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Realizing the Right to Health in the Who African Region: Issues, Challenges and the Way Forward

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Abstract

Background: The right to health has been enshrined in a number of core international and regional human rights treaties, to which WHO African Region Member States are signatories. This therefore imposes an obligation on them to make every possible effort using available resources to respect, protect, fulfill and promote the right to health of their citizens. The objective of this study was to analyze key issues and challenges affecting the realization of the right to health in countries.

Methods: A survey questionnaire was sent by email to the then 46 Member States in the African Region through the WHO Country Representatives. The questionnaire was filled out on a voluntary basis by senior government officials within the Ministry of Health. The questionnaire elicited information on legal, policy and institutional aspects that affect the realization of the right to health in the African Region countries; and contained some open-ended questions which were aimed at gathering information on what were perceived as main health-related human rights issues, and challenges in implementing the right to health.

Results: Twenty-five (54%) countries responded to our questionnaire. The main findings were that all countries were signatories to at least one human rights treaty that recognizes the right to health; all countries had national legislation touching on aspects of the right to health but only 12 countries (48%) had policies or strategies for mainstreaming human rights in healthcare. On issues affecting the realization of the right to health: 88% identified access to health care services, medical products, and technologies; 52% identified inadequate financing for health; 28% cited marginalization, stigma and discrimination of some groups and communities; and 24% cited gender-related inequities and violations. Lack of awareness of the right by the general population and health workers was cited by 52% of the respondents.

Conclusions: A lot remains to be done towards the realization of the right to health in the African Region. Member States are encouraged to review their legislation and policies to assess their consistency with human rights standards, and put in place institutional mechanisms and adequate resources that will ensure their implementation, enforcement and monitoring.

Keywords: Right to health; WHO African region; Health and human rights

List of abbreviations used: AIDS: Acquired Immune Deficiency Syndrome; CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women; CERD: International Convention on the Elimination of All Forms of Racial Discrimination; CRC: Convention on the Rights of the Child; CRPD: Convention on the Rights of Persons with Disabilities; HIV/AIDS: Human immunodeficiency Virus/ Acquired Immune Deficiency Syndrome; ICESCR: International Covenant on Economic, Social and Cultural Rights; ICRMW: International Convention on the Rights of All Migrant Workers and Members of their Families; IDPs: Internally Displaced Persons; PMTCT: Prevention of Mother To Child Transmission; R&D: Research and Development; WHO: World Health Organization

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Introduction

Human rights are universal legal guarantees that protect individuals against interference with fundamental freedoms, entitlements and human dignity. The right to health is a necessary part of our human rights and is recognized in Article 25 of the Universal Declaration of Human Rights [1] as part of an adequate standard of living. The WHO Constitution [2] defines health as a "state of complete physical, mental, and social well-being and not merely the absence of infirmity" and provides the earliest articulation of the right to health stating that the enjoyment of the highest attainable standard of health is a fundamental right of every human being without distinction of race, religion, political belief, economic or social condition. In defining the role of governments towards the realization of this right, the WHO Constitution identifies governments as duty-bearers with the responsibility of providing "adequate health and social measures" for the attainment of health of peoples. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) [3], which has been ratified by 39 of the 46 Member States of the WHO African Region **(Table 1),** and its related General Comment No.14 [4] provide an authoritative interpretation of the right to health and link its realization upon the realization of other human rights including the right to food and nutrition, safe and potable water, housing, work, education and health-related information among others. This strong relationship underscores the need for addressing determinants of health and tackling health inequities and avoidable inequalities related to health outcomes.

There are several core international human rights treaties, which have been ratified by the WHO African Region Member States, which 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, together with CEDAW have been ratified by all Member States. **Table 1** summarizes the status of ratifications by African Region Member States of international human rights treaties.

At the regional level, the African Charter on Human and People's Rights (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 WHO African Region 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. **Table 2** summarizes the status of ratification by African Region Member States of regional human rights treaties.

The right to health has been enshrined in national constitutions of all African Region Member States except Botswana, Cameroon, Chad, Ghana, Liberia and Mauritius. This constitutional recognition imposes an obligation upon member States, within the principle of progressive realization, to make every possible effort using available resources to respect, protect, fulfill and promote the right to health of their citizens. The scope and content of this right is continuously being clarified at international, regional and national levels; and its normative framework is also continuously getting further clarity as a body of jurisprudence emerges from national and international litigation.

Despite the various international, regional and national commitments made by Member States, there still remain large and growing inequities in the provision and access to healthcare within countries [5]. This situation is aggravated in situations of war and civil strife, natural disasters, disease outbreaks and epidemics.

The World Health Organization reaffirmed its commitment to the right to health through the Health for All Strategy [6], which adopted a rights-based view and situated public health within the broader socio-economic developmental agenda. This was followed shortly by the Alma Ata Declaration [7], which framed primary health care as the driving force for implementing the Health for All strategy, by ensuring that essential health care services are universally accessible to communities. 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, which refer to health as a human right.

The Sixty-second session of the WHO African Regional Committee meeting held in 2012 in Angola, considered for the first time in its history, a substantive agenda item on the right to health [8]. African Ministers of Health adopted a resolution [9] committing Member States to working towards the realization of the right to health in their respective jurisdictions by putting in place mechanisms for implementing the right to health, monitoring and reporting; ensuring that marginalized and vulnerable groups of people have access to health care services; ensuring universal health coverage through equitable and efficient financing strategies; establishing policies and laws on regulation of research and adequately resourced national and institutional research ethics committees to review research involving human participants; and by strengthening technical capacities and competencies of ministries of health and health-related sectors for the implementation of the right to health.

This paper is based on information gathered through a survey conducted in 2012 of WHO African Region Member States to gather information on legal, policy and institutional aspects pertaining to the realization of the right to health. The purpose of the study is to offer an analysis of key issues and challenges facing countries hence impeding the full realization of the right

Table 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 Republic	✓	✓	✓			✓
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 & 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	✓	✓	✓			✓

Note: Data compiled from the United Nations Human Rights Treaty Bodies Database, http://www.unhchr.ch/tbs/doc.nsf.

Table 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	Republic of Congo	✓		✓	✓
13	Cote 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 & 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	✓		✓	✓

Note: Data compiled from the African Commission on Human and People's Rights Depository of Legal Instruments database, http://www.achpr.org/instruments/

to health, and to propose some actions that can be undertaken in addressing these challenges.

Methodology

During the writing of the Regional Committee paper on "Health and Human Rights in the African Region: Current Situation and Way Forward" a short semi-structured questionnaire on the subject was circulated through the network of WHO Representatives in the then 46 countries of African Region (South Sudan was at that time not a Member State of the WHO African Region). The questionnaire was filled out on a voluntary basis by senior government officials within the Ministry of Health.

A statement on the rationale and purpose of conducting the survey and a brief definition of the right to health was provided on the questionnaire. The questionnaire (Appendix 1) contained questions which aimed at provided information on legal, policy and institutional aspects that affect the realization of the right to health in the African Region countries. The questionnaire contained some open-ended questions which were aimed at allowing the respondents to provide contextually relevant responses and elicited information on what were perceived as main health-related human rights issues in the countries, together with the key challenges in implementing the right to health.

The questionnaire was available in the three WHO working languages in the African Region, i.e. English, French and Portuguese. Out of the then 46 Member States in the Region; there were 21 Francophone, 20 Anglophone and 5 Lusophone countries. The questionnaire was emailed to the 46 WHO Country Representatives who in turn conveyed it to respondents. The respondents were senior government officials at respective Ministries of Health and were informed that the questions were to be answered on a voluntary basis and that they could abstain from participating in the study.

Limitations of the study

The low response rate limits the extent to which these results can be generalized for all countries in the WHO African Region.

Ethics Clearance

This study proposal was submitted to the WHO Regional Office for Africa Ethics Review Committee (AFRO/ERC) for approval. The AFRO/ERC determined that this was a study whereby public officials were interviewed in their official capacity on issues in the public domain and thus not subject for ethics review.

The preamble to the questionnaire (Supplementary 1) informed respondents that the aim of the survey was to gather up-to-date information on legal, policy and institutional aspects pertaining to the realization of the right to health; and that the information collected would be analyzed and presented to Ministers of Health at the WHO African Regional Committee.

The respondents were informed of their right to consent or not to consent to participating in the survey; and that there would be no consequences if one chose not to participate.

Results and Discussion

The response rate was 54% with only 25 countries participating in the survey. The participating countries were Angola, Botswana, Burundi, Cameroon, Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Equatorial Guinea, Gabon, Gambia, Guinea, Liberia, Madagascar, Malawi, Mozambique, Namibia, Niger, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda and Zambia.

a) Main issues and challenges

Access to healthcare services, medical products and technologies: In response to the question "what are the three main health-related human rights issues in your country", 22 countries (88%) indicated that access to health care services, medical products, and technologies was a challenge. WHO estimates [10] 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 non-communicable diseases would save more than 10.5 million lives a year by 2015. Further studies [11] 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.

This survey identified the main factors hindering access included prohibitive costs, weak public health infrastructure, geographical access to health facilities, availability of adequately skilled human resources for health, inadequate consideration of gender-responsive health care needs and ineffective referral systems. The most common barriers to access to medical products and technologies included cost (out-of-pocket payments), quality, counterfeited and substandard pharmaceutical products; inadequate incentive structures for R&D on medicines and vaccines on diseases disproportionately affecting least developed countries, and trade-related barriers.

Fifty-two percent of the respondent countries identified inadequate financing for health as an issue affecting the realization of the right to health. To date there are only 11 Member States (Benin, Cote d'Ivoire, Gabon, Ghana, Malawi, Mali, Namibia, Rwanda, Sierra Leone, South Africa, and Togo) 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 [12]. According to the WHO Global Health Observatory [13], only seven countries (Botswana, Burkina Faso, Liberia, Madagascar, Rwanda, Tanzania and Zambia) have attained the Abuja target that commits countries to allocating at least 15% of the total national budget to the health sector.

Twenty-eight percent of the respondents identified marginalization, stigma and discrimination of some groups and communities as an issue hampering the realization of the right to health in their respective countries. 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 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.

Gender-related inequities and violations were identified by 24% of the survey respondents as an issue hampering the realization of the right to health of women and their infant children. Societal gender-based discrimination that marginalizes women and puts them at a disadvantage combined with limited access to education and other economic opportunities is a major determinant of women's health. High maternal and infant mortality as a result of inadequate sexual and reproductive services, including access to abortion and family planning services, female genital mutilation, lack of prevention of mother-to-child transmission (PMTCT) of HIV services were all identified as gender-related inequities [14-24].

Awareness of the right to health: The survey enquired whether the respondents were familiar with some human rights treaties, namely the ICESCR [3], the CRPD [25], the Banjul Charter [26], and the Protocol on the African Charter on Human and People's Rights on the Rights of Women in Africa [27]. The responses indicated that the Banjul Charter was the commonly known of the treaties with 80% of the respondents indicating familiarity with it. Seventy-six percent of the respondents indicated that they were familiar with the CRPD, while 72% were familiar with the ICESCR and the Protocol on the African Charter on Human and People's Rights on the Rights of Women in Africa respectively. It was noted by 52% of the respondents that 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 [28]. Health workers most often lack training on this subject thus creating a situation whereby human rights are inadequately integrated into programmes and policies, and sometimes infringement on patients' rights and unethical conduct [29-36].

b) Legal and policy frameworks

Despite the fact that all Member States are signatories to at least one human rights treaty that enshrines the right to health and that 85% of them make recognition of the right to health in their national constitutions, a major challenge is the failure to enforce these obligations meaningfully at country level. This is particularly so when countries do not give sufficient recognition of the right to health through legislation and policies and by putting in place institutional mechanisms that support the realization of this right. The survey found that although all countries had different types of legislation (ranging from constitutional provisions to other laws such as the Public Health Act) touching on aspects of the right to health, this did not translate in effect for 74% of these countries into policies or strategies for mainstreaming human rights in healthcare. Only 12 countries (48%) -Zimbabwe, Zambia, Uganda, Swaziland, Sierra Leone, Niger, Gambia, Eritrea, DRC, Cameroon, Burundi, and Angola - indicated that they had policies/strategies for mainstreaming human rights in healthcare. All 12 countries indicated that they were faced with financial, technical and advocacy challenges for scaling up.

In 9 countries (36%) - Zimbabwe, Uganda, Mozambique, Madagascar, Gambia, Equatorial Guinea, Eritrea, Cameroon, and Angola – there were officials within the Ministry of Health designated as human rights focal points.

All respondent countries indicated that they had institutions that addressed human rights generally. The nature of these institutions ranged from human rights commissions, ministries of justice and national ombudsman offices. However, only 13 (52%) of the countries indicated that they had mechanisms for reporting on the right to health. These mechanisms varied from provision of national reports through national commissions - (Uganda, Sierra Leone, Seychelles, Niger, Cameroon, and Angola); ministerial /parliamentary reports – (South Africa, Mozambique, Gambia, Eritrea, and Cameroon) and UN reporting mechanisms (Zimbabwe, Uganda and Tanzania). Most of the respondent countries (76%) indicated having civil society organizations working specifically on the right to health.

Conclusions

The findings of this survey leads us that conclude that despite the various political commitments made by Member States, a lot needs to be done towards the full realization of the right to health in the African Region. Member States are encouraged to review their legislation and policies to assess their consistency with human rights standards, and put in place institutional mechanisms that will ensure their implementation and enforcement. Member States should endeavor to implement the primary health care approach and define the minimum essential components 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 [37,38]. Together with these, countries should provide sufficient budgetary allocations for healthcare provision and reduce gender-related inequities by systematically integrating a gender-based approach in the development of health sector strategies and other national policies. Member States should adopt participatory process, and in conformity with human rights principles identify multi-sectoral collaboration mechanisms between all relevant government ministries, parliamentary committees (where they exist), national human rights institutions and civil society to: identify and address the specific healthcare needs of vulnerable and marginalized populations; increase the public awareness of this right; and monitor its implementation.

Competing interests

The authors declare that they have no competing interests.

Authors' contributions

MM and JMK contributed to conception, design, analysis and writing of the manuscript. All authors read and approved the final manuscript.

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