THE RIGHT TO HEALTH IN TANZANIA

Position Paper

This document presents Sikika's views on existing and non-existing legal provisions on the Right to Health. We invite all interested parties to join in the process of consultation and debate.

UNRESOLVED CHALLENGES IN THE HEALTH SYSTEM

Tanzania is a country that has experienced continuous economic growth during the past years. But despite increasing tax revenues, the Government struggles to ensure availability and equal access to health facilities, essential goods and services for all of its citizens.

To this day, Tanzanians do not enjoy equal access to health facilities. The number of health facilities per population in Sumbawanga district council is ten times higher compared to Geita district council. If the available health facilities were equally distributed, Geita district council would have 128 health facilities to serve a population of 850,000 instead of only 54 health facilities. In turn, Sumbawanga district council has a far smaller population of only 200,000 which would have access to 31 health facilities instead of 123.[1]

There is a severe shortage of health workers. In 2012, the Ministry of Health and Social Welfare recorded 64,500 available health workers leaving a gap of 113,000 health workers that are further needed to care for over 43 million citizens.[2] The situation is exacerbated by the fact that most medical doctors (69%) are found in urban areas whereby the majority (74%) of Tanzanians lives in rural parts of the country.[3]

Tanzania's health facilities experience frequent stock outs of essential medicines like pain killers or antibiotics. The Tanzania Service Availability and Readiness Assessment (SARA) 2012 survey shows that 63% of the requested tracer medicines were out of stock.[4] As a consequence, many citizens are leaving public health facilities every day without receiving essentially needed medical relief.

These chronic stock outs are not going to vanish until the Government provides the necessary funding. For the fiscal year 2013/2014, the Ministry of Health and Social Welfare

[1] Ifakara Health Institute and Ministry of Health and Social Welfare (2013), Tanzania Service Availability and Readiness Assessment 2012, p. 7.
[2] Ministry of Health and Social Welfare (2013), Human Resource for Health Country Profile 2012/2013, p. 25ff.
[3] National Bureau of Statistics and Ministry of Finance (2011), Tanzania in Figures 2010, p. 28.
[4] Ifakara Health Institute and Ministry of Health and Social Welfare (2013), Tanzania Service Availability and Readiness Assessment 2012, p. 15.

earmarked TZS 30.8 billion of the domestic revenues for the procurement of essential medicines and medical supplies. Foreign donors are going to contribute another TZS 28.5 billion.[5] But the sum of TZS 59.3 billion is TZS 140.7 billion short of the estimated need of TZS 200 billion. Despite this considerable funding gap, the collective whole of MDAs has earmarked TZS 346.7 billion for paying allowance, which many citizens deem as 'unnecessary' due to their questionable effect on citizens' welfare.[6]

Moreover, most health facilities are not well-prepared to provide basic health care services. To reduce the staggeringly high maternal mortality rate of 454 per 100,000 live births,[7] pregnant women need access to health facilities where they find skilled staff, proper equipment, essential medicines and commodities. According to the (SARA) 2012 survey, 74% of public health facilities offer delivery services, but those facilities have merely half (51%) of the key items that are necessary to provide basic delivery services.[8]

There are various other challenges that make it hard for citizens to enjoy a healthy life. When the Tanzanian Demographic and Health Survey (2010) asked women about their problems accessing health care, about 24% said that getting money was a big problem, 19% complained about the geographic distance to a health facility, and 11% said that they did not want to go alone. Those problems are more often reported by women that are poor, those who live in rural areas, older women, women with no education, and women who are divorced, separated or widowed. Thus, there is large evidence that access to health services is related to various other socio-demographic factors.[9]

Finally, citizens are hardly involved in health-related matters. The Government recognizes community participation and ownership as key to make primary health service delivery responsive to specific local needs.[10] But Sikika found that two-thirds of Multi-Sectoral AIDS Committees do not conduct the required monthly meetings and that they do not provide feedback on plans and budgets to the communities that they represent.[11]

[5] Ministry of Health and Social Welfare (2013), Medium Term Expenditure Framework for FY 2013/14-2017/18, pp. 14, 30.

[6] Ministry of Finance and Economic Affairs (2013), Volume II Public Expenditure Estimates Supply Votes (Ministerial) as Passed by the National Assembly 2013-2014.

[7] National Bureau of Statistics (2011), Tanzania Demographic Health Survey (2010), p. 12.

[8] Ifakara Health Institute and Ministry of Health and Social Welfare (2013), Tanzania Service Availability and Readiness Assessment 2012, pp. 24, 27.

[9] National Bureau of Statistics (2011), Tanzania Demographic and Health Survey (2010), p. 141.

[10] Ministry of Health and Social Welfare (2008), Health Sector Strategic Plan III, p. 7.

[11] Sikika (2012), Multi-Sectoral AIDS Committees in Tanzania – A Gateway for Citizens' Participation.

THE RIGHT TO HEALTH IN THE CURRENT CONSTITUTION

The currently existing constitution does not provide citizens with a legal guarantee of basic entitlements to live a healthy life. The second part of the supreme law mentions fundamental objectives and directives of state policy:

> ***11. (1) The state authority shall make appropriate provisions for the realisation of a person's right to work, to self education and social welfare at times of old age, sickness or disability and in other cases of incapacity, without prejudice to those rights, the state authority shall make provisions to ensure that every person earns his livelihood.***

While the government is to recognize and apply those objectives and directives, article 7. (2) renders the existing provision toothless by denying its enforcement by courts.

> ***7. (2) The provisions of this Part of this Chapter are not enforceable by any court. No court shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Part of this Chapter.***

As a consequence, citizens lack an effective remedy if their health needs are not fulfilled.

THE RIGHT TO HEALTH IN THE DRAFT CONSTITUTION

The draft constitution does not provide a clear definition of a universal right to health. However, there are elements that are health-related.

> ***40. - (1) Every person who lives in the United Republic has the right to live in a clean, safe and healthy environment.***
>
> ***(2) The right to live in a clean, safe and healthy environment involves the right of every citizen to use public places and other areas designated for the purposes of entertainment, education, health services, religion, cultural and economic activities.***
>
> ***(3) Any person who lives in Tanzania has the duty to maintain and develop the environment and provide information to***

the country's authorities on activities or anything that is risky or has the possibility to damage or harm the environment.

A clean and safe environment is an important factor to allow people living a healthy life. But there are various other factors that have an impact on health such as work conditions, safe and potable water, sufficient nutrition, basic housing and sanitation, social security if individuals are not able to fend for themselves, and basic primary health care.

Three of these entitlements, namely nutrition, housing and health care, are provided in article 42 (1) (e) as rights of the child.

42. - (1) Every child has the right to-

(a) be named and nationality;

(b) provide ideas to be heard and to be protected from bullying, violence and abuse;

(c) play and be educated;

(d) be kept in good conditions, that are not in contradiction with the law;

(e) be provided with proper nutrition, housing and health care, and

(f) engage in activities related to the age he or she has, and

(g) to get the care and protection of parents, guardians or authorities of the country, without distinction of race, nationality, language, political views, community which he or she comes from, wealth, birth, race, tribe, religion, gender or other forms of status.

Furthermore, article 46 (1) (g) entitles women with the right to health care.

46. - (1) Every woman has the right to:

(a) respect of her dignity;

(b) be protected against exploitation and violence;

(c) to participate without discrimination in elections at all levels of decision-making;

(d) receive pay equal to a man at work;

(e) be protected from discrimination, bullying and harmful traditional practices;

(f) the protection of her employment during pregnancy and at the birth stage, and

(g) access to available quality health care.

While health care is a vital interest of all children and women, there are other vulnerable or marginalized groups including the elderly, and physically or mentally disabled individuals, who have special needs that are to be met by the national health system.

Because the citizens are directly and indirectly affected by public health policies and interventions, one needs to ensure their active, free and meaningful participation in the setting of priorities, decision-making, concrete planning, implementing and regular evaluating of the chose strategies to progressively achieve better health services. Therefore, the constitution should empower citizens (in the role as active right holders) with legal means to hold the government (in the role of the duty bearer) accountable for its actions and inactions at community and national level. Without such encouragement, the national health system remains at risk of being unresponsive to citizens' needs.

In the draft constitution, article 45.-(1) requires the government to provide a legal framework that allows citizens to participate in public decision-making. However, to ensure their meaningful participation, it is further necessary to ensure their right to seek, to receive and to impart health-related information.

45. - (1) The country's authority will set legal procedures to enable small groups in the community to:

(a) participate in the leadership of the nation's authorities;

(b) be given special opportunities for education and self economic advancement, and opportunity for employment, and

(c) allocation of land areas which by custom those groups can use it for living and obtain food for living.

(2) The Government and countries' authorities will take deliberate action to promote and develop economic activity and create infrastructures for housing, education and health for present and future generations of the community of people in small groups.

Paragraph 45.-(2) obligates the government to create infrastructure for housing, education and health. Based on this provision, any court which is to decide on whether the provision has been violated will face difficulties to determine if the quantity, accessibility, acceptability or quality of existing infrastructure is sufficient or not. For that reason, it is necessary to include such additional criteria into the supreme law. Besides the mentioned

infrastructure, the promotion of citizens' well-being also requires other essential elements such as trained medical personal, functional medical equipment and essential medicines.

THE RIGHT TO HEALTH IN THE NEW CONSTITUTION

WHAT IS 'HEALTH'?

To promote social well-being in Tanzania, the next constitution should provide a framework that establishes a universal Right to Health, and it should also provide guidance on how those rights should be achieved. The first step is to define a comprehensive concept of the Right to Health. In line with the World Health Organization, we support the view that health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[12]

WHAT ARE HEALTH DETERMINANTS?

The Right to Health must not to be confined to health care. Individuals should be able to enjoy living conditions in which they can lead a healthy life. This requires the inclusion of health determinants such as sufficient nutrition, safe and potable water, basic shelter and sanitation, safe and health working conditions, a healthy environment, access to education and information, and the opportunity to participate in decisions that affect people's health.

For those mentioned reasons, we propose the following *definition* of the Right to Health to be included in the new constitution.

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(1) Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health and the promotion of adequate living conditions including

- ***(a) essential primary health care,***
- ***(b) basic shelter,***
- ***(c) clean and potable water,***
- ***(d) sufficient food,***
- ***(e) a healthy environment,***
- ***(f) safe work conditions,***
- ***(g) social security in circumstances beyond their control,***
- ***(h) access to health-related education and information, and***
- ***(i) participation in health-related political decision-making at both the community and national levels.***

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[12] World Health Organization (2006), Constitution of the World Health Organization, preamble.

A Right to Health for Everyone

The above provision ensures that *everyone* is entitled to health care and the underlying determinants of health without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), and civil, political, social or other status, which has the intention or effect of impairing the equal enjoyment of the right to health.

A Right to be Healthy?

The enjoyment of health and other necessary conditions is a great challenge in Tanzania as the country suffers from a high burden of diseases coupled with limited resources. Thus, the State cannot ensure good health for everyone. The right to the enjoyment of the highest *attainable* standard of health takes into account that everyone has different genetic and socio-economic preconditions, and that the State has limited resources to satisfy the various needs. For that reason, the right to health should be understood as the right to the enjoyment of a variety of health facilities, goods and services and the promotion of adequate living conditions in which people can lead a healthy life. That obligates the State to move as expeditiously and effectively as possible towards the highest attainable standard of health as more resources become available with national economy growth.

Primary Health Care

When financial and human resources are scarce, it is particularly necessary to ensure that the available means are targeted and applied to highly cost-effective interventions. International evidence has shown that health systems which are oriented toward primary health care produce better outcomes, at lower costs, and with higher user-satisfaction.[13] Therefore, the new supreme law should recognize the requirement of providing essential primary health care.[14]

To emphasise the importance of primary health care, the State should further specify its responsibility to provide equal access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level; the provision of essential drugs; and appropriate mental health treatment and care.

Which Duties Arise for the State?

[13] Director-General of WHO, Dr. Margaret Chan, (2007) at the International Seminar on Primary Health Care in Rural China.

[14] Compare Declaration of Alma-Ata (1978).

In a second step, the supreme law must provide *duties* that guide the State how it is to deliver the entitlements that arise from the Right to Health definition. The Right to Health acknowledges that the universal enjoyment of health and healthy living conditions can only be *progressively* realized depending on the development of available resources. This constraint does not confine the State's obligation to *immediately* provide its constituents with a legal guarantee that the Right to Health will be exercised. After the passing of health-related legislation, the government must develop reasonable, well-targeted policies, programmes and costed action plans that are tied to a specific time frame.

For the full enjoyment of the Right to Health, the State must ensure that functioning facilities, goods and services, which are required to provide essential primary health care and other underlying determinants of health, such as safe and potable water, are *available* in sufficient quantity. Further, all required facilities, goods and services, should be physically and economically *accessible*, especially for vulnerable and marginalized groups including mothers, children, the elderly and persons with physical or mental disabilities. The State also needs to ensure that all required facilities, goods and services are *acceptable* complying with medical ethics, being sensitive to gender or age, and improving the health status of the patients. Good *quality* requires that health facilities provide adequate equipment, sanitation, and skilled health workers who dispense efficacious and unexpired medicines.[15]

For the aforementioned reasons, we propose the following *duty* that the State has to fulfil towards everyone to be included in the new constitution.

> ***(2) It is the State's duty to take reasonable legislative and other measures, within its available resources, to ensure the availability, accessibility, acceptability and quality of facilities, goods and services, especially for vulnerable and marginalized groups including mothers, children, the elderly and persons with physical or mental disabilities.***

MEDICAL EMERGENCIES

The national health system has seven levels: 1. Village health service, 2. Dispensaries, 3. Health centres, 4. District hospitals, 5. Regional hospitals, 6. Referral Hospitals, and 7. Treatment abroad. Each of these levels can refer patients to higher levels which are able to provide patients with a greater degree of specialization and resources.

However, in cases of emergency, any health facility should provide patients with immediate emergency medical treatment given that the required resources are available at

[15] Compare United Nations Committee on Economic, Social and Cultural Rights (2000), General Comment No. 14, p. 4f.

that health facility. This implies that private health facilities are obligated to provide any patient, including those who are not able to pay, with immediate emergency medical treatment. Only after successful stabilization, the patient may be transferred to another health facility.

For those mentioned reasons, we propose the following *basic right* to Emergency Medical Treatment to be included in the new constitution.

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(3) No one shall be refused emergency medical treatment.

WHAT ARE YOUR VIEWS?

Up to this day, health is not a legally enforceable right in Tanzania. The preparation and implementation of the new constitution provides Tanzanians with an historic opportunity to rectify this unacceptable situation. We invite you to provide us with your views on the issues raised in this document and any other additional comments.

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