

UN COMMISSION ON HUMAN RIGHTS

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ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF
PHYSICAL AND MENTAL HEALTH**

TUESDAY 30th MARCH 2004

Mr Chairman,
Distinguished Delegates,
Ladies and Gentlemen,

In April last year, I presented my preliminary report to the Commission in which I outline my main objectives:

First, to promote the human right to health -- as enshrined in numerous legally binding international treaties, the Constitution of the WHO, resolutions of the Commission on Human Rights, and over sixty national constitutions.

Second, to clarify the legal scope of the right to health.

Third, to identify good practices for the operationalisation of the right to health at the national and international levels.

I aim to address these three objectives by focusing on the twin issues of poverty and discrimination.

I endorse a court-based approach to the right to health. The courts have an important role to play in the vindication of the right to health, as shown by court cases in several jurisdictions over recent years.

And I also endorse a policy-based approach to the right to health – that is, the integration of the right to health into all relevant national and international policy-making processes.

Policies that are based on human rights norms, including the right to health, are more likely to be effective, equitable, inclusive and meaningful to those living in poverty.

The policy-based approach represents a great challenge: it demands the development of new techniques and new skills.

Mr. Chairman, in November last year I presented my interim report to the General Assembly (A/58/427). Today, I would like to introduce, very briefly, my annual report to this Commission (E/CN.4/2004/49).

This report has three main themes: neglected diseases, poverty, and sexual and reproductive health. Because of time constraints, here I will confine my remarks to poverty and sexual and reproductive health.

Many developing and developed states have poverty reduction strategies. But very few of these strategies give explicit attention to the right to health. This gives rise to an important question: how would the right to health enhance a poverty reduction strategy?

I am not yet in a position to answer fully this difficult question. But, in my annual report, I begin to consider this question by looking at the Poverty Reduction Strategy of Niger.

As you may see Mr Chairman, I come to the conclusion that a right to health approach does not imply a radically new approach to poverty reduction. Rather, a right to health approach reinforces and enhances elements that already exist in many anti-poverty strategies. For example, the right to health approach reinforces existing anti-discrimination measures. It enhances existing monitoring and accountability mechanisms. It highlights the crucial importance of both national and international initiatives -- and the need for international initiatives underlines the importance of the human rights concept of international assistance and cooperation.

May I take this opportunity to thank the Government of Niger for agreeing to my use of its Poverty Reduction Strategy as a vehicle for exploring some of these issues in my annual report.

Mr Chairman, I turn briefly to the rights to sexual and reproductive health.

This year marks the tenth anniversary of the International Conference on Population and Development held in Cairo in 1994.

Cairo was a landmark event because participating states recognized that sexual and reproductive health is fundamental to individuals, couples and families -- as well as to the sustainable development of communities and nations.

Surprisingly, the human rights community often neglects this extremely important world conference. Yet human rights are a major feature of the Cairo Programme of Action. The Programme of Action sets out fifteen Principles that guided conference participants -- and several of these Principles refer explicitly to human rights, including the right to health, the right to education, gender equality and the right to development. The Programme of Action has an entire chapter entitled 'Reproductive Rights and Reproductive Health' (Chapter VII).

In short, the right to health and other human rights are not incidental to the continuing Cairo process -- they are central to that process.

Mr Chairman, time permits me to make only three further remarks on these issues.

First, the rights to sexual and reproductive health have an indispensable role to play in the struggle against poverty, HIV/AIDS, gender equality and intolerance. They have a major role to play in the realization of the Millennium Development Goals.

Second, the Cairo process and the international human rights system represent two complementary sets of norms and processes that can assist, inform and reinforce each other.

Third, I understand that the issues of sexual and reproductive health are among the most sensitive and controversial in international human rights law. But they are also among the most important -- that is why they feature so prominently, if implicitly, in the Millennium Development Goals. Last year, this Commission passed a resolution confirming that sexual and reproductive health are "integral elements" of the right to health. In all these circumstances, I decided that it was incumbent on me, ten year after Cairo, to address these issues, despite the manifest difficulties and sensitivities.

Mr. Chairman, during 2003 I undertook two missions.

In December, I visited Mozambique. I will be presenting my report on this mission to the next session of the Commission. Today, I only want to thank, very warmly, the Government of Mozambique for their invitation and for the open and constructive spirit in which my colleagues and I were received throughout the mission.

Earlier in 2003, I visited the World Trade Organisation. My mission report is before this session of the Commission (E/CN.4/2004/49/Add.1).

Mr Chairman, in recent years, the High Commissioner has published some insightful reports on trade and human rights. These reports have clarified a number of the issues and sharpened the debate.

Nonetheless, in my experience, there remains much misunderstanding between the trade and human rights communities.

The main goal of my mission to the WTO was to enhance the dialogue between trade and human rights specialists, by focusing on aspects of the relationship between trade and the right to health.

Trade impacts on the right to health in numerous ways. It has the potential to increase resources and so to contribute to the progressive realization of the right to health. However, the effect of trade on the right to health depends upon the trade rules chosen. The great challenge for all of us is how to implement consistently human rights and trade treaties. In a specific country context, which trade rules will enhance the right to health of its citizens, including those living in poverty? We can only address this challenge – and answer this question – through rigorous and well-informed dialogue.

Mr. Chairman, because time is extremely short, I refer you to my report, and in particular its recommendations, and make the following points.

First, the report focuses on the position of WTO member states, rather than the WTO and its secretariat. (see para 7)

Second, trade rules and policies can have different implications for men and women. The consideration of gender in trade policy requires urgent attention. (see paras 57-58 and 87.)

Third, what is urgently needed is a coherent approach to the application of a State's various national and international obligations, including those relating to trade, development, economics -- and human rights. (see paras 9-10 and 79)

Fourth, the report identifies practical measures, such as the use of right to health impact assessments (paras 53-56, 72) and also the role of technical assistance (paras 59-63, 74, 84, 88) – technical assistance being a core element of the Doha Development Agenda.

Fifth, the UN Secretary-General often reminds us how important it is that *all* people enjoy the benefits of globalisation.

In my view, Mr Chairman, this signals one of the historic missions of human rights.

The right to health (and other human rights) can help us ensure that trade rules and policies are fair to all. When negotiating and implementing trade agreements, we can use the right to health to ensure that trade regimes contribute to, at least, those minimum standards of human existence that are enshrined in international human rights. In short, consideration of the right to health can help us establish an inclusive, balanced, and equitable trading system benefiting all, including those living in poverty.

Mr. Chairman, before closing may I thank the Director-General of WTO for enabling my mission to take place. I would also like to thank the WTO secretariat, and WTO member State representatives, who generously gave their time. Also, the secretariats of WIPO and WHO -- and many others too numerous to mention. Without exception, I found the mission's multiple meetings constructive, informative and helpful.

In conclusion Mr. Chairman, I thank the secretariat of the OHCHR for their highly professional support over the last twelve months, without which I would not have been able to undertake my duties.
