

a RIGHTS-BASED APPROACH for ADVOCACY on ACCESS to ESSENTIAL MEDICINES

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OUTLINE

- essential medicines (EMs) defined
- barriers to access: R&D, patents and prices
- rights-based advocacy: *access to medicines is a human right*
- conclusions



ESSENTIAL MEDICINES DEFINED

“Essential medicines [**EMs**] are those that satisfy the priority health care needs of the population. They are selected with due regard to public health relevance, evidence on efficacy and safety, and comparative cost-effectiveness.

Essential medicines 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 adequate information, and at a price the individual and the community can afford....



EMs DEFINED - 2

... The implementation of the concept of essential medicines is intended to be flexible and adaptable to many different situations; exactly which medicines are regarded as essential remains a national responsibility.”

www.who.int/medicines



BARRIERS TO ACCESS

- quality of diagnosis
- accurate prescribing
- selection, distribution, dispensing of medicines
- medicine quality
- health system capacity
- health budgets
- lack of research and development
- price
- patents



HUMAN RIGHTS – PRINCIPLES

- HRs concern the relation between state and the individual
- HRs lead to state obligations and individual entitlements
- All HR are interdependent and interrelated. **Health** is a fundamental HR, indispensable for the realization of other HR
- Freedom from discrimination underpins all HR



HUMAN RIGHTS – INSTRUMENTS 1

WHO Constitution (1946): the first expression of the right to health

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



HUMAN RIGHTS – INSTRUMENTS 2

Universal Declaration of Human Rights (1948):
promotion of HR is a principle purpose of the
UN

Art 25.1 *“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...”*



HUMAN RIGHTS – INSTRUMENTS 3

The right to health is also recognized in:

- 1961 European Social Charter
- 1966 International Covenant on Economics, Social and Cultural Rights
- 1978 Alma Ata Declaration (“health for all”)
- 1981 African Charter on Human and People’s Rights
- 1988 additional protocol to the American Convention on HRs in the Areas of Economic, Social and Cultural Rights
- 1989 Convention on the Rights of the Child



HUMAN RIGHTS – INSTRUMENTS 4

ICESCR (1966): ratified by 147 countries

Art 12: *“right of everyone to the enjoyment of the highest attainable standard of physical and mental health”*

Art 12.2: *“steps to be taken by State Parties to achieve:*

- a. maternal, child and reproductive health*
- b. health natural and workplace environments*
- c. prevention, treatment and control of disease*
- d. health facilities, good and services”*



HUMAN RIGHTS – INSTRUMENTS 5

Committee on Economic, Social and Cultural Rights
Gen Comment 14 (2000)

Art 12.2.c: Right to prevention, treatment and control of diseases includes creation of a system of urgent medical care in case of accidents, epidemics; and disaster relief and humanitarian assistance

*Art 12.2.d: Right to health facilities, goods and services includes appropriate treatment of prevalent diseases, preferably at community level; and **the provision of essential drugs as defined by the WHO Action Program on Essential Drugs***



HUMAN RIGHTS – INSTRUMENTS 6

Committee on ESCR Gen Comment 14 (2000)

“Violations”

1. Adoption of retrogressive measures
2. Failure to take all steps to ensure the right to health; eg.
 - Failure to adopt or implement a national health policy designed to ensure the right to health for anyone
 - Insufficient expenditure or misallocation of public resources
 - Failure to monitor realization of the right to health in the country
 - Failure to take measures to reduce inequitable distribution of health facilities, goods and services



HAS THE RIGHT TO ACCESS EMS BEEN REALIZED?

- 1/3 of the world's population lacks access to essential medicines --- in the poorest parts of Africa and Asia only 1/2 have access
- *treatable* infectious diseases kill 14 million people yearly; 90% are in developing countries
- Kenya: access to all essential medicines? For HIV, TB and malaria specifically?
 - Improving but not universal
 - Note HIV and AIDS Prevention and Control Act 2006 re: medicines treatment
 - continued assault on IP Act / generic procurements



OVERCOMING BARRIERS TO ACCESS: rights approach

Human Rights Approach

- Campaign for constitutional provisions for the Right to Health
- Campaign for national redress mechanisms
- Support court cases targeted on Health and Human Rights



CONCLUSIONS

- Access to medicines is an issue that needs a balance between political will and public involvement / civil society demand
- Civil society can demand their rights are realized through campaigns such as:
 - Implement the WTO rules that were designed to protect peoples' access to essential medicines!
 - Stop the assaults on procurements of generics!
 - Increase availability of essential medicines!
 - R&D for the medicines we need!
 - No taxes on essential medicines!
 - **FREE ESSENTIAL MEDICINES** is the only affordable option for most of the populations!

asanteni sana
merci beaucoup
thank you

references / acknowledgements:

- www.who.int
- *AEM as part of the fulfillment of the Right to Health HV*
Hogerzeil, WHO (28 Sept 2006)
- www.accessmed-msf.org
- www.hiafrica.org

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