

ACHPR/Res.141(XXXIV)08: RESOLUTION ON ACCESS TO HEALTH AND NEEDED MEDECINES IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 44th Ordinary Session held in Abuja, Federal Republic of Nigeria, from the 10th to 24th November 2008;

REAFFIRMING that Article 16 of the African Charter on Human and Peoples' Rights guarantees the right to enjoy the best attainable state of physical and mental health and that States must ensure that everyone has access to medical care;

ALARMED that essential medicine, were available in only 38% of all public and private health care facilities in Africa between 2001 and 2007;

STRESSING that the right to health is not confined to a right to health care but embraces all underlying aspects of health;

RECOGNIZING that access to needed medicines for treatment, prevention and palliative care is a necessary condition for leading a healthy and dignified life;

RECOGNIZING that access to needed medicines is a fundamental component of the right to health and that States parties to the African Charter have an obligation to provide where appropriate needed medicines, or facilitate access to them;

RECOGNIZING FURTHER that the United Nations Special Rapporteur on the Right to Health has explained that “access to medicines forms an indispensable part of the right to the highest attainable standard of health” and that, therefore, the right to health mandates that State promote “the realization of the right to medicines for all”;

URGES States to guarantee the full scope of access to needed medicines, including:

- a. The *availability* in sufficient quantities of needed medicines, including existing medicines and the development of new medicines needed for the highest attainable level of health;
- b. The *accessibility* of needed medicines to everyone without discrimination, including
 - i. Physical accessibility of needed medicines to all;

- ii. Economic accessibility (affordability) of needed medicines to all;
 - iii. Information accessibility about the availability and efficacy of medicines;
- c. The *acceptability* of medicine supplies, being respectful of cultural norms and medical ethics;
- d. The *quality* of medicine supplies, ensuring that available medicines are safe, effective and medically appropriate;

CALLING ON State to fulfill their duties with respect to access to medicines, in particular:

- a. **To promote** access to medicines by *refraining* from measures that negatively affect access, such as:
 - i. denying or limiting equal access to medicines for marginalized individuals or communities;
 - ii. prohibiting or impeding the use of traditional medicines and healing practices that are scientifically sound and medically appropriate;
 - iii. interfering with the provision of humanitarian aid that facilitates the supply of necessary medicines;
 - iv. implementing intellectual property policies that do not take full advantage of all flexibilities in the WTO Agreement on Trade Related Aspects of Intellectual Property that promote access to affordable medicines, including entering “TRIPS Plus” free trade agreements;
- b. **To protect** access to needed medicines from actions by third parties through regulatory systems that:
 - i. ensure that only medicines that have met scientifically appropriate standards for quality, safety and efficacy are available;
 - ii. promote the rational use of medicines, through treatment guidelines based on the best available evidence;
 - iii. prevent unreasonably high prices for needed medicines in both the public and private sectors, through promotion of equity pricing in which the poor are not required to pay a disproportionate amount of their income for access;
 - iv. ensure that medical practitioners and patients have ready access to reliable, complete and unbiased information on the safety and efficacy of medicines;

- v. stimulate and Promote competition, intellectual property, consumer protection and other laws to promote access to medicines;
- c. **To fulfill** access to medicines by adopting all necessary and appropriate *positive measures* to the maximum of its available resources to promote, provide and facilitate access to needed medicines, including:
 - i. immediately meeting the minimum core obligations of ensuring availability and affordability to all of essential medicines as defined by the country's essential medicines list and the WHO Action Programme on Essential Drugs;
 - ii. immediately creating a national medicine strategy monitoring systems to ensure compliance with human rights obligations;
 - iii. promoting meaningful participation by affected individuals and groups in decisions that affect access to medicines, including regulatory, pricing and patent decisions;
 - iv. creating systems in which patent information and registration status for medicines is readily and publicly accessible;
 - v. expediting the regulatory review and registration of needed medicines and creating incentives for companies to register needed medicines expeditiously;
 - vi. individually and together with other States and non-governmental entities, developing and implementing need-based research and development programmes to address currently neglected diseases and conditions;

Mandates the Working Group on Economic, Social and Cultural Rights to further define State obligations related to access to medicines and to develop model monitoring and assessment guidelines.