**POST 2015. AFRICAN INDIGENOUS PEOPLE AND THE RIGHT TO HEALTH**

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**Background**

Following the ongoing deliberations on the forthcoming United Nations World Conferences on Indigenous Peoples’ and the outcomes of the high level interactive session hosted by the president of the United Nations General Assembly held in New York in June 2014, I wish to expound on the contributions I made on the right to health for Indigenous peoples in Africa. Health can be defined as the desired, social, physical, emotional, economical, and mental state of a person that enables for the enjoyment of a quality life and well-being. For all these to be achieved, factors that affect the human body, mind and spirit have to be addressed. Family, culture, human made environment which includes medical systems, lifestyle and work have to be designed to meet such needs.

The right to health which is the right to live in the best and acceptable conditions is the most basic human right; its fulfilment is both a precondition to, and a by-product of, the enjoyment of all other rights. Health is equally a right in itself under international law and in the constitutions of many countries that have ratified the United Nations Declaration on Human Rights (UNDHR, 1948)[[1]](#footnote-1). The declaration states that “Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” (UNDHR, 1948). According to the Minority Rights Group “we live in a world of profound health inequalities, a world in which a person’s health and the quality of care they receive is determined by their ethnicity, the language they speak or their religious and cultural beliefs” (MRG, 2014,p.7) . In almost every country in the world, minorities and Indigenous peoples are among the poorest and most vulnerable groups, suffer greater ill-health and receive poorer quality of care than other segments of the population. Their life expectancy is low as compared to mainstream communities, and most of them die younger, suffer from higher rates of preventable and curable disease and struggle more to access few and inaccessible health services compared to the rest of the population. More often than not, this ill-health and poor healthcare is a symptom of poverty and discrimination.

In Africa, many Indigenous women die from complications during childbirth because many African governments do not provide any medical care in the hard to reach areas where Indigenous peoples live. Many Indigenous communities and individuals are denied the right to justice for health, which is enshrined in several of the articles of the African Charter, such as *Articles 3, 4, 5, 6* and *7* (ACHPR, 2006) *.* These articles have provisions that all individuals are equal before the law and entitled to equal protection of the law, that all individuals have the right to freedom and to personal security and, as such, no one may be arbitrarily arrested or detained, and that all individuals have the right to have their cause heard

**African Indigenous Peoples and Right to health**

Most of the areas occupied by Indigenous peoples and communities in Africa are under-developed, with poor, if any, infrastructure. Social services such as schools and health facilities are either few or far between, while the roads or other physical infrastructure is equally poor. This has had a negative impact on the staffing levels and quality of health services offered. As a result, illiteracy levels and mortality rates are higher than the national average in many countries in many areas occupied by Indigenous peoples in Africa. This constitutes a violation of the African Charter such as:

* The right to medical care and attention (Article 16(2).
* The right of equal access to the public services of one’s own country including health services (Article 13 (2)
* The right to education (Article 17(1)

The health situation of Indigenous peoples in Africa is often very precarious and receives very limited attention from the health authorities responsible. This has to be seen in relation to the general marginalization from which Indigenous peoples suffer economically and politically. Besides all forms of systemic marginalization, Indigenous peoples often live in remote areas where they are easily forgotten. As Indigenous Peoples receive little political attention and prioritization, and as they to a large extent suffer from impoverishment and low literacy rates, their health situation is in many cases extremely critical.

There are several major international human rights treaties and conventions which include United Nations Declaration of Human Rights (UNDHR, 1948); the African Charter on Human Rights (ACHPR, 1981) which is specific in that it not only does it protects individual human beings but also rights of peoples. The African Commission on Human Rights (ACHR, 1986); the African Charter on the Rights and Welfare of the Child (ACRWC, 1990)[[2]](#footnote-2). Internationally, the Convention on the Rights of the Child (CRC, 1990); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1967); the Declaration on the Rights of Rights of Indigenous People, which was defined at the time of its passage as an "aspirational document by Indigenous People globally” clearly stipulates and emphasizes the need for prior and informed consent of Indigenous peoples in all aspects of development planning (DRIP, 2007), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which through Article 12 establishes the right of everyone to the enjoyment of highest attainable standards of both physical and mental health provides a universal frameworks for African nation states to implement rights to health for Indigenous peoples’(ICESCR, 1966).

As the end of the implementation of the Millennium Development Goals comes to an end in 2015 and ushers in a new strategy of addressing global development issues, the key elements provided for in the Covenant on Economic, Social and Cultural Rights General comment 14 Article 12 should be the guiding principles in accessing right to health for Indigenous Peoples in Africa (ICESCR, 2000). The General comments identifies availability, accessibility, acceptability, and equality as essential interrelated elements that define the fulfilment to the right to health.

**Availability:** According to General Comment 14**,** availability is the presence of sufficient quantities of functioning public health and health care facilities, goods and services, as well as programs. In most Indigenous Peoples territories in Africa, primary health services are absent, function only in a rudimentary way, or have been destroyed during government sponsored displacements and conflict. Discriminatory government policies have contributed to the unavailability of health services to many African Indigenous peoples. While many African states have expressed the need for free healthcare service, the mare fact that Indigenous communities have historically been discriminated against in national development plans. This includes sufficient provision of hospitals, clinics, trained health professionals and essential medicines.

Services relating to the underlying determinants of health, such as safe drinking water, sanitation facilities, adequate housing and public education on health, must also be provided to an adequate level for all.

**Accessibility**. Accessibility determines how easy or difficult it is to allocate and access goods, services, and resources. General Comment 14 states that “health services must be accessible to all without discrimination. Services must be made affordable to all and must be located within safe and reasonable reach of everyone (ICESCR, Art. 12 (b) 2000). Accessibility also includes the right to seek, receive and impart information on health, with due respect for confidentiality, and affordability of heath services. Lack of adequate infrastructure development is a hindrance to Indigenous Peoples’ access to health services in many African countries. Given the high levels of illiteracy and poverty among Indigenous Peoples, in Africa and the lack of policies that support inclusive development planning, many of such communities have no access to health care. According to the General Comment 14, accessibility can be categorized into the following categories:

***Non-discrimination***: General Comment 14 stipulates that health facilities, goods and services must be accessible to all, especially the marginalized and most vulnerable (ICESCR, Art. 12 (b) 2000). Most African development policies have been discriminatory Indigenous peoples and that health services and goods have only been accessed to those that are visible and accessible.

***Physical accessibility***: According to the General Comment 14, accessibility to health entails that health care facilities and services must be within safe physical reach for all sections of populations (ICESCR, Art. 12 (b) 2000). Indigenous peoples often live in remote areas which are inaccessible due to lack of infrastructure making it extremely difficult for them to access basic services including health services.

***Economical accessibility***: Economic accessibility is the ability to afford health services and goods (affordability of health services and goods). Health care must be affordable and comprehensive for everyone where and when needed. Disproportionately high rates of poverty and low rates of employment or underemployment affect Indigenous peoples in Africa. They are typically pushed into jobs with higher occupational health risks as a result. Poverty contributes also to inadequate housing and less food security (MRG, 2014).

***Information accessibility***: According to General Comment 14, information accessibility includes the right to receive information regarding health issues that affect the people (ICESCR, Art. 12 (b) 2000). For information to have meaning one must be able to interpret the information in a manner that will be useful. Many Indigenous communities have little or no access to health information due to the language and manner in which such information is disseminated. Poor communication between health providers who are often not from the local communities compromises access to quality care.

**Acceptability**. The concept of health among Indigenous People is seen in a perspective that incorporates communal and individual physical, mental, spiritual and emotional elements. Health services must be provided in a manner that is compatible with cultural and linguistic rights, for example, by providing services in local languages and sensitive to different cultural practices[[3]](#footnote-3). Health service delivery must also be responsive to gender and age differences. Medical ethics must be adhered to in the delivery of health services. Cultural barriers present the most challenge because there is little understanding of the social and cultural factors deriving from the knowledge, attitudes, and practices in health of the Indigenous peoples.

**Quality**. According to General Comment 14, health services must be culturally acceptable, scientifically and medically appropriate and of good quality (ICESCR, Art. 12 (b) 2000). The provision of skilled medical personnel, quality drugs, safe water and good sanitation are among the minimum expected standards of quality. Indigenous peoples’ in Africa continue to lack quality health services due to lack of inclusion and consultation in matters related to their health. Most national governments do not provide technical or financial support to Indigenous health systems, nor do most state health systems recognize, respect or incorporate the abundance of knowledge and experience of traditional medicine which in the end compromise the quality of health services available to Indigenous peoples’.

The right to health, like all human rights, imposes on States Parties three types of obligations:

* **Respect:** Indigenous Peoples cultures and way of life deserves to be respected, appreciated and enhanced to address the needs of communities within their cultural contexts. This means health interventions should not to interfere with the enjoyment of the right to health by the introduction of interventions that will harm their cultural practices.
* **Protect:** This means ensuring that third parties do not infringe upon the enjoyment of the right to health through the regulation of non- state actors not to infringe the rights to health of Indigenous Peoples’.
* **Fulfil:** That nation states should takepositive steps to realize the right to health through adopting appropriate legislation, policies and budgetary measures that respond to the rights to health of Indigenous Peoples’.

**Recommendations**

1. Promoting the participation of leaders and representatives of Indigenous Peoples and their communities in the formulation of health policies and strategies and the development of health and environmental activities directed at their people;
2. Ensuring greater access by Indigenous Peoples to quality health services;
3. Facilitating inter-sectorial actions between government, non-governmental, universities, research centers and indigenous organizations;
4. Strengthening the technical, administrative and management capacity of national and local institutions responsible for the health of Indigenous Peoples, with particular attention to the need to overcome the lack of information;
5. Promoting the transformation of health systems and supporting the development of alternative models of care, including research and certification of traditional medicine.

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**Peoples 2013**

1. On 10 December 1948, the Universal Declaration of Human Rights was proclaimed and adopted by the General Assembly. The extraordinary vision and determination of the drafters produced a document that for the first time set out universal human rights for all people in an individual context. Now available in more than 360 languages, the Declaration is the most translated document in the world — a testament to its universal nature and reach. It has inspired the constitutions of many newly independent States and many new democracies. It has become a yardstick by which we measure respect for what we know, or should know, as right and wrong. [↑](#footnote-ref-1)
2. The African Charter on the Rights and Welfare of the Child was adopted in 1990, and entered into force on 29 November 1999. As of 31 May 2000, it had 20 ratifications. The Charter spells out a long list of rights of the child and establishes an African Committee of Experts on the Rights and Welfare of the Child. [↑](#footnote-ref-2)
3. Most state health systems are not culturally sensitive, and their services and management do not reflect the socio-cultural practices, beliefs or visions of the indigenous communities [↑](#footnote-ref-3)