Access to Essential Medicines as a Human Right

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The Working Group on Access to Essential Medicines of the United Nations Millennium Project, adopting an access to medicines as a human rights approach, noted that the lack of access to life-saving and health-supporting medicines for an estimated two billion poor people stands as a direct contradiction to the fundamental principle of health as a human right (MDG Gap Task Force, 2008).

The national constitutions of sovereign states define the fundamental political principles of a country and usually guarantee certain rights to their people. Health is a fundamental human right in at least 135 national constitutions. Although access to healthcare including access to essential medicines, is a pre-requisite for realizing the right to health, only five countries specifically recognize access to essential medicines and technologies as part of the fulfillment of that right to health (MDG Gap Task Force, 2008).

In spite of this glaring omission from constitutions across the globe, most countries have signed and ratified, among others, four international human rights treaties and declarations collectively known as "International Bills of Human Rights'. They are:

- The United Nations Charter
- Universal Declaration of Human Rights (UDHRs)
- International Covenant on Civil & Political Rights (ICCPRs)
- International Covenant on Economic, Social and Cultural Rights (ICESCRs)

Each of these four documents has explicit provisions to ensure the right to health that has influenced international law since the end of the Second World War in 1945.
The following is a summary of articles in the UDHRs and ICESCRs relevant to essential drugs as a human right.

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- Article 25.1 of the Universal Declaration of Human Rights states *"Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services"*
- In article 12.1 of the International Covenant on Economic, Social and Cultural Rights, States parties recognize *"the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".* Article 12.2 enumerates a number of steps to be taken by States Parties to achieve the full realization of this right, which include the right to prevention, treatment and of disease, and the right to health facilities, goods and services.
- Article 12.2 of the Covenant is further interpreted and defined in General Comment no 14 by the Committee on Economic, Social and Cultural Rights. The right to prevention, treatment and control of diseases in article 12.2 (c) includes the creation of a system of urgent medical care and the provision of disaster relief and humanitarian assistance in emergency situations. The right to health facilities, goods and services in article 12.2 (d) includes appropriate treatment of prevalent diseases, preferably at community level; and the provision of essential drugs (CESCR, 2000).
- While the Covenant provides for progressive realization and acknowledges the limits of available resources, States parties have an immediate obligation to guarantee that the right to health will be exercised without discrimination of any kind (art. 2.2) and to take deliberate and concrete steps (art 2.1) towards the full realization of article 12. In General Comment no 3 the Committee confirms that States parties have core obligations, which are non-derogable, to ensure the satisfaction of minimum essential primary care as described in the Alma-Ata Declaration (Declaration of Alma-Ata, 1978). These core obligations are further specified in Comment no 14, and specifically include the provision of essential drugs as defined under the WHO Action Programme on Essential Drugs, and a national public health strategy and plan of action with particular attention to vulnerable or marginalized groups.

Provision of essential drugs is one of the most important tools in achieving the holy grail of health for all. Arguably one of the most significant developments in the battle for universal

access was the 1978 Alma Ata Declaration on "Health for All". The member states of the World Health Organization (WHO) made a promise to the World Community in Alma Ata in 1978 that each member state would develop a framework for strategic action to develop national health policies based on Primary Health Care (PHC). Furthermore, political commitment to mainstream health concerns into development decision-making and implementation processes were to be strengthened in order to promote, enable and sustain the achievement of health for all with active participation of the community. The Alma Ata Declaration underscored the fact that primary health care was the key to make health for all a reality and identified several components of primary health care. The provision of essential drugs was one of the components.

Provision of essential drugs has been identified by the Committee of ICESCRs as one of the minimum core obligations of governments. In General Comment No. 3, the Committee confirms that State parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development (UN population fund, 1995), the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. In the Committee's view one of these core obligators include, "to provide essential drugs, as from time to time, defined under the WHO Action Programme on Essential Drugs".

"Essential Medicines", according to the World Health Organization (WHO), "are those that satisfy the priority health needs of the population" and, "are intended to be available within the context of functioning health systems at all times, in adequate amounts, in the appropriate dosage forms, with assured quality, and at prices the individual and the community can afford" (WHO, n.d.). The UN MDG Gap Task Force defined access, as "having essential medicines continuously available and affordable at public or private health facilities or retail pharmacies that are within one hour's walk from the homes of the population" (MDG Gap Task Force, 2008). In fact, about

one third of the population, approximately two billion people, has no access to life-saving and other essential medicines (WHO, 2000).
According to the WHO, scaling-up interventions including essential medicines for infectious diseases, maternal and child health and non-communicable diseases, would save more than 10.5 million people by 2015 (WHO, 2004).

The UN Working Group on Access to Medicines identified six barriers to access to medicines in resource-poor countries (MDG Gap Task Force, 2008). They are:

- Inadequate national commitment;
- Inadequate human resources;
- Failure of the international community to keep its promises of assistance to developing countries;
- Lack of coordination of international aid;
- Obstacles placed by the Trades Related Intellectual Property Rights (TRIPS); and
- The current incentive structure for research and development of medicines and vaccines to address priority health needs of developing countries.

In examining the solution to the problem, the UN Working Group underscored the, "consensus that human rights should incorporate the ability of individuals to maintain and restore good health through access to at least a basic level of primary health care including essential medicines" (MDG Gap Task Force, 2008). Among the working groups, recommendations aimed at the improvement of access to essential medicines are *improving the rate and relevance of innovation* and the development of *more reliable procurement and supply systems at the national and international levels* (MDG Gap Task Force, 2008).

In *Realising the Right to Health* (2009) Kohler poses "Ask any serious philosopher whether there is a conclusive reasoning for the logical validity of human rights" and the honest answer will be: "No, … but there are many good reasons for acknowledging human rights", and above all, the philosopher will continue, "their binding force is …[…]… no longer dependent on any theories and philosophical reflections but the expression of the will of the community of nations and of a

world encompassing experience, which humanity has learned from its own history, adopting it and converting it to binding law" (Kohler, 2009). In other words, the bed rock of civilization is the concept of human rights. Ignore human rights and a nation becomes barbaric.

Most would agree that the most basic human right on which our civilization is built is the right to life. The right to life is indivisible from the right to health. The right to health includes the right of access to medicines. Realizing human rights is only possible by turning demands into claims and commitments - claims by the people and commitment by the State. Access to medicines in the context of human rights framework means that Governments do not only have moral responsibilities but legal obligations as well; and for governments, the legal obligations under access to medicines must be taken into account in:

- The establishment of budget priority lines;
- The management of the health system; and
- The regulation of competition, pricing and licensing.

Attaining the human right of access to medicines consists of two components:

- The availability of certain basic medications free of charge throughout the public health system; and
- The formulation and implementation of a National Drug Policy ensuring the procurement, production and distribution of an entire range of essential medicines at affordable prices.

From a public health point of view, access to medicines requires the fulfillment of the following conditions:

- Rational Use;
- Sustainable, adequate financing;
- Affordable prices; and
- Reliable health systems.

In any society an effective health system should be a core institution, no less than a fair justice system or democratic political system (Freedman, 2005). But unfortunately in many developing

countries the health systems are failing, sometimes to the point of collapse, giving rise to an extremely grave and widespread human rights problem (WHO, 2007).

The basic components of a public health system in a human rights-based framework should include:

- Adequate, skilled health professionals in all health care facilities;
- Availability of a complete range of specific services appropriate to all levels; and
- Availability of all basic medications and supplies.

In its General Comment No 14, the Economic Social and Cultural Rights committee explained that health care facilities and services should be:

1. Available in sufficient quantity;
2. Accessible to everyone without discrimination;
3. Acceptable in the sense of respectful of medical ethics and customs; and
4. Of good quality and scientifically appropriate.

In particular, accessibility includes:

1. Physically accessibility
    - "health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS"
2. Economic accessibility
    - "health facilities, goods and services must be affordable for all"
3. Information accessibility
    - "accessibility includes the right to seek, receive and impart information and ideas concerning health issues"

The same General Comment reaffirmed that "States Parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care".

Conclusion

Humans Rights is at the core of our society, therefore the approach should be incorporated in all national health and medicines policies and programmes. National NGOs should be empowered to put pressure on governments to fulfill their commitments and obligations under the international and national human rights instruments they have signed and ratified.

The human right to essential medicines is a derivative right from the rights to health and to life. The right to health includes the right to emergency treatment and the right to health facilities, goods and services. The right to health facilities, goods and services specifically includes the provision of essential medicines as defined by WHO. State Parties are under obligation to guarantee that the right to health will be exercised without discrimination, and to take deliberate and concrete steps towards its full realization with emphasis on vulnerable and marginal groups.

The human right to essential medicines has advanced in terms of its normative content and its legal recognition. However, it remains a daunting challenge to find accommodation with the international trade regime, bridge the gaps in political will, find incentives for innovation and affordable pricing and create the availability of adequate human and financial resources to ensure distribution networks.

All these need to be achieved for the right to essential medicines to become a reality for over two billion people who have no access to essential drugs.

Suggested reading on access to essential medicines as a human right

1. Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No 14 on the Right to the Highest Attainable Standard of Health, 11, Aug 2000*UN, DOC.E/C12/2000/4

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2. The Report of the UN special Rapporteur on the Right to the Highest Attainable Standard of Health A/HRC/4/28,17 Jan 2007
3. MDG Gap Task Force: Millennium Development Goal 8: Delivering on Global Partnership for achieving the Millennium Development Goals: MDG Task Force Report 2008 (New York, United Nations 2008)

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