

Monitoring of Human Rights in the Health Sector

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Abstract

Monitoring of human rights in the health sector is of crucial importance to ensure the effective realisation of these rights, especially in the light of human rights abuses in the history of our country. Monitoring means comprehensive efforts to collect appropriate data to determine whether performance of institutions or individuals conforms to accepted human rights standards. Monitoring can take place by means of a number of strategies and at different levels, considering certain preconditions for monitoring. This article outlines information on mechanisms for monitoring of human rights. Furthermore it seeks to raise relevant issues that warrant further consideration in order to inform an effective approach to the monitoring of human rights in the health sector.

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Introduction

Monitoring of human rights is a widely accepted and highly successful means of measuring compliance with human rights standards, influencing public policies that affect human rights, and reinforcing respect for human rights.¹ In South Africa where colonial and apartheid racist policies have had a profound and enduring impact on health and health care, monitoring of health rights has particular relevance. Evidence led at the Health Sector Hearings of the Truth and Reconciliation Commission (TRC) clearly alluded to human rights abuses that took place in the health sector.² In its report, the TRC found that "the health sector, through apathy, acceptance of the status quo and acts of omission, allowed the creation of an environment in which the health of millions of South Africans

was neglected, even at times actively compromised, and in which violations of moral and ethical codes of practice were frequent, facilitating violations of human rights".³

Monitoring is vital to ensure the effective realisation of human rights within the health sector. Furthermore, in the light of the supremacy of the South African Constitution, it is critical that the rights and standards relevant to health that are entrenched in the Constitution be monitored.

Monitoring means systematic and comprehensive efforts to collect appropriate data in order to determine whether the performance of individuals and institutions conforms to international human rights and constitutional standards. Monitoring should include regular reviews, based

on established protocols, of human rights compliance by health institutions.¹ Effective monitoring is proactive, independent, and should be performed according to a uniform methodology. Monitoring in this regard aims to establish accountability of the relevant role-players for the realisation of human rights within the health sector.

This article discusses some of the preliminary issues that should be borne in mind when monitoring human rights within the health sector. In particular, it highlights some of the preconditions necessary for monitoring, the strategies for monitoring, and the levels at which monitoring can take place. It is by no means intended to be comprehensive and merely seeks to raise some of the relevant issues that warrant consideration in the monitoring of human rights within the health sector.

Preconditions for monitoring human rights within the health sector

In order for monitoring to occur effectively, it is important that certain preconditions are met. When applied specifically to health within the domestic context and in relation to economic and social rights, these preconditions include⁴⁵

- A clear conceptualisation of health rights and all its constituent elements as well as the concomitant obligations it imposes on the State;
- A delineation of performance standards related to each component of health rights, including relevant indicators. This would include clarity on violations of the right, due observance of the right as well as minimum conditions that will be acceptable for fulfilment of health rights;
- The objectives of monitoring should be clear, for example, whether the information obtained is intended for use in litigation, to form policies or legislative reform or a combination of these;
- There should be clarity on the kind of data (appropriately disaggregated by a variety of variables, including race and sex) that is required and the sources from which it should be collected;
- Data should be analysed so as to be able to ascertain the performance of a particular institution, government department or other relevant structure;
- Benchmarks and indicators should be developed to analyse and assess progress.

How should monitoring take place?

Monitoring can take place through a number of different strategies. Two potentially effective strategies are

reporting procedures and complaint mechanisms.

Reporting procedures

Similar to the international context, domestic monitoring can take place through an effective reporting procedure. This procedure is similar to that of the South African Human Rights Commission. Policy and legislative formulators, service-providers and other relevant persons or structures that are responsible for the delivery of health care services can be requested for information at regular intervals. Such requests for information can focus on the measures they are undertaking to make health care services a reality as well as particular shortcomings and difficulties that are being experienced. The information gathered from this kind of reporting procedure can then be used to hold the relevant structures accountable in respect of their obligations regarding health care.

Complaint mechanisms

Effective monitoring of human rights within the health sector can also take place through complaint mechanisms. The nature of the complaint received can be used to highlight systemic violations of human rights within the health sector, and ultimately hold the relevant authorities accountable.

Levels at which monitoring should take place

Monitoring of health rights should take place at multiple levels. These should ideally include international, regional, and government monitoring, monitoring by state institutions and statutory bodies as well as monitoring by non-governmental organisations (NGOs) and civil society more broadly both nationally and internationally.

(a) International and regional monitoring

South Africa has signed and/or ratified a wide range of international instru-

ments. This imposes certain legal obligations and a respect for a wide range of human rights within the health sector. Amongst these are the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In addition, the Convention on the Rights of the Child makes express reference to the health rights and other human rights of children. Furthermore, the International Covenant on Economic, Social and Cultural Rights, which South Africa is likely to ratify in the near future, makes express reference to health. At regional level, South Africa has ratified the African Charter on Human and Peoples' Rights.

Each of the supervisory bodies established under these instruments has a duty to monitor the realisation of the rights in these instruments. Such monitoring normally takes place through State parties submitting regular reports on measures that have been adopted to give effect to the rights in the international instrument. The supervisory body considers these reports and recommendations are made in terms of how the rights can be better implemented. This is an important mechanism through which State measures can be assessed for their effectiveness. NGOs and other civil society structures can also contribute to this process through submitting "shadow reports" focussing on issues not canvassed in the government report or on civil society perceptions regarding the effectiveness of government programmes. Depending on the nature of particular instruments, there is in addition sometimes room for complaints from individuals or groups on possible violations of the rights to an international body. However, if this option does exist, it can only be exercised once all domestic options have been exhausted.

(b) Government Monitoring

The White Paper on the Transformation of Health Systems in South

Africa makes limited reference to the issue of monitoring within the health system. However, it does state that the National Health Information System should be used to monitor the implementation and success of Department of Health priority programmes. Though the White Paper offers very little insight into the actual mechanics of monitoring at this level, this should be researched and taken account of in developing a monitoring strategy for South Africa.

(c) Monitoring by State Institutions

The South African Human Rights Commission

The South African Human Rights Commission (SAHRC) has a crucial role to play in the monitoring of human rights within the health sector. In particular, section 184(3) of the Constitution makes provision for the SAHRC to request information from relevant organs of State on measures they have taken to realise economic and social rights, including health rights.

The Human Rights Commission has formulated protocols that have been sent to the relevant organs of state within the health sector to monitor the measures they have taken to realise health rights. The protocols are structured so as to garner both statistical information on health rights as well as information indicating the level of constitutional compliance regarding health rights. Each year the SAHRC compiles a report assessing the measures that have been taken to realise health rights as well as the other socio-economic rights.

The bulk of the SAHRC's work is complaints driven, where complaints are investigated and addressed. The SAHRC also provides important input at the level of legislation formulation. The Commission is involved in hearings and public inquiries i.e. the Poverty Hearings and the Inquiry into

racism in the media. The SAHRC also fulfils an important advocacy role in terms of research, training and awareness campaigns.⁵

The Commission for Gender Equality

In terms of its constitutional mandate, the Commission for Gender Equality has an important role to play in the monitoring of gender equality in South Africa. Although little attention has been given to health rights, and particularly women's health, it is nevertheless an important avenue through which women's health can be monitored.

(d) Monitoring by statutory bodies

The Health Professions Council of South Africa (HPCSA)

The Health Professions Council consists of 12 autonomous Professional Boards. Each has statutory powers to deal with complaints against professionals registered with that particular Board. The complaint mechanism also has an important role to play in highlighting systemic violations of health rights, but remains a mainly reactive process hampered by legal constraints and administrative difficulties.

The Medical and Dental Professions Board has since its inception in 1999 taken an increasingly proactive approach to the monitoring of health rights. Investigations into amongst others perverse incentives have been commissioned, committee structures and functions changed, and regular publications highlighting ethical rules and rulings are distributed. A Committee for Human Rights, Ethics and Professional Practice was also established, fulfilling a TRC recommendation.

A most important function of Professional Boards is to provide guidelines for good ethical professional practice. In the past, ethical rulings

were primarily concerned with issues of practice etiquette and financial matters.² The Medical and Dental Professional Board is currently in the process of drafting comprehensive guidelines for professional practice, which will for the first time include human rights in health issues.

The South African Nursing Council (SANC)

The Nursing Council sets and maintains standards of nursing education and practice in South Africa and also has an important role to play in monitoring health rights, particularly in respect of nurses. It applies similar complaint procedures than the HPCSA.

(e) Monitoring by NGOs

NGOs continue to play an important role in the monitoring of human rights within the health sector. The 1998 National Speak Out on Poverty Hearings co-convened by the South African National NGO Coalition, The Human Rights Commission and the Commission for Gender Equality is one example. These hearings afforded the beneficiaries of health care the opportunity to raise issues on the constraints and difficulties of accessing health care services in South Africa.

Conclusion

The effective monitoring of human rights in the South African health sector is critical if those in the health sector are serious about transformation and accountability. In addressing the issue of monitoring compliance with constitutional and international standards within the health sector, it is important that some of the following issues are debated and addressed:

- WHAT should be monitored? A common understanding must be reached on exactly what is meant by monitoring, as well as

objectives sought to fulfil through such monitoring;

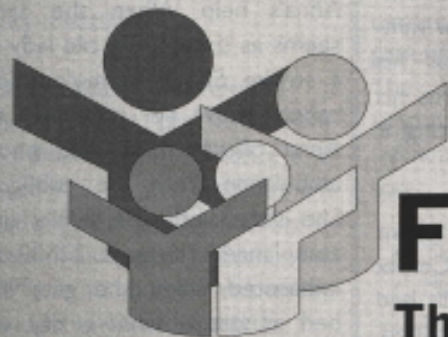
- HOW to monitor? Clarity has to be reached on the methodology to be used in monitoring;
- WHO shall monitor and who should be monitored? Consensus should be reached on who should be responsible for monitoring as well as the bodies and structures that should be monitored; and
- WHEN should monitoring take place? Agreement has to be reached on how often such monitoring should take place, well in advance.

Constructive discussion and clarity on these issues will inform a strategic and effective approach to monitoring human rights within the health sector, and ultimately enhance the realisation of health rights in South Africa.

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