including anti-retroviral medicines and medicines for chronic diseases”.

Committee on Economic, Social and Cultural Rights Concluding Observations

Overview

Every year, the Committee reviews reports from ten countries and, in response, raises issues of concern on which it asks countries to act and to report back on during the subsequent reporting round. The extent to which the Committee’s responses in relation to NCDs will result in concrete change at the country level is an area to be monitored, and will be made clear in the next reporting round. Relevant extracts from the Committee’s responses from 2010-2011 are provided below.

Relevant text

2011 Report²:

ARGENTINA: “The Committee is concerned about the high level of tobacco consumption in the State party, especially among women and youth... The Committee recommends that the State party ratify and implement the WHO Framework Convention on Tobacco Control and develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.”

CAMEROON: “The Committee notes with concern the high rate of smoking in the State party, despite measures taken to cut the consumption of tobacco... The Committee recommends that the State party design effective policies to combat tobacco consumption, strengthen its prohibition on tobacco product advertising, enact legislation imposing a strict ban on smoking in all closed public areas, and intensify public awareness-raising campaigns. It also recommends that the State party allocate part of its revenue from taxes on cigarettes to discourage smoking.”

ESTONIA: “The Committee is concerned about alcohol consumption which remains high despite measures taken, such as the increase in the excise tax on alcohol and the prohibition of sales during specific hours... The Committee recommends that the State party intensify its efforts aimed at combating alcohol abuse, including through awareness-raising campaigns.”

2010 Report³:

MAURITIUS: “The Committee is concerned about the lack of information on the effectiveness of the strategies developed to combat chronic diseases, especially diabetes, tobacco use, and obesity and overweight... The Committee recommends that the State party evaluate the effectiveness of its strategies to combat the above-mentioned health problems, and if necessary, undertake further measures to that end.”

² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/415/96/PDF/G1241596.pdf?OpenElement>

³ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/422/91/PDF/G1142291.pdf?OpenElement>

Convention on the Rights of the Child (CRC)

Overview

Article 24 of the CRC concerns the States parties' obligations for the child's "right to health". 193 countries have ratified the CRC. Although the right to health in the ICESCR is also applicable to children, this right in the CRC focuses specifically on children (up to the age of 18) and States' obligations with regard to child health.

Relevant text

"State parties shall... take appropriate measures:... To combat disease and malnutrition... through the provision of adequate nutritious food and clean drinking-water... [and] to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition."

General Comment No. 15, Committee on the Rights of the Child, March 2013

Overview

General Comment 15 on the right to health in the CRC addresses health comprehensively, including explicit attention to NCDs, but was only recently published so its impact is not yet known. Noting that NCDs usually manifest in adulthood but are shaped by behaviors that can take root in childhood, interventions to promote physical activity and education on healthy lifestyles and to regulate the advertising and sale of tobacco, alcohol and "fast" foods are recommended.

Relevant text

Paragraph 5: "Children's health is affected by a variety of factors, many of which have changed during the twenty years... This includes attention to new health problems and changing health priorities, such as: HIV/AIDS, pandemic influenza, non-communicable diseases..."

Paragraph 26: "Comprehensive primary healthcare programs should be delivered alongside proven community-based efforts including preventive care, treatment of specific diseases and nutritional interventions."

Paragraph 38: "The Committee is concerned by the increase in mental ill-health among adolescents, including the development and behavioral disorders; depression; eating disorders; anxiety; psychological trauma resulting from abuse, neglect, violence or exploitation; alcohol, tobacco and drug use."

Paragraph 44: "States are required to introduce into national law, implement and enforce internationally agreed standards concerning children's right to health, including the International Code on Marketing of Breast-milk Substitutes, as well as the WHO Framework Convention on Tobacco Control..."

Paragraph 45: “Adequate nutrition and growth monitoring in early childhood are particularly important. Where necessary, integrated management of severe acute malnutrition should be expanded through facility and community-based interventions, as well as treatment of moderate acute malnutrition, including therapeutic feeding interventions.”

Paragraph 47: “States should also address obesity in children as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children’s exposure to “fast” foods that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances especially focused on children should be regulated and their availability in schools and other services controlled.”

Paragraph 59: “Children require information and education on all aspects of health to enable them to make informed choices in relation to lifestyle and access to health services. Information and life skills education should address a broad range of health issues including, inter alia, healthy eating and promotion of physical activity, sports, and recreation... and the dangers of alcohol, tobacco and psychoactive substance use.”

Paragraph 62: “Preventive health should address communicable and non-communicable diseases, and incorporate a combination of biomedical, behavioral and structural interventions. Preventing non-communicable diseases should start early in life through the promotion and support of healthy and non-violent lifestyles for pregnant women, their spouses/partners, and young children.”

Paragraph 65: “States should protect children from solvents, alcohol, tobacco and illicit substances, increase the collection of relevant evidence, and take appropriate measures to reduce the use of such substances among children. Regulation of advertising and sale of substances harmful to children’s health and of promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children are recommended.”

Paragraph 66: “The Committee encourages States parties that have not yet done so to ratify the UN International Drug Control Conventions, and the WHO Framework Convention on Tobacco Control.”

Paragraph 81: “Among other responsibilities and in all contexts, private companies should... comply with the International Code of Marketing of Breast-milk Substitutes; limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; and refrain from the advertisement, marketing and sale to children of tobacco, alcohol and other toxic substances or the use of child images.”

General Comment No. 16: On state obligations regarding the impact of the business sector on children's rights, February 2013

Overview

The CRC's General Comment 16 on state obligations regarding the impact of the business sector on children's rights highlights the possible long-term negative impact on health of marketing to children of potentially harmful products. As with General Comment 15, it was only published this year so its impact is yet to be determined.

Relevant text

Paragraph 19: "The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health."

Paragraph 57: "States are also required to implement and enforce internationally agreed standards concerning children's rights, health and business including the World Health Organization Framework Convention on Tobacco Control, International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions."

Guidelines for Country Reporting

Overview

The Committee on the Rights of the Child issues reporting guidelines for States to ensure that topics of relevance are addressed in countries' periodic reports on their implementation of the Convention. The current guidelines were adopted in 2010; it is likely that these will be revised in coming years to reflect the content of recent General Comments, including with respect to NCDs.

Relevant text

"Under disability, basic health and welfare, States should provide relevant and updated information in respect of... Efforts to address the most prevalent health challenges and promote the physical and mental health and well-being of children, and to prevent and deal with communicable and non-communicable diseases... and measures to protect children from substance abuse..."

Committee on the Rights of the Child Concluding Observations

Overview

Every year, the Committee reviews country reports and, in response, raises issues of concern on which it asks countries to act in the following years and to report back during the subsequent reporting round. Five recent reports were analysed for mention of NCDs or relevant risk factors and provide illustrative examples of the inconsistencies in the level of current attention to NCDs. The extent to which the Committee's responses will result in concrete change at the country level is an area to be monitored, and will be made clear in the next reporting round.

Relevant text⁴:

ARGENTINA (2010): “The Committee notes with concern disparities in chronic malnutrition between the national average (8 per cent) and the average of north-western Argentina (15.5 per cent). While noting the adoption of the Programme for the Integral Care of Adolescents, the objectives of which, among others, are to reduce... the abuse of alcohol and other drugs, the Committee remains concerned at the high incidence of substance use and abuse by adolescents.”

BELGIUM (2010): “The Committee is concerned about drug and substance use among adolescents in the State party. It is also concerned at the rise in obesity among children, in particular adolescents, in the State party. The Committee recommends that the State party continue and strengthen efforts to combat drug and substance among adolescents and manage overweight and obesity among children... The Committee recommends that the State party take all necessary measures to prevent drug and alcohol abuse.”

GRENADA (2010): There is no mention of any NCDs or their risk factors.

JAPAN (2010): There is no mention of any NCDs or their risk factors.

NIGERIA (2010): “The Committee... notes with concern information that the population in the Niger Delta suffers from respiratory problems, such as asthma and bronchitis, as a result of toxins released from gas flaring. The Committee is furthermore concerned about the negative effects on children of global climate change, including in the context of the desertification in the northern states... and its related effects on the health of children, such as malnutrition.”

“The Committee urges the State party... to consider nutrition as a national priority and to provide appropriate resources for the implementation of nutrition programmes and to ensure their full integration into government health structures.”

Conclusion

The increase in attention to NCDs by the human rights treaty bodies is encouraging. Even as the impact this will have on the ground is yet to be determined, as has been demonstrated in other key areas relevant to health and well-being, there is great potential to use the range of mechanisms offered through the formal human rights system to move the NCD agenda forward. These mechanisms can usefully set directions and boundaries applicable to NCDs from a human rights perspective, ensuring attention to key populations within a framework of legal accountability.

⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/434/76/PDF/G1243476.pdf?OpenElement>