Serious Problems with the Report of
The Special Rapporteur on the Right to Health

In the Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, which will be submitted to the General Assembly on October 24, 2011, the Special Rapporteur on the Right to Health, Anand Grover, has largely ignored his mandates as outlined in Human Rights Council Resolutions 15/22 and 6/29, and instead focused on highly controversial issues beyond their purview.

Grover’s report is one of the most blatant activist documents a United Nations official has ever produced. By declaring a universal right to abortion that contradicts express language in UN treaties, the Special Rapporteur has implemented his own agenda in violation of his mandate; ignored legitimate health concerns such as nutrition, sanitation, and basic medical care; and promoted a course of action that, if pursued, would actually harm women’s health, subvert national sovereignty and the rights of parents and children, and undermine religious liberty. His report must be denounced as contrary to international law, policy, and procedure.

A universal right to health has been recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in the Universal Declaration on Human Rights (Universal Declaration), but this right does not and cannot include abortion. ICESCR recognizes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The Universal Declaration, which is not actually a treaty but widely recognized as a definitive document in international human rights law, states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services. . . .”

As an expressly recognized international human right, the “highest attainable standard of physical and mental health” must include specifically negotiated and defined boundaries. The Universal Declaration suggests some categories that fall under this right, namely food, clothing, housing, medical care, and necessary social services. Rather than concentrating on the principle problems of hunger, lack of nutrition, disease, and poor medical care, as outlined in his mandates, the Special Rapporteur instead focused much of his report on an imaginary universal “right” to abortion, claiming that free access to abortion is required to improve sexual and reproductive health and women’s rights generally, and to reduce maternal mortality.

2 http://www2.ohchr.org/english/bodies/hrcouncil/docs/A-65-53-Add1.pdf
6 Id.
7 See supra notes 2 & 3.
However, as this policy brief will demonstrate, abortion rights have never been promoted in any international consensus document; in fact, abortion for family planning purposes has been specifically excluded from some documents that mention sexual and reproductive health.\(^8\) And, contrary to the Special Rapporteur’s claims, evidence shows that abortion may actually increase maternal mortality and decrease levels of mental and physical health (including sexual and reproductive health). Moreover, as indicated later on, recognizing a broad right to abortion would eliminate an unborn child’s right to life without meaningfully advancing women’s rights and subvert clearly recognized parental rights and rights to national sovereignty and religious liberty.

**No “Right” to Abortion in International Treaties or Other Consensus Documents**

UN officials and committees act under authority given by UN Member States, which are responsible to develop international human rights through a consensus process.\(^9\) It is highly instructive that the Special Rapporteur’s report does not cite to a single UN consensus document (e.g., treaty) that establishes a human right to abortion. Instead, Grover tries to establish abortion rights by stating that the right to health includes sexual and reproductive health, which in turn includes family planning.\(^10\) Grover then erroneously implies, but for good reason never expressly states, that family planning includes the right to abortion on demand under international law.

In 1994, the International Conference on Population and Development (ICPD) outcome document noted: “Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning . . .”.\(^11\) In fact, not only should the UN refrain from promoting abortion as a method of family planning, member states have repeatedly stressed that “Any measures or changes related to abortion within the health care system can only be determined at the national or local level according to the national legislative process.”\(^12\)

A year after the 1994 ICPD Conference, despite some strong pro-abortion voices at the UN, very similar language prohibiting abortion as a method of family planning was negotiated and agreed to at the Fourth World Conference on Women (Beijing 1995).\(^13\) The ICPD language reappeared again in other UN consensus documents five years after the original ICPD (i.e., 1999), and once more five years after the Fourth World Conference on Women (i.e., 2000).\(^14\) That language has never been retracted or undermined; instead, pro-abortion UN officials like Grover completely ignore it.

UN Member States have thus made it very clear there is no international right to abortion on demand. Quite the contrary. These multiple references indicate without ambiguity that **Member States have agreed to help women avoid abortion and UN agencies are prohibited from promoting it as a method of family planning.** They also note that the UN is not authorized to

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\(^8\) See ICPD, at Par. 8.25; Beijing, Par. 106(k); ICPD +5, Par. 63(i); Beijing +5, Par. 72(o) (all documents stating that “[a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”).

\(^9\) Charter of the United Nations, Articles 13(3), 60, 62(2-4), 63, 64, 66.


\(^11\) ICPD, 1994, Par. 7.24; see also Par. 7.10, 8.25.

\(^12\) Id. Par. 8.25; ICPD+5, Par. 63(i); Beijing, Par. 106(k); Beijing +5, Par. 72(o).

\(^13\) See Beijing, Par. 106-k.

\(^14\) See ICPD + 5, Par. 63i, ii, iii; Beijing +5, Par. 72-o.
even promote the concept of abortion, as this matter is to be left to national legislatures.

UN Member States have recognized that a number of governments permit abortion “under varying legal conditions to save the life of a woman.”\textsuperscript{15} This reality of allowing governments to decide whether to rely on abortion in extenuating circumstances (such as to preserve the life of the mother) is not inconsistent, however, with the strong UN mandate to avoid promoting abortion as a method of family planning and reduce recourse to its use. Indeed, as UN Member States have noted: “All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services.”\textsuperscript{16}

In short, UN consensus documents go no further than to encourage general reproductive and sexual health and family planning services, and yet do so with explicit restrictions on abortion. The Special Rapporteur’s assertion, therefore, that “[c]riminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women’s right to health and must be eliminated,”\textsuperscript{17} goes far beyond international consensus and certainly way beyond the authority granted to him in his mandate.

**Negative Health Effects of Abortion**

To support his assertion that abortion must be universally legalized, the Special Rapporteur claims that laws criminalizing or otherwise restricting abortion “consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes.”\textsuperscript{18} He cites research by the World Health Organization (WHO), stating that “[u]nsafe abortions are estimated to account for nearly 13 per cent of all maternal deaths globally.”\textsuperscript{19} WHO has been known, however, to consistently conflate the legal status of abortion with its safety.\textsuperscript{20} A closer inspection of maternal deaths versus abortion laws reveals the errors in WHO’s reports.

\textsuperscript{15} See, e.g., ICPD Par. 8.19.

\textsuperscript{16} ICPD Par. 8.25.

\textsuperscript{17} A/66/254, at Par. 21, available at http://www.ohchr.org/EN/Issues/Health/Pages/AnnualReports.aspx.

\textsuperscript{18} Id.

\textsuperscript{19} Id. at Par. 25.

\textsuperscript{20} Id. As evidence of this definitional conflation, see the following statement by WHO: “[E]very year nearly 42 million women faced with an unplanned pregnancy decide to have an abortion, and about 20 million of them are forced to resort to unsafe abortion. These approximately 20 million women often self-induce abortions or obtain a clandestine and unsafe abortion carried out by untrained persons under poor hygienic conditions. Abortion induced by a skilled provider in situations where it is legal is one of the safest procedures in contemporary medical practice and the recourse to manual vacuum aspiration (MVA) and medical (non-surgical) abortion have reduced abortion-related complications to very low levels.” http://whqlibdoc.who.int/publications/2007/9789241596121_eng.pdf at preface. Notice how, according to WHO, women are “forced” to undergo “unsafe” abortion procedures because they live in a place where abortion is not legal. WHO’s solution, rather than providing competent medical help and education so that these women do not resort to a choice of desperation, is to liberalize abortion laws in these developing nations. In reality, even if abortion is legalized, developing countries will continue to suffer high maternal mortality rates until women have access to better nutrition and medical care.
For example, the world’s largest abortion provider, International Planned Parenthood Federation (IPPF), recently acknowledged an alarming “surge” in maternal deaths in South Africa even though that country, since 1996, has had some of the most permissive abortion laws on the African continent. On the other hand, Mauritius, which has some of the most restrictive abortion laws in Africa, has the lowest maternal mortality rate on the continent. In contrast, Ethiopia, which liberalized abortion laws in response to pressure from WHO and the UN, has a maternal death rate that is 48 times higher than in Mauritius. In South America, Chile (which protects the lives of the unborn in its constitution) has a maternal death rate that is 30 times lower than in Guyana where abortion has been allowed without restriction since 1995. Nepal places no restriction on abortion procedures, but has the highest maternal mortality rate in Southeast Asia. Sri Lanka, whose maternal death rate is 14 times lower than that of Nepal, has very strict abortion laws. Likewise, Ireland, which has been criticized for its anti-abortion legislation, has one of the lowest maternal mortality rates in the world. 

How would the Special Rapporteur explain this data? Why did he not acknowledge it exists?

In addition to false (or at least highly dubious) assertions that outlawing abortion raises maternal mortality rates, there is significant evidence that abortion, even where it is legal, produces a wide variety of mental and physical health problems. In one study, 17 percent of women undergoing “safe” (i.e., legal) abortion procedures in the U.S. experienced physical complications such as abdominal bleeding or pelvic infection after the abortion. The percentage is likely higher when long-term physical effects are considered, not to mention psychological effects that are more difficult to measure. Some of the short and long-term adverse effects include:

- Accidental tearing of uterine artery, tearing of the cervix, or scarring of the uterine wall
- Heavy bleeding, requiring blood transfusions
- Abdominal cramping, nausea, vomiting, diarrhea, and infection
- Allergic reaction to drugs or anesthesia, sometimes causing convulsions, or worse
- Heart attack, embolisms (caused by blood clots or other foreign matter in blood vessels)
- Perforation of the uterus, and damage to other internal organs
- Miscarriage of future pregnancies, infertility, or sterility
- Increased risk of subsequent tubal pregnancies
- Death (it is estimated that 20 percent of maternal deaths are due to abortion)
- Guilt, anger, anxiety, depression, suicidal thoughts
- Anniversary-grief, flashbacks of abortion, memory repression
- Sexual dysfunction, relationship problems
- Eating disorders, sleep disorders
- Alcohol and drug abuse

The information in this paragraph comes from http://www.lifesitenews.com/ldn/2009/aug/09081310.html, but can be verified by inspecting individual country statistics at UNICEF.org under the “maternal mortality” section of each country’s statistics (which you can locate by clicking on the “info by country” tab at the top on the main page, then selecting a country). A comparison of abortion laws by country can be found at http://en.wikipedia.org/wiki/Abortion_law.


Despite overwhelming documentation of these complications, many pro-abortion organizations claim that it is “safer,” at least from a mortality perspective, to have an abortion than it is to give birth. To the contrary, many recent studies show that the opposite is true.24 The “impartial” Special Rapporteur, however, cites none of this information in his report. Instead, he claims that (i) “no corresponding evidence supports the existence of long-term mental health sequelae resulting from elective abortion,” and (ii) none of the restrictions on abortion are evidence-based as they are supposedly promulgated only for public health / morality considerations, and as such, “must be immediately reconsidered.”25

Reducing the Rights of Women, Parents and Children

The Special Rapporteur repeatedly claims that laws prohibiting abortion adversely affect women’s rights, particularly their right to health.26 This brief has already shown, however, that abortion adversely affects women’s physical and mental health – regardless of whether the abortion is characterized as legal or illegal, safe or unsafe. Furthermore, there is evidence that legalized abortion actually marginalizes rather than liberates women. In places where abortion has become legal and acceptable, impregnated women may be pressured to undergo an abortion by their male partners who do not want to accept the responsibility of caring for a child.27 Other women are pressured into premature or unwanted sexual relations because they can no longer use the “risk” of pregnancy as a reason to abstain from intercourse.28

More drastically than weakening women’s rights, abortion also obliterates the rights of the unborn children it kills. The Universal Declaration of Human Rights recognizes the right to life for every person, and the Convention on the Rights of the Child states: “The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. . . .”29

Yet, the Special Rapporteur somehow thinks it is appropriate to expend his limited resources in promoting a “right” that has been consciously excluded from international consensus documents (at least where family planning is the motivation) at the expense of a right children have to legal protection even before birth that has been explicitly included in the preamble to the CRC.

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24 E.g., M. Gissler et al., Pregnancy-Associated Deaths in Finland 1987-1994: Definition Problems and Benefits of Record Linkage, 76 ACTA OBSTETRICA ET GYNECOLOGICA SCANDINAVICA 651 (1997); David C. Reardon, Abortion is Four Times Deadlier than Childbirth, THE POST-ABORTION REVIEW (2000), http://www.afterabortion.org/PAR/V8/n2/finland.html; http://www.lifenews.com/2010/03/31/int-1496/; see also NATIONAL RIGHT TO LIFE EDUCATIONAL TRUST FUND AND MCCL GO, DOES LEGALIZING ABORTION PROTECT WOMEN’S HEALTH?, http://www.nrlc.org/UN/MMEnglish.pdf (2009) (providing research that suggests that, because the root cause of maternal mortality is underdevelopment of medical care and technology whether or not abortions are legal, legalizing abortion in an underdeveloped nation will likely increase rather than decrease maternal mortality because it will increase demand for abortion and spread the healthcare system thinner than it already is).


28 See generally, id.

29 Preamble, Par. 9, Convention on the Rights of the Child (CRC). This protection is based on “State Parties recogniz[ing] that every child has the inherent right to life,” CRC, Art. 6. The notion that a child is entitled to legal protection before birth first appeared in a non-binding resolution drafted by the UN Commission on Human Rights and adopted by the UN General Assembly on 20 November 1959.
Moreover, international treaties establish the right of parents to (i) provide adolescents “appropriate direction and guidance in sexual and reproductive matters,” and (ii) “ensure the religious and moral education of their children in conformity with their own convictions.” The Special Rapporteur, however, completely ignores well recognized parental rights to pass on their values to their children in arguing that parental consent laws and related restrictions “serve to reinforce the stigma that abortion is an objectionable practice.”

**Subversion of National Sovereignty and Religious Liberty**

Both the International Covenant on Civil and Political Rights (ICCPR) and ICESCR state, in their very first article, that “[a]ll peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Contrary to this unequivocal language, however, the Special Rapporteur has boldly declared that “States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality.” He does not just recommend legalized abortion; he demands it, as if he had authority to command all of the nations of the world. Surely such an overstepping of authority should merit removal from office, or at least a severe reprimand by UN Member States and other high level UN officials. Instead, the Secretary General of the United Nations openly endorsed the report in a note at the beginning of the document.

As for religious liberty, Grover’s report could have serious deleterious effects on a right that has long been guaranteed by international consensus documents. Perhaps the foremost among these documents is the Universal Declaration of Human Rights, which states: “Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

Major human rights treaties have likewise declared a right to religious liberty. For example, ICCPR and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) contain wording almost identical to that found in the Universal Declaration. The International Convention on the Elimination of All Forms of Racial

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30 ICESCR (1976), Art. 13-3; International Covenant on Civil and Political Rights (1976), Art. 18-4.  
35 ICCPR, Art. 18(1) (“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”); CMW Art. 12(4), Dec. 18, 1990, 30 I.L.M. 1517.
Discrimination (ICERD) recognizes a “right to freedom of thought, conscience and religion.” And the Convention on the Rights of the Child (CRC) recognizes the same right specifically applied to children. Lastly, the United Nations Fourth World Conference on Women declared in 1995 that “The right to freedom of thought, conscience and religion is inalienable and must be universally enjoyed,” and includes the freedom to . . . manifest their religion or belief in worship, observance, practice and teaching.

In summation, international treaties, declarations, and other consensus documents unequivocally declare that religious liberty includes not only the right to believe a certain way, but also the right to speak and act, both in private and in public, in accordance with those beliefs.

Despite such strong language, the Special Rapporteur finds that conscientious objection exceptions to abortion laws can be problematic. In other words, he appears to assert that those who refuse to perform, participate in, or make referrals for abortions for religious reasons could be compelled to do so he can avail himself of a conscientious objection exemption in the law that is “well-defined in scope and well regulated in use,” whatever that means. For Grover, the notion that abortion is an “immoral practice” is caused only by the stigma resulting from procuring an illegal abortion, not because anyone actually believes that killing a fetus is wrong. The Special Rapporteur apparently thinks he can dictate what constitute moral practices for the entire world. Again, his report would subvert a clearly guaranteed right of religion in favor of an imaginary right to abortion.

Conclusion

To protect health, women’s and children’s rights, religious liberty, and national sovereignty, the leaders of nations and interested citizens everywhere must denounce this report as a violation of international law, policy, and procedure. UN officials must cease to promote imaginary rights at the expense of real needs such as medical treatment, proper nutrition, sanitation, and clothing.

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38 Id. at Par. 24 (emphasis added).
40 Id., Section V, Recommendations (m).
41 Id. at Par. 35.
42 This attempted subversion of religious rights also is evident in the Rapporteur’s statement that “Public morality cannot serve as a justification for enactment or enforcement of laws that may result in human rights violations, including those intended to regulate sexual and reproductive conduct and decision making.” Id. at Par. 18.