



Human rights and access to healthcare services for indigenous peoples in Africa

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Abstract

In September 2015, the United Nations adopted the sustainable development goals (SDGs) to address among others poverty and inequality within and among countries of the world. In particular, the SDGs aim at ameliorating the position of disadvantaged and vulnerable groups in societies. One of the over-arching goals of the SDGs is to ensure that no one is left behind in the realisation of their access to health care. African governments are obligated under international and regional human rights law to ensure access to healthcare services for everyone, including indigenous populations, on a non-discriminatory basis. This requires the governments to adopt appropriate measures that will remove barriers to healthcare services for disadvantaged and marginalised groups such as indigenous peoples.

Introduction

We should ensure that no person – regardless of ethnicity, gender, geography, disability, race or other status – is denied universal human rights and basic economic opportunities. We should design goals that focus on reaching excluded groups.¹

According to the preamble to the Universal Declaration on Human Rights, ‘the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’.² This makes it imperative for African governments to adopt a rights-based approach to realising access to healthcare services for indigenous peoples in the region. An estimated 370 indigenous peoples are said to be living in 90 countries across the world. Indigenous peoples face serious challenges in different areas of their lives (United Nations, 2014). Due to historical disadvantage and social exclusion, indigenous peoples often encounter challenges in accessing healthcare services in many parts of Africa. While the term ‘indigenous peoples’ has remained contested and without universally acceptable definition, attempts have been made to give a generous interpretation of this term. Thus, indigenous peoples have been defined to include peoples who:

- Identify themselves and are recognised and accepted by their community as indigenous.
- Demonstrate historical continuity with pre-colonial and/or pre-settler societies.
- Have strong links to territories and surrounding natural resources.
- Have distinct social, economic or political systems.

peoples (United Nations, 2014). Moreover, experience has shown that healthcare providers in public hospitals hardly take into consideration the traditions and cultures of indigenous peoples when providing services. It has also been found that where indigenous population also belongs to the minority group, language barrier can impede their ability to seek healthcare services (International Labour Organisation & African Commission on Human and Peoples' Rights, 2009). Unfortunately, most public hospitals in Africa do not provide interpreter services to address this barrier. The Canadian Supreme Court in *Eldridge v Attorney General and others* has held that failure of the government to ensure sign interpreter for persons with impaired sight and hearing will amount to a violation of the right to equality and non-discrimination guaranteed in the Charter of Rights.²⁶ Although this case applies to persons with disabilities the reasoning exemplifies that government must pay special attention to the need of vulnerable and marginalised groups such as indigenous populations.

Quality healthcare services: This requires the government to allocate adequate resources that will ensure delivery of efficient, timely and satisfactory healthcare services. Public healthcare services in many African countries are largely underfunded. In addition, remuneration for healthcare providers tend to be poor and uncompetitive compared to the private sector. Thus, healthcare providers tend to seek greener pastures either overseas or in private sector. This has implications for the quality of health services in public hospitals in Africa since it may lead to shortages of skilled healthcare providers. While this is likely to impact on the right to health of the people in general, its implications can be more devastating for indigenous populations who are already disadvantaged and deprived of other amenities. The CESCR in its concluding observations to Burundi has noted that disadvantaged or marginalised individuals and groups, in particular, the Batwa indigenous peoples continue to encounter obstacles in accessing health services.²⁷ It expressed deep concern about the quality and availability of healthcare services, especially in remote rural areas. Thus, it urged the Burundian government to allocate sufficient resources to the health sector to meet the needs of disadvantaged and marginalised groups.

Conclusion

It is clear that for African governments to meet the health needs of indigenous population in the region, a more pragmatic approach grounded in respect for human rights is essential. Such an approach must recognise the rights to dignity and non-discrimination of indigenous peoples. More importantly, governments must review budgetary allocations to the health needs of indigenous peoples in order to address inequities in provision of services (Yamin & Norheim, 2014). The current approach in many African states where issues relating to the needs of indigenous peoples are treated with levity is not acceptable. African governments must strive through adoption of appropriate measures to remove barriers to healthcare services for indigenous peoples. In this regard, they may be required to provide free medical services for indigenous populations and ensure that well-trained health providers that can speak the languages of indigenous peoples are recruited. At the same time, African governments must develop laws, policies and programmes that will facilitate

access to healthcare services for indigenous peoples. This should include access to traditional medicines that meets the specific needs of indigenous population.²⁸ Involving indigenous peoples in the development of such policies and programmes is crucial and must form the fulcrum of all measures adopted to realise access to healthcare services for them.²⁹ The UN Expert Mechanism on the Rights of Indigenous Peoples has noted that:

Health is an indispensable component of indigenous peoples' very existence, survival and entitlement to live in dignity and determine their own futures. States should therefore seek the free, prior and informed consent of indigenous peoples before implementing laws, policies or programmes affecting their health or health rights. (Expert Mechanism on the Right of Indigenous Peoples, 2016)

In its landmark decision of *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Inter-American Court has held that that the obligation of States to consult with indigenous peoples is now a general principle of international law.³⁰

Access to healthcare services for indigenous peoples should not be viewed as a charity or privilege; rather it should be seen as a human rights imperative.

Notes

1. United Nations, A new global partnership: Eradicate poverty and transform economies through sustainable development; The report of the high level panel of eminent persons on the post-2015 sustainable development agenda, New York, United Nations, 2013, Executive Summary. Retrieved from www.un.org/sg/management/pdf/HLP_P2015_Report.pdf.
2. Universal declaration of human rights adopted by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 www.un.org/en/universal-declaration-human-rights.
3. World Health Organization (2007).
4. Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities 2005, p. 20. Retrieved from http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf.
5. Universal Declaration of Human Rights adopted by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 Retrieved from www.un.org/en/universal-declaration-human-rights.
6. International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966; GA Res 2200 (XXI), UN Doc. A/6316 (1966) 993 UNTS 3 (entered into force 3 January 1976).
7. Convention on the elimination of all forms of discrimination against women GA Res 54/180 UN GAOR 34th Session Supp. No. 46 UN Doc. A/34/46 1980 (article 12).
8. Convention on the Rights of the Child GA Res 25 (XLIV), UN GAOR Supp. No. 49 UN Doc. A/RES/44/25 1989 (article 24).
9. Convention on the Rights of Persons with Disabilities adopted in 2006 A/RES/61/106 (article 25).
10. UN Committee on Covenant on Economic, Social and Cultural Rights: The Right to the Highest Attainable Standard of Health (article 12 of the Covenant), 11 August 2000, E/C.12/2000/4. Retrieved from <http://www.refworld.org/docid/4538838do.html>.
11. As above paras 8–12.
12. UN Committee on Covenant on Economic, Social and Cultural Rights: Right to sexual and reproductive health.
13. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 13 September 2007. Retrieved from www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
14. ILO Indigenous and Tribal Peoples' Convention 1989 (No. 169) adopted during the 76th ILC session (27 June 1989).
15. See Establishment of the UN Permanent Forum on indigenous Issues Economic and Social Council (ECOSOC) Resolution 2000/2022.
16. African Charter on Human and Peoples' Rights OAU Doc CAB/LEG/67/3/Rev 5, adopted by the Organisation of African Unity, 27 June 1981, entered into force 21 October 1986.
17. African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.0/49 (1990) (entered into force 29 November 1999).
18. Adopted by the 2nd Ordinary Session of the African Union General Assembly in Maputo CAB/LEG/66.6 (2003) entered into force 25 November 2005.

19. Established by the African Commission on Human and Peoples' Rights with the adoption of Resolution 51 at the 28th Ordinary Session (Cotonou, Benin – 23 October to 6 November 2000).
20. WHO Factsheet on health of Indigenous Peoples.
21. See the Report of the UN Special Rapporteur on indigenous peoples on Namibia 2013 A/HRC/24/41/Add.1, 25 June 2013 paras 68–69.
22. See the Report of Permanent Forum on Indigenous Peoples on tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: Measures taken to implement the declaration of the sixteenth session New York, 24 April–5 May 2016 E/C.19/2017/4.
23. Social and Economic Rights Action Centre (SERAC) and another v Nigeria (2001) AHRLR 60 (ACHPR 2001).
24. The Report of the UN Special Rapporteur on indigenous peoples on Namibia 2013 A/HRC/24/41/Add.1, 25 June 2013 paras 68–69.
25. CESCRC Concluding observation to Rwanda adopted during the 28th Meeting held 17 MAY 2013 E/C.12/RWA/ CO/2-4.
26. Eldridge v British Columbia (Attorney-General) 1997 151 DLR (4th) 577.
27. CESCRC Concluding Observations to Burundi adopted during the 78th meeting, held on 9 October 2015 E/C.12/ BDI/CO1/1.
28. See article 23 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 13 September 2007. Retrieved from www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
29. See articles 22 and 29 of ILO Convention 169.
30. Cited in Sieder (2016).

Disclosure statement

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