INTRODUCTION TO PART 2

MOVING TOWARDS ACTION: FOCUSING ON OBLIGATIONS ARISING FROM THE RIGHT TO HEALTH

The right to health is a universal entitlement, based on the dignity and integrity of all individuals. In adopting a human rights approach to health it is important that health professional associations and other concerned NGOs should understand that individuals and groups have well-defined non-negotiable health-related entitlements, and that governments are legally responsible for ensuring that those entitlements can be enjoyed effectively.

In order to monitor the right to health, NGOs must know exactly what they should be monitoring. Until recently there was considerable lack of clarity within the international human rights community as to the specific obligations that the right to health places on governments. As has already been seen in Part 1 of the Resource Manual, the right to health has been formulated in different ways by the various international human rights treaties (notably Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)). Moreover, the wording of the treaties usually does not spell out in enough detail the obligations it places on governments.

This situation has now changed significantly with the adoption by the Committee on Economic, Social and Cultural Rights (CESCR) of its General Comment 14 on the right to the highest attainable standard of health. This provides the most detailed interpretation to date of state obligations and internationally accepted standards and principles arising from the right to health. (See chapter 1.) It is an authoritative document that sets out clearly for states that have ratified the ICESCR their obligations in the context of the right to health. Furthermore it serves as a point of reference that NGOs can use for internationally accepted standards, principles and norms.

At the same time it is important to understand that the right to health is a universal entitlement, to be enjoyed by people everywhere, whether or not their country has ratified any of the relevant human rights treaties. NGOs in all countries should invoke and adopt the standards, principles and norms set out in CESCR General Comment 14 as a means to assess critically the policies and practices of their country that adversely affect health. This is especially important for NGOs working in developing countries, where difficult choices and trade-offs are often made by governments when facing resource constraints, including conditions imposed by international financial institutions (IFIs). CESCR General Comment 14 provides guidance on which health-related priorities require immediate action and which can be included in a co-ordinated and comprehensive longer-term plan for health development.1

Because of their familiarity with the local health situation, national medical and other health professional associations are ideally placed to monitor and promote the
right to health. As with other NGOs, what they need in order to do this effectively is a clear understanding of their government’s obligations concerning this fundamental right. Closely linked to the issue of state responsibility is knowledge of the ways in which the right to health can be violated by governments. An effective monitoring strategy should also take account of situations involving potential violations, and for this reason it is also important to understand why such violations may occur.

OUTLINE OF PART 2

Part 2 describes key aspects of CESCR General Comment 14 that have important implications for monitoring the right to health. It also draws on other sources that add meaning and content to specific aspects of the international right to health. These include health-related provisions of the Children’s Convention (CRC) as well as relevant General Comments and Recommendations adopted by the monitoring committees of the Women’s Convention and the CRC, which add an extra dimension of detail concerning the health rights of children, adolescents and women. Part 2 describes what government obligations arising from the right to health consist of and what constitutes their violation. It also reviews the role that NGOs have to play in monitoring.

Chapter 3, which forms the bulk of Part 2, explains the nature and logical structure of state obligations and introduces certain key conceptual distinctions between their different aspects, particularly the distinction between immediate and progressive obligations and that between the obligations to respect, protect and fulfill the right to health. It describes in more detail what government obligations consist of, and what constitutes their violation. It also provides an overview of the four standards, or criteria, for the evaluation and implementation of those obligations — namely accessibility, availability, acceptability, and quality.

Chapters 4 and 5 provide details of universal aspects of the right to health that are particularly important for monitoring, and these will therefore be revisited in Part 3 of the Resource Manual. Chapter 4 identifies minimum core obligations and explains their importance for monitoring the right to health in developing countries. Chapter 5 discusses the obligations owed to the poor and otherwise vulnerable and disadvantaged groups, which is a critical factor in monitoring the right to health in both low-income and high-income countries. Underpinning the responsibility and accountability of public health systems to such groups is the need to pay special attention to the principle of non-discrimination.

Chapter 7 provides a brief overview of how the standards and norms set by CESCR General Comment 14 affect the responsibilities of non-governmental enterprises and agencies, including multinational corporations and IFIs. This chapter is included in the manual in order to call attention to the impact that globalization is having on the right to health.