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Amnesty International final comments on the European Commission consultation on the EU role in global health

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On 14 October 2009 the European Commission (EC) launched a public consultation on the Communication on the EU role in global health. This briefing paper is Amnesty International's submission to this consultation.

1. Introduction

Amnesty International welcomes the public consultation on the EC's forthcoming Communication on 'The EU's role in global health'.

The Communication offers an important opportunity to ensure that the European Union's (EU) internal and external actions related to global health are fully consistent with the EU's commitment to place human rights at the core of sustainable development. To this end, Amnesty International underlines that the EU's approach to global health should be fully consistent with, and explicitly recognizes, international human rights standards on the right to the highest attainable standard of health.

The consultation process and the subsequent final Communication have the potential to promote the need to ensure the respect and promotion of human rights in efforts towards realizing and surpassing the Millennium Development Goals (MDGs), including in achieving the objectives directly related to health. Human rights principles and standards should underpin both the processes and the objectives in the fight against poverty and all efforts towards meeting the MDGs should be consistent with protection and fulfillment of all human rights.

Moreover, the upcoming 2010 UN Summit on the MDGs provides an opportunity to promote a human rights-focused approach to the MDGs and the eradication of poverty. While preparing for an EU common position on the review on the MDGs, this Communication can serve as a building block towards such an approach based on international human rights principles and standards.

2. Health is a human right

Question 1: In your opinion, does the proposed concept of 'global health' cover the most relevant dimensions? If not, which other essential factors would you suggest?

Amnesty International stresses that the concept of global health should be explicitly addressed as a human rights issue.

Health is a fundamental human right protected under a number of international and regional human rights treaties¹. As provided by the Committee on Economic, Social and Cultural Rights (CESCR) the right to health requires that health and health care facilities, goods and services and the underlying determinants of health be available, accessible, acceptable and of good quality².

¹ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12 of the Convention on the Elimination of Discrimination against Women (CEDAW), Article 24 of the Convention on the Rights of the Child (CRC), and Article 16 of African Charter on Human and Peoples' Rights

² "This means that:

- A sufficient quantity of health facilities, trained professionals and essential medicines must be available.
- Health facilities, goods, services and information on health must be physically and economically accessible (within easy reach and affordable) to everyone without discrimination
- Health facilities, goods, services and information must be acceptable, that is respect medical, ethics, be culturally appropriate and sensitive to gender requirements.
- Health facilities, goods, services and information must also be scientifically and medically appropriate and of good quality. This requires among other things, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment and adequate sanitation." (Amnesty International, *Out of reach: the cost of maternal health in Sierra Leone*, Index: AFR 51/005/2009)

Efforts towards fulfilling the right to the highest attainable standard of health also require international cooperation and assistance. As such, the forthcoming Communication on the 'EU's Role in global health' is an opportunity to explicitly recognise the centrality of international human rights principles and standards and the need to ensure that human rights are respected and fulfilled in all efforts to promote global health, both within and beyond the EU's borders.

In the context of the EU, article 177 of the Treaty establishing the European Community (TEC) specifies that the Community development policies "shall contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms and shall comply with the (...) [Member States commitments] in the context of the United Nations".

In its fight against poverty, the EU has recognized that improving health in developing countries is an essential factor³. This is formulated in the EU Treaty obligation to "foster cooperation with third countries and the competent international organisations in the sphere of public health" (Article 152 EU Treaty). This obligation is reinforced by the 2008-2013 EU Health Strategy which states that the EC and its Member States "can create better health outcomes for EU citizens and for others through sustained collective leadership in Global health"⁴.

EU leadership in global health needs to be based on the EU founding principle of respect for human rights and the obligations stated in article 177 of TEC. The EU's aim to contribute to efforts towards promoting global health must be consistent with international obligations to respect, protect and fulfil human rights, including the right to the highest attainable standard of health.

Incorporating human rights into a global health approach is essential to ensure equal access to good quality health care and to fulfil the right to the highest attainable standard of health for all people worldwide. In that respect, there are key human rights principles and standards which must underpin all internal and external EU actions related to global health:

- The EU's approach to global health should be underpinned by the framework of international human rights law on the right to the highest attainable standard of health
- The principle of equitable and universal access to good quality health care⁵ should be underpinned by an explicit recognition of the need to address discrimination as a barrier to the realization of the right to health, and by a focus on ensuring the adequate prioritization of the most marginalized and vulnerable.
- The EU's approach to global health should uphold and support communities' rights to participate actively and meaningfully in the development and implementation of health policies, projects and programmes.
- The EU must ensure that effective monitoring and accountability mechanisms are in place to address failures to implement the right to the highest attainable standard of health both within and outside EU. Accountability in the context of the right to the highest attainable standard of health is the process which provides individuals and communities with an opportunity to understand how government has discharged its right to health obligations. Multiple forms of accountability can be invoked in this context, such as judicial, quasi judicial, administrative, political and social. Accountability begins with government ensuring the incorporation and implementation of accountability processes into all health policy. Access to effective remedies and reparations for violations of the right to health are crucial to ensuring that the right to health has meaning. Reparations may take any one or more of the following forms: restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

³ EC, Roadmap for the Communication on the EU role in global health, 2009, p.2.

⁴ EC, "Together for Health: A Strategic Approach for the EU 2008-2013", White paper, 2007, p.6.

⁵ EC, Issues Paper on the EU role in global health, October 2009, p.17.

Recommendation: the EC's Communication on 'The EU's Role in global health' should recognize, and explicitly refer to, international standards on the right to the highest attainable standard of health

3. Human rights at the core of Millennium Development Goals (MDGs)

Question 3: Do you consider the health-related MDGs a sufficient framework for a global health approach? If not, what else should also be considered?

Question 11: In your opinion, what are the links between health, governance, democracy, stability and security and how could the right to health be put into operation?

Amnesty International values the EU's commitment to poverty reduction and its support for the MDGs as a framework for global efforts to address poverty and to improve health. However, the current MDG framework does not integrate and is not consistent with international human rights principles and standards, which States are under a legal obligation to fulfil. It does not require States to address underlying human rights concerns that can undermine efforts to fulfil the right to health. For instance, the MDG framework does not require states to take measures to systematically identify and address discrimination – including gender discrimination and denial of sexual and reproductive rights which undermine the realization of the right to maternal health.

Amnesty International recalls that despite this global initiative, progress is lagging behind with most countries already announcing that they will not meet their targets by 2015. The MDG goals directly related to health are also limited in that they are disease specific and do not fully address other barriers to the right to health, such as living in an unhealthy and unsafe environment, violence (including gender-based violence), food insecurity, lack of safe water and of sanitation, and discrimination in accessing healthcare services.

Maternal mortality (MDG 5) - with more than half a million women dying each year from complications related to pregnancy and childbirth - is a clear example of how poverty, particularly when combined with discrimination, is a key risk factor for dying from a preventable death in pregnancy. Women who are least able to access the necessary health information and services are often members of groups and communities which face discrimination and exclusion because of their race, ethnicity, age, immigration status or simply because they live in poverty. Despite longstanding international commitments to reducing maternal mortality, so far the progress has been disappointing. In recent years, there has been increased recognition that reducing maternal mortality is not just an issue of development, but also an issue of human rights. This health emergency can be addressed and prevented if it is tackled as a human right issue, as reflected in the recent United Nation Human Rights Council resolution on preventable maternal mortality and morbidity and human rights⁶. The right to health includes entitlements to goods and services, including sexual and reproductive healthcare and information. It requires action to ensure that maternal healthcare facilities, goods and services are available, accessible, acceptable and of good quality. A policy that is based on human rights is likely to be equitable, inclusive, non-discriminatory, participatory and evidence-based. These features help to empower women and ensure that policies are sustainable, robust and effective and are therefore likely to lead to improvements in sexual and reproductive health, including maternal health.⁷

Despite an increase in international assistance for health over the last decade, many countries continue to need development assistance in order to increase health coverage and progressively realize the right to health. The EC's forthcoming Communication is an opportunity to affirm the EC's commitment to financial and technical support for global health which is based on human rights principles and standards and is fully consistent with the right to the highest attainable standard of health. The EU's development assistance for health and for health systems strengthening in developing countries should contribute to the realization of the right to health. As such, it must be consistent with the obligation to respect human rights, ensure non-discrimination, advance equality, and ensure that adequate priority is given to the most vulnerable and marginalized – in line with countries' existing obligations to respect, protect and fulfil the right to the highest attainable standard of health. EU development cooperation for health which is more coordinated and predictable, and

⁶ United Nation Human Rights Council, Resolution on Preventable Maternal Mortality and Morbidity and human rights, A/HRC/11/L.16, 12 June 2009.

⁷ Report of Paul Hunt UN Special Rapporteur on the right to health (2002-2008) to the General Assembly, A/59/422, 2004.

which is grounded in human rights principles and standards, will contribute to the promotion of more equitable, participatory and effective measures towards fulfilling the right to health for all.

Recommendation: All efforts towards meeting and surpassing the MDGs – including those directly related to health - should be grounded in and consistent with human rights principles and standards. The EC’s Communication on ‘The EU’s Role in global health’ must also take into account the measures needed to address the underlying human rights violations which hinder the right to health, especially for the most vulnerable and marginalized.

For example, in relation to maternal mortality (MDG 5), the EC should take into account the specific barriers faced by women and girls in accessing health care and the need to respect and promote women’s sexual and reproductive rights.

4. Neglected diseases

The right to health not only requires that existing medicines are accessible, but also that much needed new medicines and their formulations are developed and thereby become available to those who need them. The right to health demands that particular attention is paid to disadvantaged and vulnerable individuals, communities and populations. This includes adequate priority to research and development of essential medicines for disadvantaged and vulnerable people, e.g. those suffering from neglected diseases. Amnesty International welcomes the recognition in the issues paper of the low-level and inequity of investment in global health research. Although in recent years there have been some positive measures to reverse this trend, research into these diseases remains fragmented and neglected. The work done by philanthropic institutions and civil society organizations to promote research into these diseases is commendable. However, to address the level and inequity of investment in global health research, it is imperative that states seek and provide international cooperation and assistance, both technical and financial, so as to ensure sustained research and development into neglected diseases.

5. Equitable social protection for health (within and outside the EU)

Question 24: What in your opinion, should be the main principles guiding equitable social protection for health?

Amnesty International welcomes the EU’s focus on the principles of equitable and universal access to good quality health care. To ensure compliance with EU Member States legal obligations in relation to the right to health, these principles must be consistently applied in a manner which ensures⁸ that “all people in all countries should be able to benefit from health care and innovations in the medical sciences”. The human rights principles of equality, universality, accountability and participation also require states to ensure that the right to health is respected, protected and fulfilled both within and outside the EU.

Equitable social protection also requires EU to ensure that its policies do not result in any adverse effects on global health. EU should ensure that the right to health is included in all its policies and establish mechanisms for regular assessment of impacts of EU policies on global health.

Equitable social protection also requires the EU to establish mechanisms to assess and hold to account EU based transnational corporations where their actions have resulted in adverse health outcomes.

While the EU recognizes and promotes universality and equity in access to good quality health care, Amnesty International recalls that within the EU many asylum-seekers and migrants are subject to discrimination and exclusion from health services and experience extreme poverty. In Germany for example, migrants continue to suffer restricted access to health care, and migrant children’s access to education is limited. In the United Kingdom thousands of rejected asylum-seekers are forced into destitution and face significant limitations on their access to free health care. The majority of destitute rejected asylum seekers rely on the charity of others, although some statutory support provisions exist in principle where it is recognized that there are barriers to return. Access to such subsistence is

⁸ EC, Issues Paper on the EU role in global health, October 2009, p.17.

limited in practice, as rejected asylum-seekers face barriers in terms of their eligibility. To that end, the EU should take concrete steps to tackle the obstacles which are still faced by a number of refugees and asylum seekers within the EU and ensure that EU Member States are providing adequate levels of health care for all within its territory.

Recommendation: The EU's approach to health – both within and outside the European Union – must be consistent with the legal obligations in relation to the right to health.

6. Role of civil society organizations and human rights defenders

Question 13: What should be the role of civil society in the health sector, at national and local levels?

Question 26: What is the role of civil society in global and national health governance and how can potential conflicts of interest between advocacy and service provision be avoided?

Amnesty International calls for an active, free and meaningful participation of individuals and civil society organizations (CSOs), including people living in poverty, to be guaranteed in the internal and external EU actions related to global health. The right to participation means that people, whose lives might be affected by any EU actions, should be consulted and be involved in public debates and the decision-making process. The right to participation is the means to address the principles of local ownership and evidence-based policies for health supported by the EU⁹.

Empowerment is a precondition for participation. It requires that the EU policies related to global health provide for access to information and awareness of decision making processes, by both rights-holders and duty-holders. Most fundamentally, policies must enhance the ability to demand rights and to hold duty-bearers accountable. Moreover, it is important to guarantee adequate allocation of time and resources to achieve these goals. Amnesty International recalls that EU policies, particularly development policies, should adopt a clear position that empowerment is vital for upholding human rights.

CSOs help to bring in diverse perspectives and in monitoring and holding to account the duty bearers. Amnesty International underlines the importance of the role that CSOs play in improving access to more effective health care services. For example, Amnesty International's research has revealed how women's organizations have been key actors in improving access to more effective sexual health care services, raising awareness of sexual health issues and HIV/AIDs, combating domestic violence, working with survivors of sexual abuse and promoting women's rights¹⁰.

Through their understanding of the universality and indivisibility of rights, human rights defenders are able to articulate how the respect of the right of health is dependent on upholding a host of other civil, political, social and economic rights. In addition, human rights defenders bring added value by monitoring the implementation of policy, decrying the dilution of human rights standards, introducing new ideas and challenge concepts that might stand in the way of the realization of the right to health, promote public discussion around rights, introduce ideas and proposals (and counter proposals) for scrutiny and debate. They encourage and demand participation in processes to define policy or practice, thus increasing the likelihood of airing of views, informed policy design and subsequent oversight.

Moreover, human rights defenders are crucial actors in the struggle for political, social, and economic rights, including the right to health. Their position at the forefront of defending and promoting human rights often puts them at particular risk of attack and intimidation. For example, nine women human rights defenders are facing legal proceedings as a result of their work promoting sexual health issues and women's rights in Nicaragua. Intimidation against them and other defenders has decreased since international appeals began in 2008; however the legal complaint remains unresolved¹¹.

⁹ EC, Issues Paper on the EU role in global health, October 2009, p.17-18.

¹⁰ Amnesty International, *Nicaragua: Intimidation of Women Human Rights Defenders*, (Index: AMR 43/011/2009)

¹¹ Amnesty International, *Nicaragua: Intimidation of Women Human Rights Defenders*, (Index: AMR 43/011/2009)

Supporting and giving legitimacy to the work of human rights defenders is one of the most important ways to protect and promote the human rights of all, as they are catalysts for change on human rights issues, and the oppression of human rights defenders is often emblematic of the wider repression of others in the country in which they work.

The EU acknowledged the crucial role of human rights defenders with the adoption of the EU Guidelines on Human Rights Defenders in June 2004 (and revised in December 2008). This written commitment to promote the principles in the UN Declaration on Human Rights Defenders in its relations with countries outside its borders is rare. However, words and written commitments are not enough. The EU needs to increase the level and consistency of action to support and protect human rights defenders, from the desk officer in the embassy, right the way up to ministers visiting the country in question.

To this end, the Communication on the EU role in global health should explicitly recognize the vital role of CSOs and human rights defenders and the EU's commitment to promoting and protecting their work.

Recommendations:

The EU should explicitly refer to the active, free and meaningful participation as a right and adopt a clear position that empowerment is vital for upholding human rights. The communication on the EU role in global health must enhance ability to demand rights and to hold duty-bearers accountable. Guarantee adequate allocation of time and resources to achieve these goals.

The EU should explicitly acknowledge in the Communication on the EU role in global health the crucial role civil society organizations and human rights defenders play in promoting the realization of the right to health. The EU should take proactive measures to guarantee everyone's right to active, free and meaningful participation and actively support and initiate efforts to ensure that human rights defenders can carry out their activities without obstacles or fear of reprisals.