The Right to Palliative Care as a Human Right

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Pain Relief and Palliative Care as Human Rights

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• Legal Foundations:
  – UN Conventions and Declarations
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Facts

• Worldwide more than 57 million people died during 2010
  – 10 million = malignant neoplasm
  – 2.7 million = AIDS related illness

• Millions suffer and die of:
  – Cardiac, respiratory, renal and hepatic failure and neurological conditions

• 60 % of people who die would benefit from palliative care

• Palliative Care is integrated into public health in a few countries of the world.
Facts

- In 2006, Western Europe and North America together accounted for 89% of global consumption of morphine.
- 80% of the world population lives in developing countries - consumes only 6% of the morphine.
- More than 50 countries do not have any opioids available.
- Opioids are not available in rural areas and in home care in most of the countries.

INCB, Press Release #4 p 11, March 2008
Global Equivalence of Morphine Consumption: High Income vs Middle/Low Income countries

Source: International Narcotics Control Board and UN Population data
By: Pain & Policy Studies Group, University of Wisconsin/WHO Collaborating Center, 2011
Key Factors

- The care of the dying is a public health issue.
- Palliative care, public health and human rights are interacting.
- Maturing of palliative care = clinical specialty and academic discipline coincided with development of a public health approach to global and community health.
- Accumulation of evidence that patients are not adequately treated = “ethics of under treatment”
Basic Tenets

- A right can only exist if there is a pre-existing obligation.
- The holder of a right has the capacity to enforce a duty in a person or institution.
- The “other part” has a duty to fulfill that right.
Sources of International Law:

UN Conventions and Declarations:

• Universal Declaration of Human Rights (1948)
• International Covenant on Economic, Social and Cultural Rights (1966)
• International Covenant on Civil and Political Rights (1966)
• Single Convention on Narcotic Drugs (1961)
• Convention on Psychotropic Substances (1971)
“Everyone has the right to a standard of living adequate for the health of himself and of his family…”

Article 25 (1948)
“The right to health in all its forms and at all levels contains the following interrelated and essential elements… and essential drugs, as defined by the WHO Action Programme on Essential Drugs.”
Gen Comment 12, para 12

“…attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.”
Gen Comment 14 para 25

“States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, ……… to preventive, curative and palliative health services.”
Gen Comment 14 para 34
“No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment...”

Article 7
“Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes…”

Preamble
“Recognizing that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted…”

Preamble
The right to palliative care and pain treatment may be implied from the expressed right to health:

Health: “A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

WHO Constitution (1949)
Member States Obligations

1. The creation and implementation of palliative care policies and programs with assigned resources.
2. Equity of access to services, without discrimination.
3. Availability and affordability of essential medications, including opioids (esp. oral solid morphine).
4. The provision of palliative care at all levels of care.
5. The integration of palliative care education at all levels of the learning continuum, from informal caregivers to health professionals.
Key Questions

• Can and individual or group, citing these Conventions, complain that this right to palliative care and pain treatment was not met?

• Can the United Nations induce each nation’s health service to provide adequate palliative care and pain treatment?
Resources - International Level

• Universal Declaration of Human Rights:
  – Human Rights Commission

• International Covenant on Economic, Social and Cultural Rights:
  – Committee on Economic, Social and Cultural Rights

• International Covenant on Civil and Political Rights:
  – First Order Protocol
Many nations have written constitutions - right of their citizens to receive adequate health care.

Many nations have adopted palliative care and pain treatment laws that enumerate the rights and obligations of patients with life limiting conditions.
Calls from the International Palliative Care Community

- **The Korea Declaration** (2005): WPCA
- **The Budapest Commitment** (2007): EAPC, IAHPC, WPCA
- **Joint Declaration** (2009): IAHPC, WPCA
- **Morphine Manifesto** (2010): Pallium India
- **Prague Charter** (2013): EAPC in alliance with WPCA, IAHPC
The Meaning, Limitations and Possibilities of Making Palliative Care a Public Health Priority by Declaring it a Human Right

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There is a growing movement to increase access to palliative care by declaring it a human right. This article examines the development of palliative care as a human right, the context of international human rights law, and the nature of the human right to palliative care. The article also discusses the challenges and opportunities for palliative care in the context of public health ethics.

Introduction

In 2002, the International Association for Hospice and Palliative Care declared palliative care a human right and called for action to ensure access to palliative care. This movement was followed by the United Nations and the World Health Organization, which added palliative care to their list of basic human rights. The article explores the challenges and opportunities for palliative care in the context of human rights law.

Background and Definitions

Palliative Care

Although a frequently used term, definitions and conceptualizations of palliative care vary widely. In the USA, a frequently used definition in the policy community is found in the National Quality Forum (NQF) consensus statement, "A National Framework and Preferred Practices for Palliative and Hospice Care Quality.

Palliative care is an approach that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering.
Access to pain relief – an essential human right

A report for World Hospice and Palliative Care Day 2007
Published by Help the Hospices for the Worldwide Palliative Care Alliance
“Please, do not make us suffer any more...”

Access to Pain Treatment as a Human Right

Global State of Pain Treatment

Access to Palliative Care as a Human Right
ACCESS TO PALLIATIVE CARE: A NEGLECTED COMPONENT OF THE RIGHT TO HEALTH

PANEL DISCUSSION ON USING HUMAN RIGHTS MECHANISMS TO ADDRESS GLOBAL CHALLENGES IN ACCESSING PAIN AND PALLIATIVE CARE TREATMENT

MONDAY, JUNE 6TH, 2011
LUNCH TIME BRIEFING
Room XXII in the Palais de Nations at 13:00 – 15:00

Keynote Speaker
Professor Dr. Tabaré Vázquez
Director and Professor, Radiotherapy Service of the Department of Oncology, School of Medicine, La Universidad de la República, Head of Radiotherapy Services at the National Institute of Oncology, Uruguay Ministry of Health; former President of Uruguay 2005-2010

MChERATOR
Benedict Lobban
Senior Researcher, Health and Human Rights Division, Human Rights Watch

PANELISTS
Dr. Faith Mavingi-Kwetel, PhD
Executive Director, African Palliative Care Association

Dr. M. R. Rajagopai
Chairman, Palliative India

Lilian de Lima, MHA
Executive Director, International Association for Hospice & Palliative Care

Snackcakes and drinks will be served
Human Rights Council  
Twenty-second session  
Agenda item 3  
Promotion and protection of all human rights, civil, 
political, economic, social and cultural rights,  
including the right to development  

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez  

Summary  

The present report focuses on certain forms of abuses in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment. It identifies the policies that promote these practices and existing protection gaps.  

By illustrating some of these abusive practices in health-care settings, the report sheds light on often undetected forms of abusive practices that occur under the auspices of health-care policies, and emphasizes how certain treatments run afoul of the prohibition on torture and ill-treatment. It identifies the scope of State’s obligations to regulate, control and supervise health-care practices with a view to preventing mistreatment under any pretext.  

The Special Rapporteur examines a number of the abusive practices commonly reported in health-care settings and describes how the torture and ill-treatment framework applies in this context. The examples of torture and ill-treatment in health settings discussed likely represent a small fraction of this global problem.
treatment of severely ill individuals. These interventions should be based on a holistic approach, considering the physical, mental, and emotional needs of patients. 

1. Denial of pain relief

86. The Special Rapporteur calls upon all States to:

(a) Adopt a human rights-based approach to drug control as a matter of priority to prevent the continuing violations of rights stemming from the current approaches to curtailing supply and demand (A/65/255, para. 48). Ensure that national drug control laws recognize the indispensable nature of narcotic and psychotropic drugs for the relief of pain and suffering; review national legislation and administrative procedures to guarantee adequate availability of those medicines for legitimate medical uses;

(b) Ensure full access to palliative care and overcome current regulatory, educational and attitudinal obstacles that restrict availability to essential palliative care medications, especially oral morphine. States should devise and implement policies that promote widespread understanding about the therapeutic usefulness of controlled substances and their rational use;

(c) Develop and integrate palliative care into the public health system by including it in all national health plans and policies, curricula and training programmes and developing the necessary standards, guidelines and clinical protocols.

2. Compulsory detention for medical reasons

87. The Special Rapporteur calls upon all States to:
In Summary

The right to palliative care and pain treatment is not recognized in a single legal source.

Several declarations and conventions with a varying degree of enforceability and obligations at the international and national levels.

Palliative care and pain relief organizations can help patients and providers by facilitating access to this information, increasing awareness and developing advocacy campaigns.
“The destiny of human rights is in the hands of all our citizens in all our communities.”

Eleanor Roosevelt