

Joint Contribution of Action Canada for Population and Development (ACPD), Egyptian Initiative for Personal Rights (EIPR) and Federation for Women and Family Planning (Poland) to OHCHR Study on Human Rights and Preventable Maternal Mortality and Morbidity

With the adoption of its landmark resolution 11/8, entitled “Preventable Maternal Mortality and Morbidity, and Human Rights”, the Human Rights Council has affirmed that the issue of maternal mortality and morbidity is a part of the global human rights agenda and has also placed the issue squarely within the Council’s own agenda. The resolution represents the first international intergovernmental recognition that maternal mortality and morbidity is a human rights issue. We have congratulated all co-sponsors for their support and also congratulated all Council Members for joining consensus on this important text, and wish to reiterate these congratulations.

The study requested by the Council is doubtless an important part of what will underpin the work of the Council in this area. We hope that this study will constitute only the first of many steps in which the Council will receive information as to the human rights dimensions of maternal mortality and morbidity and seek to contribute constructively to its eradication. In short, we would ask: how can the Council best and most effectively the commitment it has made through the adoption of resolution 11/8 to address preventable maternal mortality and morbidity and its causes from the perspective of human rights as part of its work? Part of what the Council has requested in the study is an assessment of how the human rights dimensions of preventable maternal mortality and morbidity can be better addressed within the UN system. As the primary UN political body responsible for the promotion and protection of all human rights as well as for the mainstreaming of human rights throughout the UN system, the Human Rights Council clearly has a central and important role to play in eradicating preventable maternal mortality and morbidity by addressing the issue through its human rights mandate and focus.

The present contribution to this study focuses on what the Council must do to effectively discharge these two responsibilities (i.e. promoting and protecting all human rights and the mainstreaming of human rights throughout the UN system) with respect to its work on preventable maternal mortality and morbidity.

Broadly speaking, there are at least 2 critical roles that the Human Rights Council through its various working methods and mechanisms must play in order to ensure that it is optimally and effectively fulfilling its mandate with respect to the issue of human rights and maternal mortality and morbidity. These are as follows:

1. The Council must itself develop a better understanding and must encourage greater understanding on the part of governments and the international community as to how maternal mortality and morbidity is a human rights issue.
2. The Council must derive some kind of mechanism, process or procedure by which the Council could systematically, regularly, appropriately and effectively address maternal mortality and morbidity as a human rights issue. This would involve, inter alia, promoting with States that they address maternal mortality and morbidity as a human rights issue, that they integrate human rights-centred

approaches into eradication efforts, and that they implement commitments and obligations to address maternal mortality and morbidity including through implementing recommendations of UN treaty-monitoring bodies on the issue.

Increasing Governments' and the Council's Understanding of the Human Rights Dimensions of Preventable Maternal Mortality and Morbidity

For the international human rights community itself, the examination of the human rights dimensions of maternal mortality and morbidity is in certain ways a fairly new topic. With respect to how preventable maternal mortality and morbidity and its causes violate human rights law, UN human-rights treaty-monitoring bodies, including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have, for many years now, addressed this in their work. This has increased the international community's understanding of how maternal deaths violate human rights and what States are obliged to do to prevent these deaths. As well, the work of the Special Rapporteur on the right to health has helped to increase this understanding. However, the aspect that is still relatively newer is with respect to what it means to integrate human rights into maternal mortality programmes and policies or what must be done when adopting a human rights-centred approach to eradicating maternal mortality and morbidity.

With respect to the Council and governments there is similarly a great gap in knowledge with respect to what governments, at national and local levels, must do in order to integrate human rights into maternal mortality and morbidity eradication and a smaller gap with respect to how maternal mortality and morbidity has been dealt with within the international human rights protection system.

Some key questions that the Council and its Member and Observer States must consider in rectifying this knowledge gap and in looking at their role in addressing preventable maternal mortality and morbidity from a human rights perspective are:

- What international human rights and obligations are implicated in preventable maternal mortality and morbidity?
- What does it mean to adopt a human rights-centred approach to the eradication of maternal mortality and morbidity?
- What does integrating human rights into maternal mortality and morbidity eradication programs and policies involve?
- What initiatives are currently being undertaken at the international level by different groups to eradicate/reduce maternal mortality and maternal morbidity? What gaps exist that need to be filled?
- How can the Human Rights Council within its mandate fill the existing gaps within international efforts to combat maternal mortality and morbidity?
- What can the Human Rights Council do to promote the integration of human rights into maternal mortality and maternal morbidity eradication at the domestic and local levels?

The answers to these questions are a first step along the path to having the Council play a crucial role in eradicating maternal mortality and morbidity. Without a doubt, the present

study being conducted by the OHCHR will help provide some of the answers to these questions. However, it is simply not possible for this study to contain all the information that the Council will need to play an appropriate, effective and regular role to systematically address maternal mortality and morbidity.

The information needed by the Council and by Member and Observer States not only includes recognizing the human rights obligations and commitments associated with eliminating maternal mortality and morbidity but moreover, it involves developing a greater awareness and understanding of how to integrate human rights into maternal mortality and morbidity eradication efforts. This includes defining actual concrete steps, which governments, whether donors or developing countries, could or must take in order to effectively integrate human rights into maternal mortality programmes and policies.

It is critical that some of this information-gathering focus on what sort of accountability mechanisms are needed at the local and national levels. It is naturally well understood that human rights, of course, entail accountability at all levels. Given that the Council has recognized maternal mortality and morbidity as a human rights issue, it must look at monitoring and accountability for this issue and seek information on this subject and to take action on this information. The reality of course is that the target in MDG5 to reduce maternal deaths by three quarters by 2015 is the MDG target that is the furthest off track. Globally, we are not that much further along than where we were 2 decades ago in eliminating maternal mortality, which speaks to a profound need for greater monitoring and accountability systems at all levels.

Unfortunately, the term accountability has come to be understood synonymously with either “naming and shaming” or judicial processes. These are of course merely two types of accountability, which have their place and can be useful. However, there are a great many more types of accountability and various systems that could be implemented to ensure a consistent and basic level of improvement. In the words of the Special Rapporteur on the right to health:

Accountability is also sometimes narrowly understood to mean blame and punishment, whereas it is more accurately regarded as a process to determine what is working (so it can be repeated) and what is not (so it can be adjusted).¹

Part of what the Council must do in its work on maternal mortality and morbidity is to “de-stigmatize” the term “accountability” for governments. To do this, it must collect information on various possible forms of accountability (particularly those that embody human rights principles such as transparency, non-discrimination, and participation) and ensure that states know that there are a whole range of forms of accountability, what they each entail, the strengths and weaknesses of each, and how to ensure that local and national accountability systems are human rights-consistent.

Unless supported by some form of accountability, human rights run the risk of becoming mere window dressing. There are many forms of accountability. While some are general

¹ 2007 Special Rapporteur on the right to health’s report to the Human Rights Council, UN Doc. A/HRC/4/28 at para. 46.

(e.g. fair elections, a free press), others are specific to human rights (e.g. inquiries by national human rights institutions). While some are judicial (e.g. bills of rights enforceable in the courts), others are administrative (e.g. human right impact assessments). While some are national (e.g. a constitutional court), others are international (e.g. a human rights treaty body). Within each State there will have to be a range of accountability mechanisms. Just as the forms of accountability are likely to vary from one State to another, so will the appropriate mix. All mechanisms of accountability should be accessible, transparent and effective.²

The work of many experts has shown that maternal mortality and morbidity should be addressed with an eye to an overall health systems approach. Similarly, it is perhaps not surprising that some of the major forms of accountability for maternal mortality and morbidity are the same as accountability mechanisms for the right to health and for health systems. There is a small-to-moderate size and growing body of literature and research on accountability for the right to health, which includes the work of the Special Rapporteur on the right to health; the Council would do well to draw upon this work.³

Monitoring and accountability are integral features of the right to health and can help reduce maternal mortality. The right to health demands accountability of various stakeholders, including health-care providers, local health authorities, national Governments, international organizations and civil society. Accessible and effective accountability mechanisms — including courts, tribunals, health ombudsmen, impact assessments and policy review processes — can all help enhance access to health care;⁴

In addition to recognizing the necessity of accountability to reduce maternal mortality, the Special Rapporteur on the right to health also observes that:

The right to health brings with it the crucial requirement of establishing accessible, transparent and effective mechanisms of monitoring and accountability... There are many different forms of monitoring and accountability mechanisms. While a State will decide which are most appropriate in its particular case, all mechanisms must be effective, accessible and transparent.⁵

It is very crucial to observe that accountability for maternal mortality and morbidity is not something that just implicates countries with high rates, but all countries. According to the Special Rapporteur, “the right to health gives rise to a responsibility of international assistance and cooperation on developed States to assist developing States to realize the right to health. Developed States should support developing States’ efforts to reduce maternal mortality. This responsibility is reflected in Millennium Development Goal 8, which is a commitment to develop a global partnership for development.”⁶ This is reflected in resolution 11/8, which explicitly recognizes the importance of international assistance and cooperation in eliminating maternal mortality. In addition to donor governments being accountable to assist developing countries to address maternal

² 2007 Special Rapporteur on the right to health’s report to the Human Rights Council, UN Doc. A/HRC/4/28 at para. 57.

³ See e.g. Potts, Helen. Human Rights Centre. University of Essex. Accountability and the Right to the Highest Attainable Standard of Health. 2008, available on-line.

⁴ 2006 Report to the General Assembly, UN Doc. A/61/338 at para. 28(d).

⁵ 2006 Report to the General Assembly, UN Doc. A/61/338 at para 65.

⁶ 2006 Report to the General Assembly, UN Doc. A/61/338 at para. 20.

mortality and morbidity, accountability for the right to health domestically is necessary for all countries regardless of maternal mortality rates.

What are some options through which the HRC can effectively do this? What mechanisms, processes, or procedures can allow the Council to appropriately, effectively, regularly and systematically give attention to maternal mortality and morbidity?

As the Council recognized in operative paragraph 5 of resolution 11/8 that it is important that States and other stakeholders “give increased attention and resources to preventable maternal mortality and morbidity in their engagement with the United Nations human rights system, including with the human rights treaty bodies, the universal periodic review and special procedures”. In short, the Council has recognized the importance of integrating consideration of preventable maternal mortality and morbidity and its causes into its existing mechanisms, including the work of the UPR and the Special Procedures. It is important that all States including Members and Observers of the Council, as well as other stakeholders give effect to this provision to better integrate considerations of maternal mortality and morbidity and its causes into the work of the Council and its mechanisms.

Given the Human Rights Council’s function of mainstreaming human rights throughout the UN system, the Council must ensure that it performs its role at ensuring human rights is integrated within the UN system’s work on addressing maternal mortality and its causes. A start to doing this would be to invite regular and systematic inter-agency dialogue between the OHCHR and UN entities working directly on maternal mortality and morbidity (such as UNFPA, the WHO, and UNICEF). This could be an initial step to ensure these various agencies take further steps to integrate human rights in their work on maternal mortality and morbidity.

To enhance the protection and promotion of all human rights is one of the key mandates of the Council and discharging this function is one of the most important ways that the Council can contribute to eliminating maternal mortality and morbidity. To do this effectively, the Council must be in a place to actively promote that UN Member States take specific actions to address the human rights dimensions of maternal mortality and morbidity. To be able to do this appropriately, effectively, regularly and systematically, the Council must first address the knowledge gaps on the part of governments and itself with respect to the human rights dimensions of maternal mortality and morbidity. As described above, the major knowledge gap on the part of governments and the Council is with respect to what must be done to effectively incorporate human rights into maternal mortality and morbidity programmes, initiatives and policies.

However at the same time, the Council has specifically requested states within resolution 11/8 to integrate a human rights perspective into maternal mortality and morbidity initiatives. Remedying the knowledge gap on the part of states and the Council itself with respect to the various ways in which this integration might be done is an important

first step in effectively fulfilling its important role in this area. This gap in knowledge also hampers the ability of Council Members and Observers to have the consideration of maternal mortality and morbidity and human rights be fully integrated in the work of the Council.

Remedying this is part of the goal of the current study. However, this is a new area for the Council and a fairly new area for the international community itself. Moreover, the steps that governments can take to integrate human rights into maternal mortality and morbidity eradication are not well understood or well known. There is also much involved with and many different options for incorporating a human rights perspective into maternal mortality and morbidity eradication.

All these factors point to a clear need for a policy guidance document (or set of documents) prepared by experts in maternal mortality and human rights to serve as a further basis upon which the Council can work with States to ensure that the human rights dimensions of maternal mortality and morbidity are well addressed at the local, domestic and international levels. The structure of such a document – whether it is guidelines, thematic reports, or a set of thematic studies – is not so important, but it would be valuable to ensure that governments had a tool with robust policy recommendations that would lay out in detail what is involved in integrating human rights into maternal mortality and morbidity eradication programmes and policies at the local and national levels. Such a document should lay out guidance for both donor countries as well as countries with higher than minimal maternal mortality rates and seek to give options in terms of what steps must be taken by each of these groups of States to ensure a human rights-centred approach to the issue. It should also seek to identify the various types of accountability entailed by a human rights-centred approach and to give guidance in this area. Such a policy guidance document would be an excellent place to detail “best” or effective practices as examples of approaches or steps that could be effectively taken by governments. Such a document is best prepared by a group of experts with a broad range of necessary technical expertise who would be able to provide governments independent guidance in this area and who would do so on the basis of some form of mandate from the Council or another intergovernmental body.

The key features of such a group that would elaborate such a policy guidance document are that it would have to consist of a fairly large group of experts working in the field of human rights and maternal mortality including experts in public health and health care workers who are expert in this area as a breadth of different expertise would be absolutely necessary. Both independent experts and experts within UN agencies addressing maternal mortality and morbidity should be among the experts.

There are a couple of options by which such an expert policy guidance document could be developed. **One option** is for the Council to mandate that the OHCHR host an expert consultation to develop such a document. Experts invited to such a consultation would as a group possess a range of expertise on maternal mortality and morbidity, human rights, and the right to health and would come from different professional backgrounds and diverse parts of the world. It would be essential that experts from the two lead agencies

with respect to maternal mortality, WHO and UNFPA, be among the experts at these consultations, and in fact it could potentially strengthen the consultations if these two agencies co-hosted them with OHCHR. An initial draft of the policy guidance document could also be prepared by these three UN agencies in order to facilitate work at the consultations. In the lead-up to the consultations, inputs should be received from both States and civil society, which would allow the experts at the consultation to benefit from these perspectives. It would also allow for the consideration of actual case study examples, including effective or good State practice, which could form a specific part of the policy guidance document or could be integrated throughout the document. It would also be important once the policy guidance document has been completed, that it be presented to the Council and debated by Members and Observers.

A second option, along the lines of that already proposed by the Special Rapporteur on the right to health in his June 2008 address to the Council during its debate on maternal mortality and the human rights of women, involves the establishment of a Working Group of independent experts that would develop such a policy guidance document, which could take the form of a series of thematic studies or reports. This Working Group should not be thought of as a typical Special Procedure as the range of expertise needed may require more than 5 experts, which is usually the number on an expert working group. Furthermore, Secretariat support could also be provided by OHCHR, WHO and UNFPA, all of whom could also provide additional expertise to the Working Group. Also ensuring that the Working Group is able to interface with treaty-monitoring bodies and the Special Rapporteur on the right to health is critical. This proposal has at least 2 advantages. First, it would allow policy guidance for States and the Council to be developed over a period of time, which could ensure greater time for reflection and consultation among the experts and could emerge in a more digestible form (i.e. a series of reports rather than a single long document). It also has the advantage in that a Working Group would already be established and after developing such policy guidance (or over the course of developing a series of guidance documents), the Working Group could work to give support to government to give effect to the guidance. In this way, this second option is in fact a better option, as it would create a single group of experts not only responsible for developing policy guidance but also for giving advice to States on an ongoing basis. In discharging this mandate, reporting of this Working Group should be to the Council, the World Health Assembly, the Economic and Social Council, and any other UN body interested in receiving reports from it. **A third option** could combine both of these options and would see, first, the development of a policy guidance document for States through a larger-scale expert consultation, followed by, second, the establishment of an independent expert working group that would work continually with States to advise them on the implementation of this policy guidance document.