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Anand Grover is a practicing lawyer in the Bombay High Court and the Supreme Court of India, and a pioneer in the field of HIV/AIDS litigation. He is director and cofounder of the Lawyers Collective (www.lawyerscollective.org), established in 1981, and its HIV/AIDS Unit in India, established in 1998. He has acted as advocate and lead counsel in various public interest and human rights matters, including the rights of marginalized groups such as men who have sex with men, sex workers, drug users, women, and children. He was counsel for the first HIV case in India relating to employment law and the right of HIV-positive persons to marry. With the Lawyers Collective HIV/AIDS Unit, he drafted a comprehensive HIV bill, invited by the Government of India, that is now pending consideration in Parliament.

Please address correspondence to the author at srhealth@ohchr.org and at specialrapporteurhealth@lawyerscollective.org.

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THE POWER OF COMMUNITY IN ADVANCING THE RIGHT TO HEALTH: A CONVERSATION WITH ANAND GROVER

Anand Grover was recently appointed by the UN Human Rights Council as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Special Rapporteurs hold an honorary position as independent experts appointed by the Human Rights Council to examine and report on a country situation or a specific human rights theme. This interview with Mr. Grover was conducted by Alec Irwin, Co-Managing Editor of Health and Human Rights*, at the XVII International AIDS Conference in Mexico City in August 2008.*

Health and Human Rights: What aspects of your background do you feel have especially prepared you to take on the role of Special Rapporteur on the right to health?

Anand Grover: What is very important for me is to bring to the Special Rapporteur's role the strengths I have from my work with communities of HIV-positive people and with other marginalized groups. I've done a lot of work in India around HIV, discrimination, access to treatment, and also the rights of marginalized groups like men who have sex with men, sex workers, and injection drug users. What the HIV movement has shown is that it's community empowerment which changes the paradigm.

We need to pay more attention to the content of the right to health as it is experienced by communities. This right is not only an abstraction to be argued about by academics or clever lawyers. It's a vital part, a living part of people who actually enforce it themselves. In that sense, it's crucial to respond to people, not just to make your own decisions. I have experiences in my work where the community has corrected me and told me, "Anand, you're wrong." And they proved to be right in the final analysis. I'm proud to say that the community has the right to correct me, so I'm committed to continuing the exchange with affected communities on critical health issues.

HHR: Could you give an example of a situation in which the community challenged you and changed your views?

AG: One instance was recently, when we were working on an amendment to Indian law that included, for the first time, punishing clients of sex workers. As their legal advisor, I had accompanied the representatives of the sex workers to the Office of Women and Children, which was in charge of drafting the amending law. When I looked at the law that was being proposed I remarked, "They're punishing the clients; why should we be worried about that?" I didn't see a problem. I explained to the sex workers what the law was about. They replied: "Let us go back to the office and you translate the text to us in Hindi." So we went back to my office and I translated the documents for them. The sex workers said,

"Anand, you have to oppose this law on our behalf." I asked why, and they said, "We won't be able to have clients, and we'll starve to death." So, the community corrected me there. Our intellectual faculties are abstract. We come to our conclusions by intellectual discourse. We don't have the experience of oppression and discrimination. The community has that experience. If we don't marry our intellectual analysis with the community's experience, we can't make the right decisions.

HHR: In these early stages of your work as Special Rapporteur, what do you see as the main challenges and opportunities?

AG: Well, I think we have a strong foundation to build on. There is a recognized right, which is established in international law and is also understood by countries, though of course it's interpreted differently. This shows the importance of dialogue that includes all points of view. I'm a great believer in dissent and opposition of ideas. I'm a leftist, and people often think that leftists don't believe much in dialogue! But I've always been a part of the "New Left," which encourages a very strong element of dissent, which believes that effective strategies and policies can only be formulated after rigorous discussion. And I think that's what is required. There are different ways of looking at the right to health that are entirely legitimate. So we need an ongoing process of dialogue.

That's on the conceptual level. The second issue, then, is how this is implemented concretely, at the local level. The large majority of countries recognize a right to health, whether this is formally written into their constitutions or otherwise. So how the right is implemented becomes critical. Courts have issued judgments — are they actually translated into practice? The classical model of implementation is top-down. Well, I think the community, again, plays a very important role in transparency, accountability and effective implementation of the right to health. That's the lesson again from HIV, which I want to impress upon Member States and other constituencies. That's also a process of dialogue, which has to include both human rights activists and people who don't necessarily believe in the human rights framework.

HHR: Do you see opportunities to advance this dialogue on specific issues?

AG: Two areas where I want to concentrate initially are access to treatment and health systems, including the whole area of budgeting and finance in the health sector. There are very different views on questions like the proper role of insurance — for example, whether we should have community health insurance or social insurance. And whether the focus should be on state-funded, tax-based health systems or on a greater role for the private sector. All these models may be legitimate, and the practical realization may be different in different countries. But any solution has to be premised on the idea that everyone, without exception, is entitled to the right to health.

Again, I do think there are many fundamental issues countries have agreed upon. And then there are civil society and health activists, affected and infected, who get engaged in these issues and exert pressure, for example, for access to AIDS treatment. Already there is great mobilization in the community about these issues, so I want to take that further. This will help governments to realize the rights of their citizens. I firmly believe in dialogue between civil society and government, like we have a dialogue with our government [in India] is critical. The government now sees the value of the community organizing itself, lots of people organizing. Communities can make sure that the government and the different agencies are delivering, that they are accountable.

The community is the most effective tool that we have: an organic tool, not a tool in the abstract or purely instrumental sense, but a living, organic tool which can see to it that the right to health is actually delivered. You just have to compare the efficiencies of the Global Fund, in terms of actual delivery, to the traditional systems of financing, and you see a vast difference. This suggests how we have to shift the paradigm across the sectors, not only in HIV. And HIV activists are very clear that health systems must respond to the needs of all people who suffer disadvantage in health — whether it's because of poverty, as Paul Farmer has discussed, or because of other forms of discrimination and marginalization, for example the discrimination that affects indigenous peoples or other ethnic minorities. Now we must deliver, and those communities must be part of the process of decision-making, implementation, monitoring, and accountability. That's what HIV has shown as a living reality, and that's what we want to translate into other areas of health.

HHR: Why might the mandate of the Special Rapporteur be especially important right now?

AG: The economic crisis shows the importance of systematic action to protect rights, including the right to health, especially for poor and marginalized groups. In the 1990s, we had economic liberalization, which usually meant only privatization. The poor were pushed into deeper poverty, while the rich became richer. In this context, it's all the more important to insist that the right to health is universal. But this isn't just a philosophical principle. It's about budgeting. As I said, we can't ignore budgeting anymore. And budgeting doesn't mean that governments in low-income countries must pay for everything from their own resources. The right to the highest attainable standard of health, and the responsibility to protect the right, have to be seen in international terms. This means you look at international systems of financing. If a country's resources aren't adequate, then money has to come from abroad, also. That financing commitment has to be part of the international rights agenda.

HHR: How do you plan to build on the contributions of Paul Hunt during his tenure as Special Rapporteur?

AG: That's an important question. Paul Hunt has done tremendous work, and I'm glad to say I'm in regular communication with him. I've got a lot to learn from him, not only about the procedures, which are but a tiny part of the work, but also because he laid down the basic foundations and the contours of the work of the Special Rapporteur. And he's been prolific in his writings, which I don't think I'll ever be able to match. If I can produce even half the number of reports he has generated, I'll be happy!

Specifically I will try to see that what Paul did in terms of country missions are followed up by me, so that the progress or lack of it can be monitored. This will reinforce what Paul has done. Also on issues like indicators, he has made a good beginning. We need to explore that further.

Building on Paul Hunt's achievements requires learning from him, seeking advice from him. I don't believe that any person is better than another person; you only become better by learning from others, with humility. So I want to build on that previous work not with my own native intelligence, but drawing on what I described earlier, the experience of the community and the marrying of that experience with a nuanced understanding of the right to health.

A full description of the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is available at http://www2.ohchr.org/english/issues/health/right/overview.htm.