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**HEALTH AND HUMAN RIGHTS: CURRENT SITUATION AND WAY FORWARD
IN THE AFRICAN REGION**

Report of the Secretariat

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BACKGROUND

1. Human rights are universal legal guarantees that protect individuals against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. The right to health is a necessary part of human rights, recognized in Article 25 of the 1948 Universal Declaration of Human Rights¹ as part of adequate standard of living. The earliest articulation of the right to health was set forth in the 1946 Constitution of the World Health Organization (WHO)² which asserts that the enjoyment of the highest attainable standard of health is "...one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

2. The right to health is closely related to and largely dependent upon the realization of other human rights including the right to food, housing, work, education, human dignity, life, non-discrimination, equality, prohibition of torture, among others. This strong relationship underscores the need to address health inequities and avoidable inequalities related to health outcomes.

3. WHO reaffirmed its commitment to health as a human right through the 1978 Alma Ata Declaration³ and subsequently the 1998 World Health Assembly Resolution WHA51.7.⁴ Additionally the World Health Assembly has adopted a number of resolutions on issues such as women's health, child and adolescent health, HIV/AIDS, mental health, essential medicines, indigenous peoples' health, among others, all of which consider health as a human right. The Eleventh General Programme of Work for the period 2006–2015⁵ as well as the Medium-Term Strategic Plan for 2008–2013⁶ underscores the importance of human rights and health equity in the work of WHO. Furthermore, the Strategic Directions for WHO (2010–2015) in the African Region⁷ commit WHO to support countries to develop health policies and strategies that enhance equity, and are responsive to gender, and based on human rights. In the context of the wider UN system, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is mandated to monitor, including through country visits, and report to the UN General Assembly, the situation on the right to health. In the African Region the Special Rapporteur has already visited Mozambique⁸ (2003) and Uganda⁹ (2005).

4. Several core international human rights treaties, ratified by Member States, recognize the right to health. These include the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the International Convention on the Rights of All Migrant Workers and Members of their Families (ICRMW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The CRC, which is the most widely ratified human rights treaty globally, and

¹ United Nations General Assembly (UNGA), General Assembly Resolution 217 A (III)- The Universal Declaration of Human Rights- Paris, December, 1948 <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>. Last accessed on 14 February 2012.

² Official Record World Health Organization, 2, 100 www.who.int/governance/eb/constitution/en/index.html. Last accessed on 14 February, 2012.

³ Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, USSR, September 1978.

⁴ Annex to World Health Assembly Resolution 51.7 "Health for all Policy for the twenty-first century", May 1998.

⁵ World Health Organization (2006) Engaging for Health: 11th General Programme of Work, 2006–2015, A Global Health Agenda, Geneva Switzerland.

⁶ World Health Organization (2007) Medium-Term Strategic Plan, 2008–2013, Geneva, Switzerland.

⁷ WHO. Achieving Sustainable Health Development in the African Region: Strategic Directions for WHO 2010–2015, World Health Organization, Regional Office for Africa, Brazzaville, Congo, 2010.

⁸ UN/ECOSOC (2005). The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, report of the Special Rapporteur, Mission to Mozambique. E/CN.4/2005/51/Add.2. Last accessed on 25 April 2012 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/101/64/PDF/G0510164.pdf?OpenElement>.

⁹ UN/ECOSOC (2006). The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, report of the Special Rapporteur, Mission to Uganda. E/CN.4/2006/48/Add.2. Last accessed on 25 April 2012 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/105/24/PDF/G0610524.pdf?OpenElement>.

CEDAW have been ratified by all WHO Member States. Annex 1 summarizes the status of ratification of international human rights treaties.

5. At the regional level, the African Charter on Human and People's Rights (also called the Banjul Charter) recognizes the right of every individual to "enjoy the best attainable state of physical and mental health" and urges States to "take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick". All Member States have ratified the Banjul Charter. The Protocol to the African Charter on Human and People's Rights on the Right of Women in Africa and the African Charter on the Rights and Welfare of the Child recognize the right to health of women and children respectively. Annex 2 summarizes the status of ratification of regional human rights treaties.

6. The right to health has been enshrined in the national constitutions of all but six of the Member States.¹⁰ This constitutional recognition imposes an obligation upon Member States to make every possible effort according to available resources to respect, protect, fulfil and promote this right. The right to health is subject to progressive realization,¹¹ which means that countries must make every possible effort, according to available resources, to protect and promote this right. Available resources include the resources within the country as well as those available through international cooperation and assistance.

7. Despite the various international, regional and national commitments made by Member States, there still remain large and growing inequities in the provision of access to health care within countries.¹² This situation is aggravated in occurrences of war and civil strife, natural disasters, disease outbreaks, and in the current global financial crisis.

8. This paper is based on information gathered through a recent WHO survey of Member States, and supplemented by a desk literature review. Its purpose is to analyse key issues and challenges facing countries and hampering the full realization of the right to health, and to propose actions that can be undertaken to address these challenges.

ISSUES AND CHALLENGES

9. *Enforcement of human rights treaties:* Despite the fact that all Member States are signatories to at least one human rights treaty in which the right to health is enshrined, a major challenge is the failure to guarantee this right meaningfully at country level. This is particularly so when countries do not give sufficient recognition to the right to health through national legislation and policies and through putting in place institutional mechanisms that support the promotion of this right.

10. *Universal access to quality health care through primary health care approaches:* The vast majority of people in the Region cannot access essential health care services due to prohibitive costs, weak public health infrastructure, geographical access to health facilities, inadequate consideration of gender-responsive health care needs and ineffective referral systems. In the Region, there are only 11 Member States¹³ that have articulated policies for universal coverage. Additionally, about half of total health expenditure in the Region is by private health spending, much of which consists of household out-of-pocket payments that can expose people to risks of catastrophic expenditures and impoverishment.¹⁴ According to the WHO Global Health Observatory¹⁵ only seven countries¹⁶ have

¹⁰ Botswana, Cameroon, Chad, Ghana, Liberia, Mauritius.

¹¹ Article 2 (1) of the ICESCR.

¹² WHO. Health Inequities in the African Region of the World Health Organization: Magnitudes, Trends and Sources. World Health Organization, Regional Office for Africa, Brazzaville, Congo, 2010.

¹³ Benin, Côte d'Ivoire, Gabon, Ghana, Malawi, Mali, Namibia, Rwanda, Sierra Leone, South Africa and Togo.

¹⁴ WHO: The World Health Report 2010: Health Systems Financing – the Path to Universal Coverage. World Health Organization, Geneva; 2010.

attained the Abuja target that commits countries to allocating 15% of the total national budget to the health sector.

11. *Access to medical products and technologies:* The most common barriers to access to medical products and technologies include cost, quality and the growing problem of falsely labelled/spurious/counterfeited/substandard pharmaceutical products, inadequate incentive structures for medicines and vaccines research and development, and trade-related barriers. WHO estimates¹⁷ that a third of the global population lacks reliable access to essential and new medicines and that expanding access to existing interventions in areas such as medicines provision for infectious diseases, maternal and child health, and noncommunicable diseases would save more than 10.5 million lives a year by 2015. Further studies¹⁸ show that there is a significant unmet need for pain relief and treatment in the Region, with an estimated 1.2–1.4 million people experiencing moderate-to-severe pain annually during the end-stages of AIDS and terminal cancer, without treatment.

12. *Ethics in biomedical research:* There has been a significant increase in clinical trial sites in the developing world, particularly in Africa. Examples of trials conducted in the African Region¹⁹ have raised concerns of exploitation, inadequate informed consent, post-trial obligations of researchers and a tendency for greater risks than benefits to research participants. Furthermore, studies²⁰ conducted by WHO on National Ethics Committees show that the regulatory infrastructures and independent oversight processes that minimize the risk of exploitation are not-so-firmly established, inadequately supported financially and sometimes ineffective.

13. *Gender-related inequities:* Societal gender-based discrimination that marginalizes women and puts them at a disadvantage with limited access to education and other economic opportunities is a major determinant of women's health. Sexual and reproductive health rights,²¹ which include safe motherhood and newborn care, abortion care, family planning, prevention and management of sexually transmitted infections including HIV/AIDS, prevention and management of infertility, and prevention and management of cancers of the reproductive system are recognized as vital to women's attainment of the right to health.

14. *Marginalization, stigma and discrimination:* Some of the marginalized groups of people in the Region include orphans, street children, the elderly, migrants, refugees, internally displaced persons (IDPs), people with disabilities, sex workers, drug users, homosexuals, prisoners, indigenous communities, and people living with HIV/AIDS. People suffering from diseases and conditions such as leprosy, tuberculosis, noma, buruli ulcer, fistula, mental and physical disabilities are shunned and rejected by society. Compelled to shy away from seeking help due to prejudice, they are thus denied

¹⁵ WHO Global Health Observatory, <http://www.who.int/gho>. Last accessed on 30 March 2012.

¹⁶ Botswana, Burkina Faso, Liberia, Madagascar, Rwanda, Tanzania and Zambia.

¹⁷ Measuring medicine prices, availability, affordability and price components, 2nd ed. Geneva, World Health Organization/Health Action International, 2008.

¹⁸ Scholten, W. Nygren-Krug, H. and Zucker, H.A (2007) The World Health Organization Paves the Way for Action to Free People from Shackles of Pain *Anesthesia & Analgesia, Vol 105, No. 1 pp. 1-4*; Human Rights Watch (2011) "Global Access to Pain Treatment: Access to Palliative Care as a Human Right" New York, USA.

¹⁹ Laurie P and Wolfe SM, (1997). Unethical Trials of Interventions to Reduce Perinatal Transmission of Human Immunodeficiency Virus in Developing Countries. *N Engl J. Med* (337) 853-856; Annas GJ, Grodin MA. Human Rights and Maternal-Fetal HIV Transmission Prevention Trials in Africa. *American Journal of Public Health* 1998; 88:560-2; Singh, JA and Mills, EJ (2005) The Abandoned Trials of Pre-Exposure Prophylaxis for HIV: What Went Wrong?" *PLoS Med* 2(9):e234 accessed on www.plosmedicine.org on 7 March 2012, Kabir, Ahmad (2001) Drug Company Sued over Research Trial in Nigeria. *Lancet*,358: 815.

²⁰ Kirigia JM. *et.al.* (2005). Status of National Research Bioethics Committees in the WHO African Region" *BMC Medical Ethic* 6:10; Kirigia, JM and Wambembe C. (2006) Status of National Health Research Systems in ten Countries of the WHO African Region. *BMC Health Services Research* 6:135.

²¹ General Comment No. 14 (2000) on the right to health adopted by the Committee on Economic, Social and Cultural Rights, states that reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right to access appropriate health-care services that will, for example enable women to go through pregnancy and childbirth.

access to health care services and full participation in society. In addition, these population subgroups are likely to suffer poor health and poor quality of life because their specific health care needs are overlooked, resulting in underfunding of facilities and programmes targeted at them.

15. *Awareness of the right to health:* Discussions on the subject of human rights in general and the right to health in particular tend to be very technical and are most often the preserve of legal experts. This has resulted in a lack of awareness among people, including even health workers, of their right to health and healthy working conditions, thus limiting their ability to initiate actions to advance these rights. Health workers most often lack training on this subject, and that creates a situation whereby they sometimes infringe on patients' rights or engage in unethical conduct.

ACTIONS PROPOSED

16. To ensure the *enforcement of human rights treaties*, countries should give sufficient recognition of the right to health in political and legal systems including national constitutions. In addition to reviewing their legislation and policies to assess their consistency with human rights standards, countries should put in place institutional mechanisms that will ensure their implementation and enforcement. National public health acts, health policies, and health sector strategic plans should be consistent with the norms and principles of the right to health.

17. To enhance *universal access to primary care services*, countries should implement the primary health care approach and define the minimum essential elements of the right to health to include equitable access to, and distribution of, health facilities, goods and services, maternal and child health services; access to health-related education and information and; the availability of appropriately trained health personnel. In addition, countries should make sufficient budgetary allocations for health care provision.

18. To improve *access to medical products and technologies*, countries should develop and strengthen the capacities of medicine regulatory authorities to ensure the quality, safety and efficacy of health products. They should explore possibilities of developing regional mechanisms for price negotiations and procurement, as well as developing pharmaceutical research and development (R&D) capacities. The existing flexibilities in the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and in the Doha Declaration, allowing for compulsory licensing and parallel importation of medical products should be exploited.

19. To ensure *ethics in biomedical research* countries should put in place adequately resourced national and institutional ethics committees to review and approve research involving human subjects, and adopt an overarching policy and/or law on the regulation of health research as mechanisms for protecting the human rights of research participants.

20. To reduce *gender-related inequities* countries should systematically integrate a gender-based approach to the development of health sector strategies and other national policies aimed at prevention. Efforts should be made to strengthen support structures for victims of sexual violence and enhance the availability and accessibility of infertility management structures.

21. To address *marginalization, stigma, and discrimination* countries should, through a participatory process and in conformity with human rights principles, identify and establish mechanisms for multisectoral collaboration between all relevant government ministries, parliamentary committees (where they exist), national human rights institutions and civil society to identify and address the specific health care needs of vulnerable and marginalized populations.

22. To *improve awareness on and understanding of human rights and health* countries should ensure, through a multisectoral approach, that medical education curricula offer training and guidance

on human rights in regard to both health workers' rights and the rights of beneficiaries of health care services. Furthermore, measures should be taken to increase public awareness of these rights. National human rights institutions, civil society and the general public should play an active role in monitoring and upholding this right in the course of its implementation.

23. The Regional Committee is invited to examine the document and endorse the actions proposed.

Annex 1: Summary of the status of ratification of international human rights treaties

	Country	ICESCR	CRC	CEDAW	CRPD	ICRMW	CERD
1	Algeria	√	√	√	√	√	√
2	Angola	√	√	√			
3	Benin	√	√	√			√
4	Botswana		√	√			√
5	Burkina Faso	√	√	√	√	√	√
6	Burundi	√	√	√			√
7	Cameroon	√	√	√			√
8	Cape Verde	√	√	√	√	√	√
9	Central African Republic	√	√	√			√
10	Chad	√	√	√			√
11	Comoros		√	√			√
12	Congo	√	√	√			√
13	Côte d'Ivoire	√	√	√			√
14	Democratic Republic of Congo	√	√	√			√
15	Equatorial Guinea	√	√	√			√
16	Eritrea	√	√	√			√
17	Ethiopia	√	√	√	√		√
18	Gabon	√	√	√	√		√
19	Gambia	√	√	√			
20	Ghana	√	√	√		√	√
21	Guinea	√	√	√	√	√	√
22	Guinea-Bissau	√	√	√			√
23	Kenya	√	√	√	√		√
24	Lesotho	√	√	√	√	√	√
25	Liberia		√	√			√
26	Madagascar		√	√			√
27	Malawi	√	√	√	√		√
28	Mali	√	√	√	√	√	√
29	Mauritania	√	√	√		√	√
30	Mauritius	√	√	√	√		√
31	Mozambique		√	√			√
32	Namibia	√	√	√	√		√
33	Niger	√	√	√	√	√	√
34	Nigeria	√	√	√	√	√	√
35	Rwanda	√	√	√	√	√	√
36	Sao Tome and Principe		√	√			
37	Senegal	√	√	√	√	√	√
38	Seychelles	√	√	√	√	√	√
39	Sierra Leone	√	√	√	√		√
40	South Africa		√	√	√		√
41	Swaziland	√	√	√			√
43	Togo	√	√	√	√		√
42	United Republic of Tanzania	√	√	√	√		√
44	Uganda	√	√	√	√	√	√
45	Zambia	√	√	√	√		√
46	Zimbabwe	√	√	√			√

Source: Data compiled from the United Nations Human Rights Treaty Bodies Database, March 2012.

Annex 2: Summary of the status of ratification of regional human rights treaties

	Country	Banjul Charter	Protocol on the African Charter on Human and people's Rights on the Rights of Women in Africa	African Charter on the Rights and Welfare of the Child	AU Convention Governing the Specific Aspects of Refugee Problems in Africa
1	Algeria	√		√	√
2	Angola	√		√	√
3	Benin	√	√	√	√
4	Botswana	√		√	√
5	Burkina Faso	√	√	√	√
6	Burundi	√		√	√
7	Cameroon	√		√	√
8	Cape Verde	√	√	√	√
9	Central African Republic	√			√
10	Chad	√		√	√
11	Comoros	√	√	√	√
12	Congo	√		√	√
13	Côte d'Ivoire	√		√	√
14	Democratic Republic of Congo	√			√
15	Equatorial Guinea	√		√	√
16	Eritrea	√		√	
17	Ethiopia	√		√	√
18	Gabon	√		√	√
19	Gambia	√			
20	Ghana	√		√	√
21	Guinea	√		√	√
22	Guinea-Bissau	√			√
23	Kenya	√		√	√
24	Lesotho	√	√	√	√
25	Liberia	√			√
26	Madagascar	√		√	
27	Malawi	√	√	√	√
28	Mali	√	√	√	√
29	Mauritania	√	√	√	√
30	Mauritius	√	√	√	
31	Mozambique	√	√	√	√
32	Namibia	√	√	√	
33	Niger	√		√	√
34	Nigeria	√	√	√	√
35	Rwanda	√	√	√	√
36	Sao Tome and Principe	√			
37	Senegal	√	√	√	√
38	Seychelles	√	√	√	√
39	Sierra Leone	√		√	√
40	South Africa	√	√	√	√
41	Swaziland	√			√
43	Togo	√	√	√	√
42	United Republic of Tanzania	√	√	√	√
44	Uganda	√		√	√
45	Zambia	√	√		√
46	Zimbabwe	√		√	√

Source: Data compiled from the African Commission on Human and People's Rights Depository of Legal Instruments database, February 2012.

DRAFT RESOLUTION

AFR/RC62/WP/6: HEALTH AND HUMAN RIGHTS: CURRENT SITUATION AND WAY FORWARD IN THE AFRICAN REGION (Document AFR/RC62/11)

The Sixty-second session of the Regional Committee for Africa,

Having considered the report on “Health and Human Rights: Current Situation and Way Forward in the African Region” (Document AFR/RC62/11);

Bearing in mind that the 1946 Constitution of the World Health Organization asserts that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic and social condition”;

Recalling the principles of the 1978 Alma Ata Declaration on Primary Health Care, the 1998 Health-for-All Policy for the Twenty-first century, and the 2008 Ouagadougou Declaration on Primary Health Care and Health Systems in Africa: Achieving better Health for Africa in the New Millenium, which reaffirm health as a fundamental human right;

Recalling further the African Charter on Human and Peoples Rights states that “every individual shall have the right to enjoy the best attainable state of physical and mental health” and that States “shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”;

Aware that the Strategic Directions for WHO (2010-2015) in the African Region commit WHO to supporting countries to develop health policies and strategies that enhance equity and are responsive to gender and are based on human rights;

Recognizing that international and regional human rights treaties, as well as national constitutions, make it incumbent upon State Parties to protect, fulfil and promote the right to health;

Recognizing the principle of progressive realization that requires Member States to take steps using maximum available resources towards progressively achieving the full realization of their citizens right to health;

1. ENDORSES Document AFR/RC62/11 entitled “Health and human rights: current situation and way forward in the African Region”;
2. **URGES** Member States:
 - (a) to uphold the right to health in legal frameworks including national constitutions and put in place mechanisms for its implementation, monitoring and reporting;
 - (b) to protect the right to healthcare of marginalized groups of people including orphans, street children, the elderly, migrants, refugees, people with disabilities, internally displaced, sex workers, drug users, homosexuals, prisoners, indigenous communities and people with HIV/AIDS, and other vulnerable groups within the context of national legal frameworks;
 - (c) to ensure universal health coverage through equitable and efficient health financing strategies in order to define the minimum essential elements of the right to health to include equitable access to health facilities, goods and services; access to health-related education and information;

- (d) to adopt an overarching policy and/or law on the regulation of health research and establish adequately resourced national and institutional ethics committees to review and approve research involving human subjects;
- (e) strengthen the technical capacities of the ministries of health, health-related sectors and other stakeholders to work with human rights bodies, and the Regional Office, to monitor, evaluate and upholding the right to health;
- (f) to strengthen the competencies of health workers with regard to knowledge of human rights treaties, conventions, standards and norms and their application in health care and health research and ensure their inclusion in the curricula of health professional training institutions and the effective teaching of these notions.

3. **REQUESTS** the Regional Director:

- (a) to promote the human rights approach in health development in the light of the African Charter on Human and Peoples' Rights and UN Human Rights mechanisms;
- (b) to support Member States in the design of health policies and strategies based on human rights standards and norms of relevance to their health systems' needs;
- (c) to support Member States in the strengthening of capacities and expertise in human-rights based approach to health development;
- (d) to develop monitoring tools in order to evaluate progress;
- (e) to report on the implementation of this resolution to the Sixty-fifth session of the Regional Committee and thereafter.