# Using health rights to promote equity oriented health budgets

Parliament Briefing 4

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*In co-operation with the network of Parliamentary Committees on health in east and southern Africa* (SEAPACOH)

Public policy can make a difference to people's health. Health improves with increased wealth. But countries with low per capita national incomes have been able to achieve very high health outcomes when they have directed resources towards primary health care and district health services. This indicates that it is not only how much, but how resources are spent that influence health outcomes.

*Parliaments can contribute to these health outcomes in their debate on, review and approval of government budget allocations and oversight of public spending by the executive. This function is often seen as separate to the legislative role of parliament. But this leaflet argues that in fact, rights and their expression in law can be a powerful tool for parliamentarians when they are arguing the case for increased budget allocations, especially for health, and for these resources to be directed at the areas of health that matter most for equity.*

## Recommendations

Parliamentarians in east and southern Africa can

- Review and revise existing laws and policies to ensure consistency with human rights obligations
- Use the rights in treaties and laws to promote fair budgets for health
- Oversee that the Executive is progressively increasing access to health care and the conditions needed for health
- Establish a mechanism and appropriate indicators to track increased access to health care and the conditions needed for health
- Encourage participation of civil society groups representing the most vulnerable populations at highest risk of violations of human rights, though public hearings and other public consultations

## Parliaments roles in ensuring the right to health

Internationally the right to health imposes four obligations on states: to respect, protect, promote and fulfil the enjoyment of the right to health. The last obligation (to fulfil) means taking positive measures, particularly budgetary, to ensure that a right is met. That is why budgetary oversight is integrally linked to parliament's legislative role. The right to health sets a bottom line for what states must do for the health of its citizens and obligations on those who have a duty to ensure that the rights are protected or achieved.

There are various formulations by which health rights are protected. The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by most countries in the region, focuses on the "highest attainable standard of physical and mental health" and this is echoed in the African Charter on Human and Peoples' Rights ("...best attainable state of physical and mental health."). Parliament Briefing number 3 provides more information on this. The right to health includes rights to conditions necessary for health, including clean water, sanitation, safety, housing and access to information, amongst many factors.

This right of access to health care is qualified in two ways: it is subject to the availability of resources; and it is subject to "**progressive realisation of the right**". This means that states have to 'progressively realise' the right of access to health care by allocating budgets, passing laws and putting administrative programmes in place that will realise the right over time. Even if government cannot afford a level or form of health care now, it must, over time, take measures to ensure that it will, in future, be able to provide this health care. This is discussed further in Brief 3.

The right of access to health care, like many entitlements that comprise the right to health, requires that States adopt reasonable measures by which to realise this right. Parliament is one of the key institutions responsible for these (reasonable) measures because it has core responsibilities for the adoption of equity-oriented legislation and has oversight of an appropriate budget.

People are sometimes critical of human rights, saying that it reinforces individualism and allows vocal groups to lobby parliamentarians for special favours on the basis of a rights claim. But if parliaments are aware of the state's obligations to meet core obligations for the right to health, it is easier to decide what can be supported, when faced with competing claims.

There are many opportunities for parliament to promote health equity. Parliaments pass and revise laws, and can ensure that these reflect rights to health, including those states have committed to in international conventions.

Parliaments can also

- hear input from stakeholders representing vulnerable groups when bills are being scrutinised by committees;
- monitor health policies and programmes to see whether they incorporate recognition of the right to health and how far the rights to health are being implemented;
- adopt and oversee budgets that allocate resources for health equitably;
- invite public and stakeholder input through public hearings, constituency offices and on-site visits, and make sure that this includes inputs from vulnerable groups. For example, if public hearings are to be held to examine language as a barrier to access to health care, consideration should be given to hosting inputs from groups who are minorities, such as deaf people who rely on sign language, or taking testimony in different forms (e.g. video recordings from rural groups who cannot reach urban venue).

Meeting the right to health care does not benefit just a few people; it is a social entitlement, enjoyed by many people at the same time. For example, if parliament recommends expanding services to rural areas, this will benefit not just the individual lobbying for rural health care, but all people in rural areas.

## Ensuring laws protect health rights

Parliaments play a central role in debate on and enactment of health related laws, and Portfolio Committees responsible for health or for social services in Parliament can influence the process. Committees have the powers to study the bills, conduct public hearings, engage experts to support their role and to support amendments to bills in order to promote health equity. By focusing attention on whether vulnerable groups, who are prioritised by human rights commitments, are protected as a consequence of legislation or not, parliamentarians can ensure equity oriented legislation. A separate briefing (Brief 3) outlines parliaments role in ensuring that health rights set out in international treaties and agreements are protected in national law and practice.

## Using health rights to promote equity oriented health budgets

It is not possible to achieve health rights without a reasonable allocation of resources. To achieve this, Parliaments are obliged to ensure that there is a reasonable budget allocation to meet the demands of implementing the right to health. A rights approach supports efforts to allocate resources equitably, with different levels of resources based on different levels of need. One of the key aspects to a state's core obligation is to ensure that health care is delivered without discrimination. In practice, this means that the state should not place barriers to some people's access to health care or to conditions that benefit their health. But the state's obligation goes beyond this more passive approach to preventing discrimination. States must also take

proactive steps to ensure access to care in vulnerable groups. For example health workers and services need to be oriented to ensure that they do not discourage use of the sexual and reproductive health services in adolescents. This may mean that more funds must be allocated to promote the health of people with poorer incomes, less social power, or weaker capacities to meet their health needs.

*The right to health means that budget decisions are not only based on economic efficiency - social justice also counts.*

Often, parliamentarians are encouraged to be practical – to look at the costs and benefits of a health intervention. This is an important, but not the only basis for decisions. Poor and marginal communities can be disadvantaged by decisions based only on efficiency. For example, a sparsely populated rural area will require greater spending on transport services to achieve the same level of coverage by health services as a dense urban area, so efficiency cannot be the only criteria for deciding how to spend money on health. The obligations arising due to rights to health and the principle of non-discrimination should be given equal weight in deciding on public spending.

Parliament should make sure that, if there are a few loud voices making rights claims, other vulnerable groups are given equal opportunity to lobby and present their case to parliament by actively seeking out those who are less familiar and able to use the parliamentary machinery.

There are various tools for making sure resources reach those with health needs that are discussed in other briefs. They include, for example, using a needs-based resource allocation formula in allocating public budgets, and ensuring that there is adequate funding for resources to achieve universal coverage of key areas of health care. Budgets should prioritise what the ICESR General Comment 14 labels as "essential primary health care', including services to ensure freedom from hunger, access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; essential drugs; reproductive, maternal and child health care; immunization services; measures to prevent, treat and control epidemic and endemic diseases; education and access to information on health. The General Comment defines government's core obligation to realising the right to health as including ensuring the "equitable distribution of all health facilities, goods and services."

## Overseeing the right to health

Portfolio Committees have an important role to play in overseeing the implementation of policies that provide access to health care services. For example, if a country has made a commitment to eliminating discrimination against women, parliamentary committees should be scrutinising the performance of the executive in reducing maternal mortality rates, reducing the frequency and impacts of domestic violence and promoting maternal education as a preventive health measure.

Parliaments monitor and report on the performance of institutions that implement laws and policies. Monitoring can be done against indicators that are based on realizing the right to health, and goals such as the Millennium Development Goals (MDGs). If indicators are disaggregated to show differences across gender, race, ethnicity, rural and urban areas and socio-economic status, it will show which groups are suffering from gaps in health rights.

The box overleaf shows ten indicators that EQUINET has identified as commitments made by heads of state or that are good indicators of progress towards achieving equity in health. Parliaments can play an important role in tracking, reporting and encouraging public debate on these indicators.

# Health rights and equity oriented health budgets

## Selected markers of progress in advancing equity in health

1. Is the right to health and health care, included, with specific provisions for vulnerable groups like children, in the constitution?
2. How far are we in achieving universal access to treatment for AIDS including prevention of mother to child transmission (PMTCT) by 2010?
3. Have we eliminated differences between income groups and between rural and urban areas in maternal mortality, child mortality, under five year stunting, access to immunisation, attendance by a skilled person at birth and access to PMTCT?
4. How far are we in achieving the MDG goal of reducing by half the number of people living on $1 per day by 2015?
5. How far are we in achieving universal primary and secondary education in women?
6. How far are we in achieving the MDG goal of reducing by half the proportion of people without sustainable access to safe drinking water by 2015?
7. Have we abolished user fees from health systems?
8. How far are we in meeting standards of adequate provision of health workers and of vital and essential drugs at primary care and district levels of health systems?
9. Have we achieved the Abuja commitment of 15% government spending on health - excluding external funding?
10. Have we allocated at least 50% of government spending on health to district health systems (including level 1 hospitals) and 25% of government spending on Primary health care?

*EQUINET 2007*

Parliaments can also monitor progress on the right to health as contained in national or international human rights law, using indicators of the specific core obligations of governments to provide access to health care as defined in the General Comment 14 of the ICESCR below:

| Criterion | Examples |
|---|---|
| Physical access | % population within 5km of a primary care facility<br>% pop. within 300m of potable water |
| Informational access | % pop. served by a provider able to speak the patient's language<br>% health promotion material in language understood by population |
| Financial access | % pop. with free access at primary contact<br>% household disposable income spent on energy and water |
| No discrimination | Vaccination coverage levels in vulnerable groups |

## Tackling obstacles

Advancing rights to health can be an important tool for equity oriented laws, policies and budgets. Parliaments can strengthen their role and effectiveness by

- Strengthening their links and information exchange with the public and the executive
- Drawing input from experts, professional groups, state officials and civil society
- Encouraging government to develop and disseminate policy frameworks (such as white papers), information and reports on policies, budgets and their implementation
- Encouraging tracking and reporting on government spending using an equity and rights framework.

## Resources

1. World Health Organisation (2002) 25 Questions and Answers on Health and Human Rights, available at: www.who.int/hhr/information/25_questions_hhr.pdf
2. Kinney ED, Clark BA, "Provisions for Health and Health Care in the Constitutions of the Countries of the World," *Cornell International Law Journal* (2004): 285–355, at 287. Aavailable at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=687962
3. London L (2003) 'Can Human rights serve as a tool for Equity?' EQUINET Discussion Paper 14. EQUINET and the University of Cape Town School of Public Health and Family Medicine: Harare, available at: http://www.equinetafrica.org/bibl/docs/POL14rights.pdf
4. EQUINET, GEGA, SADC (2003) Parliamentary Forum Report: Regional meeting on Parliamentary Alliances for Equity in Health in Southern Africa, Gauteng, August 2003. EQUINET: Harare.
5. EQUINET SC (2007) Reclaiming The Resources For Health: A Regional Analysis of Equity in Health in East and Southern Africa. EQUINET: Weaver press, Fountain Publishers & Jacana media Harare, Uganda & Johannesburg.

For further information see www.equinetafrica.org or contact EQUINET at admin@equinetafrica.org

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